

THE CITY OF ELKINS

**Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)**

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THE CITY OF ELKINS

**SEWER REVENUE BONDS, SERIES 1996 A
(WEST VIRGINIA SRF PROGRAM)**

BOND ORDINANCE

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THE CITY OF ELKINS

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$300,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ELKINS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation"), supplemental to the Prior Ordinance (as hereinafter defined), is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Elkins (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and

improvements to the existing public sewerage system of the Issuer, consisting of a lime silo storage system, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage facilities of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the "System") at an estimated cost of not to exceed \$344,000, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the City Clerk of the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Prior Bonds and the Series 1996 A Bonds and to make all payments into all Sinking Funds, Reserve Accounts and other payments provided for herein and in the Prior Ordinance, all as such terms are hereinafter defined.

D. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program) (the "Series 1996 A Bonds"), in the total aggregate principal amount of not more than \$300,000, initially to be represented by a single bond, to permanently finance the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 1996 A Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction or acquisition of the Project; amounts which may be deposited in the Series 1996 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1996 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the

issuance of the Series 1996 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

F. The period of usefulness of the System after completion of the Project is not less than 20 years.

G. It is in the best interests of the Issuer that its Series 1996 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), in form satisfactory to the Issuer, the Authority and the DEP (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

H. There are outstanding obligations of the Issuer which will rank either on a parity with or junior and subordinate to the Series 1996 A Bonds as to liens, pledge, source of and security for payment, which obligations are designated and have the lien positions with respect to the Series 1996 A Bonds as follows:

<u>Designation</u>	<u>Lien Position</u>
Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$1,037,970 (the "Series 1986 Primary Bond");	First Lien
Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$517,001 (the "Series 1986 Supplemental Bond");	Second Lien

The Series 1986 Primary Bond and the Series 1986 Supplemental Bond are hereinafter collectively called the "Prior Bonds". The ordinance which authorized the issuance of the Prior Bonds is herein referred to as the "Prior Ordinance".

The Series 1996 A Bonds shall be issued on a parity with the Series 1986 Primary Bond, and senior and prior to the Series 1986 Supplemental Bond with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has met the coverage requirements for issuance of parity bonds of the Series 1986 Primary Bond and the Prior Ordinance and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained the consent of the Holder of the Series 1986 Primary Bond to the issuance of the Series 1996 A Bonds on a parity

with the Series 1986 Primary Bond. The Issuer has also obtained the consent of the Holder of the Series 1986 Supplemental Bond to the issuance of the Series 1996 A Bonds senior and prior to the Series 1986 Supplemental Bond.

Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1996 A Bonds as to liens, pledge and/or source of and security for payment or in any other respects.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 1996 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a certificate of public convenience and necessity, from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 1996 A Bonds or such final order will not be subject to appeal.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1996 A Bonds for the purposes set forth herein.

K. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Series 1996 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(D) of the Code and all other entities benefiting thereby, reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year in which the Series 1996 A Bonds are to be issued.

L. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended, or is grandfathered from review thereby.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of Series 1996 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 1996 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond

of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 1996 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 1996 A Bonds, the Series 1986 Primary Bond, and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1996 A Bonds for the proceeds or at least a de minimis portion thereof representing the purchase price of the Series 1996 A Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Kelley Gidley Blair & Wolfe, Inc., Charleston, West Virginia, or any qualified engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System or portion thereof; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02E hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently constituted.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, (ii) evidences of ownership of a proportionate interest in specified direct

obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined, and for the furnishing by the Issuer of miscellaneous service.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia, in Randolph County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body and the Sanitary Board of the Issuer.

"Loan Agreement" means the Loan Agreement, heretofore entered, or to be entered, into by and among the Authority, the DEP and the Issuer, providing for the purchase of the Series 1996 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1996 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 1996 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1996 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 1996 A Bonds and is not acquired in order to carry out the governmental purpose of the Series 1996 A Bonds.

"Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Series 1996 A Bonds or the Series 1986 Primary Bond or the principal of the Series 1986 Supplemental Bond, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund established by the Prior Ordinance and continued hereby.

"Outstanding," when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified

percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 1996 A Bonds in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" means, collectively, the Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$1,037,970, and the Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$517,001.

"Prior Ordinance" means, collectively, the ordinance of the Issuer enacted March 13, 1986, as supplemented by the supplemental resolution of the Issuer adopted April 17, 1986, authorizing the issuance of the Series 1986 Primary Bond and the Series 1986 Supplemental Bond.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of a lime silo storage system, together with all appurtenant facilities.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must

have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is exempt from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recording Officer", "Recorder" or "City Clerk" means the City Clerk of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor to the Code.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 1996 A Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any reserve account for the Prior Bonds and the Series 1996 A Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Ordinance and continued hereby.

"Series 1986 Primary Bond" means the Issuer's Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original principal amount of \$1,037,970.

"Series 1986 Primary Bond Reserve Account" means the Reserve Account established for the Series 1986 Primary Bond in the Prior Ordinance.

"Series 1986 Primary Bond Sinking Fund" means the Sinking Fund established for the Series 1986 Primary Bond in the Prior Ordinance.

"Series 1986 Supplemental Bond" means the Issuer's Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original principal amount of \$517,001.

"Series 1986 Supplemental Bond Reserve Account" means the Supplemental Reserve Account established for the Series 1986 Supplemental Bond in the Prior Ordinance.

"Series 1986 Supplemental Bond Sinking Fund" means the Supplemental Sinking Fund established for the Series 1986 Supplemental Bond in the Prior Ordinance.

"Series 1996 A Bonds" means the not more than \$300,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer.

"Series 1996 A Bonds Reserve Account" means the Series 1996 A Bonds Reserve Account established in the Series 1996 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1996 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1996 A Bonds in the then current or any succeeding year.

"Series 1996 A Bonds Sinking Fund" means the Series 1996 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 1996 A Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 1996 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1996 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 1996 A Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund and the respective Reserve Accounts.

"System" means the complete existing public sewerage system now owned by the Issuer, consisting of a sewage treatment system, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said sewer system from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$344,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 1996 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the SRF Program.

The cost of the Project is estimated not to exceed \$344,000, of which \$300,000 will be obtained from proceeds of the Series 1996 A Bonds and \$44,000 from funds of the Issuer.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 1996 A Bonds, funding a reserve account for the Series 1996 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1996 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 1996 A Bonds of the Issuer, in an aggregate principal amount of not more than \$300,000. The Series 1996 A Bonds shall be issued as a single Bond, designated as "Sewer Revenue Bond, Series 1996 A (West Virginia SRF Program)," and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1996 A Bonds remaining after funding of the Series 1996 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest on the Series 1996 A Bonds, if any, shall be deposited in or credited to the Bond Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 1996 A Bonds shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 1996 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1996 A Bonds, if any, shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1996 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1996 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1996 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Series 1996 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 1996 A Bonds shall cease to be such officer of the Issuer before the Series 1996 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 1996 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 1996 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 1996 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 1996 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 1996 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 1996 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 1996 A Bonds.

The registered Series 1996 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly

authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 1996 A Bonds or transferring the registered Series 1996 A Bonds are exercised, all Series 1996 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 1996 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 1996 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 1996 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 1996 A Bonds or, in the case of any proposed redemption of Series 1996 A Bonds, next preceding the date of the selection of Series 1996 A Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 1996 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 1996 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 1996 A Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Series 1986 Primary Bond, and senior and prior to the lien on such Net Revenues in favor of the Holders of the Series 1986 Supplemental Bond. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 1996 A Bonds and to make the payments into the respective Sinking Funds, the Reserve Accounts therein, and the Renewal and Replacement Fund, and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 1996 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1996 A Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 1996 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1996 A Bonds to the original purchasers;
- C. An executed and certified copy of Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 1996 A Bonds.

Section 3.10. Form of Series 1996 A Bonds. The text of the Series 1996 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[FORM OF SERIES 1996 A BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BOND, SERIES 1996 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-_____

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 199____, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation), shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 199____, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and

among the Issuer, the Authority and the West Virginia Division of Environmental Protection, dated _____, 199__.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) [to pay interest on the Bonds of this Series (the "Bonds") during the construction of the Project and for not more than 6 months thereafter; (iii) to fund a reserve account for the Bonds; (iv)] to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 199__, and a Supplemental Resolution duly adopted by the Issuer on _____, 199__ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWER REVENUE BOND, SERIES 1986 (THE "SERIES 1986 PRIMARY BOND"), DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,037,970.

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SUPPLEMENTAL SUBORDINATE SEWER REVENUE BOND, SERIES 1986 (THE "SERIES 1986 SUPPLEMENTAL BOND"), DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$517,001;

THE SERIES 1986 PRIMARY BOND AND THE SERIES 1986 SUPPLEMENTAL BOND ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on parity with the pledge of Net Revenues in favor of the holders of the Series 1986 Primary

Bond, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1996 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 1996 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 1996 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding prior to or on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated _____, 199 ____.

[SEAL]

Mayor

ATTEST:

City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1996 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 199____.

ONE VALLEY BANK, NATIONAL
ASSOCIATION, as Registrar

By _____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	
TOTAL		\$	_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 1996 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. "Amended Schedule A" Filing. Within 60 days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinance);
- (2) Operation and Maintenance Fund (established by the Prior Ordinance);
- (3) Renewal and Replacement Fund (established by the Prior Ordinance); and
- (4) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 1986 Primary Bond Sinking Fund (established by the Prior Ordinance);
 - (a) Within the Series 1986 Primary Bond Sinking Fund, the Series 1986 Primary Bond Reserve Account (established by the Prior Ordinance);
- (2) Series 1986 Supplemental Bond Sinking Fund (established by the Prior Ordinance);
 - (a) Within the Series 1986 Supplemental Bond Sinking Fund, the Series 1986 Supplemental Bond Reserve Account (established by the Prior Ordinance);
- (3) Series 1996 A Bonds Sinking Fund; and
 - (a) Within the Series 1996 A Bonds Sinking Fund, the Series 1996 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinance and in this Bond Legislation. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund, an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 Primary Bond Sinking Fund the amount required by the Prior Ordinance to pay interest on the Series 1986 Primary Bond and (ii) commencing 4 months prior to the first date of payment of interest on the Series 1996 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 1996 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 1996 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1996 A Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 Primary Bond Sinking Fund the amount required by the Prior Ordinance to pay principal of the Series 1986 Primary Bond and (ii) commencing 4 months prior to the first date of payment of principal of the Series 1996 A Bonds, for deposit in the Series 1996 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 1996 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1996 A Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 Primary Bond Reserve Account the amount required by the Prior Ordinance to be deposited therein and (ii) commencing 3 months prior to the first date of payment of principal of the Series 1996 A Bonds, if not fully funded upon issuance of the Series 1996 A Bonds, remit to the Commission for deposit in the Series 1996 A Bonds Reserve Account, an amount equal to 1/120 of the Series 1996 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1996 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1996 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund (as previously set forth in the Prior Ordinance and not in addition thereto), transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any of the Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any of the Reserve Accounts, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 5.03A(4) hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1986 Supplemental Bond Sinking Fund the amount required by the Prior Ordinance to pay principal of the Series 1986 Supplemental Bond.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1986 Supplemental Bond Reserve Account the amount required by the Prior Ordinance to be deposited therein.

Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the respective Sinking Funds, including the Reserve Accounts

therein, and the Renewal and Replacement fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

Moneys in the Series 1996 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1996 A Bonds as the same shall become due. Moneys in the Series 1996 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1996 A Bonds, as the same shall come due, when other moneys in the Series 1996 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1996 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 1996 A Bonds Reserve Account which result in a reduction in the balance of the Series 1996 A Bonds Reserve Account to below the Series 1996 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full to the Series 1986 Primary Bond Sinking Fund and the Series 1996 A Bonds Sinking Fund.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional Bonds.

The Issuer shall not be required to make any further payments into the Series 1996 A Bonds Sinking Fund or into the Series 1996 A Bonds Reserve Account therein when the aggregate amount of funds in said Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1996 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal and interest payments, and any payments made for the purpose of funding any Reserve Account, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata with respect to the Series 1986 Primary Bond and Series 1996 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account created hereunder, and all amounts required for said Sinking Fund and Reserve Account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

Moneys in the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1996 A Bonds Sinking Fund, including the Series 1996 A Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1996 A Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, principal and reserve payments with respect to the Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of each calendar month.

D. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee as set forth in Schedule Y attached to the Loan Agreement.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due.

F. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 1996 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1996 A Bonds, there shall first be deposited with the Commission in the Series 1996 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1996 A Bonds for the period commencing on the date of issuance of such Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1996 A Bonds, there shall be deposited with the Commission in the Series 1996 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 1996 A Bonds Reserve Account.

C. Next, from the proceeds of the Series 1996 A Bonds, there shall first be credited to the Bond Construction Trust Fund and then paid, any and all other borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project and any borrowings by the Issuer from the Authority, including interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer; provided that the Authority and the DEP have previously consented to the payment of such borrowings.

D. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 1996 A Bonds, such moneys shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof.

E. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Series 1996 A Bonds.

Section 6.02. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 1996 A Bonds will

be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1996 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 1996 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 1996 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 1996 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 1996 A Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 1996 A Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holder of the Series 1986 Primary Bond, and senior and prior to the lien on such Net Revenues in favor of the Holder of the Series 1986 Supplemental Bond. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1996 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on August 4, 1994.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease, or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority and the DEP. Additionally, so long as the Series 1996 A Bonds are outstanding and except as otherwise required by law or with the written consent

of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding or to effectively defease the pledge created by this Bond Legislation in accordance with Section 10.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 1996 A Bonds, immediately be remitted to the Commission for deposit in the Series 1996 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Series 1996 A Bonds as prescribed by Section 10.01 hereof, all on a parity basis and pro rata with the Prior Bonds. Any balance remaining after the payment of the Bonds and the interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine, with the written approval of the Consulting Engineers, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property in excess of \$10,000 and not in excess of \$50,000, shall, with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Funds and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 66 2/3% in amount of all Bonds then Outstanding. The Issuer shall prepare the form of such approval and

consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 1996 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 1996 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1996 A Bonds and the Prior Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation and the Prior Ordinance at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 1996 A Bonds and the Prior Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 1996 A Bonds and the Prior Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 1996 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1996 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of additions, extensions, improvements or betterments to the System or refunding the Series 1996 A Bonds or the Prior Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall be not less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding, including, without limitation, the Prior Bonds;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate acquisition and construction of such additions, extensions, betterments or improvements to the System which are to be financed by such Parity Bonds.

The term "Parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section and

the Prior Ordinance, payable from the Net Revenues of the System on a parity with the Bonds, and all the covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section and the Prior Ordinance. All the Series 1996 A Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

The term "Parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 1996 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or equally, as to lien on and source of and security for payment from such revenues, with the Series 1996 A Bonds except in the manner and under the conditions provided in this section.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinance, shall have been made in full as required to the date of issuance of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinance and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments and compliance.

Section 7.08. Books; Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and

commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, the Authority and the DEP, or any other original purchaser of the Series 1996 A Bonds, and shall mail in each year to any Holder or Holders of the Series 1996 A Bonds requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 1996 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 1996 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues

of the System are adequate to meet the Issuer's operation and maintenance expenses and debt service and reserve requirements.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created (or, where appropriate, continued) hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 1996 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Series 1996 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 1996 A Bonds Reserve Account and any reserve accounts for obligations prior to or on a parity with or junior to the Series 1996 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 1996 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Series 1996 A Bonds, including the Prior Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget; Audit and Monthly Financial Report.

The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an Independent Certified Public Accountant, the report of which audit shall be submitted to the Authority and the DEP and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, this Bond Legislation and the Loan Agreement and that the revenues of the System are adequate to meet the Issuer's operation and maintenance expenses and debt service requirements.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations

of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 1996 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer

will itself, or will require each contractor and subcontractor to obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) **PUBLIC LIABILITY INSURANCE**, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) **WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS**, such bonds to be in the amounts of 100% of the amount of any construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) **FLOOD INSURANCE**, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) **BUSINESS INTERRUPTION INSURANCE**, to the extent available at reasonable cost to the Issuer.

(6) **FIDELITY BONDS** will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement and the Act.

Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. **PRIVATE BUSINESS USE LIMITATION.** The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1996 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1996 A Bonds during the term thereof is, under the terms of the Series 1996 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1996 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1996 A Bonds during the term thereof is, under the terms of the Series 1996 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1996 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1996 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. **PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1996 A Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. **FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1996 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. **INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1996 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 1996 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17CFR Part 240).

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the Prior Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 1996 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 1996 A Bonds which would cause the Series 1996 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take any and all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 1996 A Bonds) so that the

interest on the Series 1996 A Bonds will be and remain excludable from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Series 1996 A Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 1996 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year in which the Series 1996 A Bonds are issued does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 A Bonds. For purposes of this first paragraph of Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 A Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 A Bonds. In the event of a failure to pay the correct rebate amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States such amount or amounts, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its

rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issue exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 1996 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 1996 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on the Series 1996 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 1996 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 1996 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 1996 A Bonds shall be on a parity with those of the Holder of the Series 1986 Primary Bond and senior and prior to those of the Holder of the Series 1986 Supplemental Bond.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under

the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the Series 1996 A Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond

Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Series 1996 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1996 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 1996 A Bonds from gross income for federal income tax purposes.

The Series 1996 A Bonds, for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1996 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1996 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay, when due, the principal installments of and interest due and to become due on said Series 1996 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1996 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 1996 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 1996 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 1996 A Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Series 1996 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 1996 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 1996 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 1996 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 1996 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event

of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds or any portion thereof are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

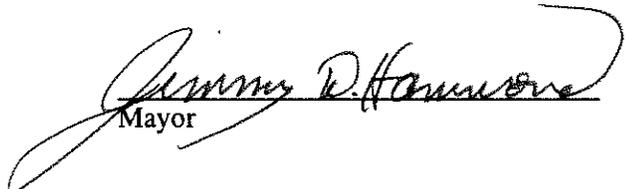
Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Elkins Inter-Mountain, a newspaper published and of general circulation in The City of Elkins, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 1996 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: - July 2, 1996

Passed on Second Reading: - July 18, 1996

Passed on Final Reading
Following Public
Hearing: - August 1, 1996

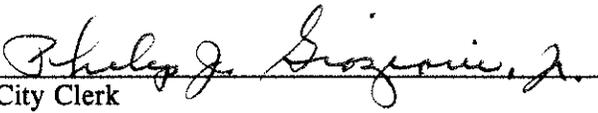

Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF ELKINS on the 1st day of August, 1996.

Dated: August 22, 1996.

[SEAL]


City Clerk

07/24/96
ELKSJM.A6
255620/95001

EXHIBIT A

Loan Agreement included in bond transcript as Document No. 3

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF ELKINS; RATIFYING AND APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the city council (the "Governing Body") of The City of Elkins (the "Issuer"), has duly and officially adopted and enacted a bond ordinance, effective August 1, 1996 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$300,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE

TERMS AND PROVISIONS OF SUCH BONDS AND
ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer (the "Bonds" or "Series 1996 A Bonds"), in the aggregate principal amount not to exceed \$300,000, and has authorized the execution and delivery of a loan agreement relating to the Bonds dated June 10, 1996 (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection (the "DEP"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Loan Agreement be ratified and approved by the Issuer, that the exact principal amount, the date, the maturity date, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF
THE CITY OF ELKINS:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered R-1, in the principal amount of \$300,000. The

Bonds shall be dated the date of delivery thereof, shall finally mature June 1, 2017, and shall bear interest at the rate of 2% per annum. The Bonds shall be payable quarterly in principal installments and interest on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1997, and ending June 1, 2017, and in the amounts as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby approve and shall pay the administrative fee equal to 1% of the principal amount of the Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 4. The Issuer does hereby ratify, approve and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 6. The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds.

Section 7. The Issuer does hereby appoint Davis Trust Co., Elkins, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 1996 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 1996 A Bonds Sinking Fund, as capitalized interest.

Section 9. Series 1996 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 1996 A Bonds Reserve Account.

Section 10. The balance of the proceeds of the Bonds shall be deposited in or credited to the Bond Construction Trust Fund as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds and related costs.

Section 11. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about August 22, 1996, to the Authority pursuant to the Loan Agreement.

Section 12. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Moneys in the Series 1996 A Bonds Sinking Fund, including the Series 1996 A Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

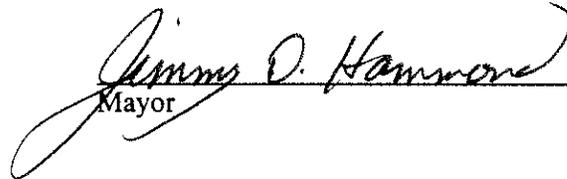
Section 15. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than \$5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1996, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on

behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 1st day of August, 1996.

THE CITY OF ELKINS



Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Elkins on the 1st day of August, 1996.

Dated: August 22, 1996.

[SEAL]



City Clerk

07/18/96
ELKSJM.B3
255620/95001

LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Department of Commerce, Labor and Environmental Resources (the "DEP"), and the local government designated below (the "Local Government").

CITY OF ELKINS
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the construction, acquisition and improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 20, Article 5I, of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by

such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to construct, operate and improve a wastewater treatment project and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

WHEREAS, the Local Government intends to construct, is constructing or has constructed such a wastewater treatment project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Loan Agreement.

1.6 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.7 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, at and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Government shall permit the Authority and DEP, acting by and through their Directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Government shall submit to the Authority and DEP such documents and information as it may reasonably require in connection with the construction, acquisition and installation of

the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract, as security for the faithful performance of such contract.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, DEP and the

Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy of each Form to DEP in compliance with the Local Government's construction schedule.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Local Government shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(c) The Local Government shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim financing of construction, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local

Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(g) The Local Government shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsection 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountants for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Local Government and the Local Government shall accept the Loan from the

Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date set forth in Exhibit E hereto.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

ARTICLE IV

Local Bonds; Security for Loan;
Repayment of Loan; Interest on Loan;
Fees and Charges

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. The revenues generated from the operation of the System will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided that if the Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the net revenues from the System;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the reserve account established for the payment of debt service on the Local Bonds is funded (whether by Local Bond proceeds, monthly deposits or otherwise) the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Government will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may be sold, mortgaged, leased or otherwise disposed of as a whole or substantially as a whole provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the local bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by

a lien on or payable from the revenues of the System prior to the Local Bonds and with the written consent of the Authority and DEP; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Government will not render any free services of the System;

(viii) That any Local Bond owner may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that the Local Government is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Local Government shall annually adopt a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC,

prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the West Virginia Municipal Bond Commission (the "Commission") its required interest, principal and reserve fund payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check to the Authority by the 5th day of such calendar month;

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is

sufficient to pay the costs of acquisition and construction of the Project; and

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include without limitation Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

ARTICLE V

Certain Covenants of the Local Government;
Imposition and Collection of User Charges;
Payments To Be Made by
Local Government to the Authority

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default

hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System.

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by local governments in the terms and covenants of loan agreements, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the SRF Regulations or this Loan Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Loan.

6.4 The Local Government hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Local Government fails to make any such rebates as required, then the Local Government shall pay any and all penalties, obtain a waiver from the Internal Revenue

Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.5 Notwithstanding Section 6.4, the Authority and DEP may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Government to be monitored or cause the rebate calculations for the Local Government to be prepared, in either case at the expense of the Local Government.

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The Local Government hereby agrees to file with the Authority upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE VII

Miscellaneous

7.1 Schedule Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.4 No waiver by any party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of

the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.5 This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.6 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Local Government specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this Loan Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the amount of the Loan made by the Authority and DEP as set forth in (iii) above is not terminated due to such non-funding on any balance on the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default under the Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

City of Elkins
[Proper Name of Local Government]

(SEAL)

By: *Jimmy D. Hammond*
Its: Mayor

Attest:

Philip G. Grogan, Jr.
Its Recorder

Date: June 27, 1996

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: Barbara S Taylor
Its: Chief, Office of Water Resources

Date: 7/3/96

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Zankosky
Its: Director

Attest:

Barbara B Meadows
Secretary-Treasurer

Date: June 10, 1996

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS
25th day of August, 1992.

Attorney General
BY: Dawn E Wayfield
DEPUTY ATTORNEY GENERAL

EXHIBIT A

Certificate of Performance
for
Publicly Owned Treatment Works

I. As required by the Clean Water Act under Title VI, Section 602(b)(6), and the Loan Agreement, the Local Government does hereby certify that it has :

- a. Provided to the WV DEP written notification of the actual date of initiation of operation. This date of initiation was on the _____ day of _____, 19__.
- b. Utilized the services of _____,
our prime engineer who either:
_____ Supervised our project construction; and/or
_____ Provided architectural and engineering services during construction.

For a period of twelve (12) months following the initiation of operations, the prime engineer provided the following services:

- 1) Directed project operation and maintenance; and
- 2) Trained operating personnel and prepared the required curricula and training materials, and revised the operation and maintenance manual(s); and
- 3) Advised the Local Government on the status of the project meeting performance standards.

II. The Local Government, having access to and control of all the necessary data, and having monitored the construction of this project, hereby certifies that the project built under this Loan Agreement meets:

- a. The specifications for which the project was planned, designed, and built.
- b. The effluent limitations contained in its NPDES permit, if applicable.

Local Government Name

Local Government Representative's Name and Title

Date

EXHIBIT B

[Form of Monthly Financial Report]

[Name of Local Government]

[Name of Bond Issue]

Fiscal Year - _____

Report Month: _____

<u>ITEM</u>	<u>CURRENT MONTH</u>	<u>YEAR TO DATE</u>	<u>BUDGET YEAR TO DATE</u>	<u>DIFFERENCE</u>
1. Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. SRF Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

Witnesseth my signature this _____ day of _____, 19__.

[Name of Local Government]

By: _____
Authorized Officer

EXHIBIT C

PAYMENT REQUISITION FORM

(TO BE PROVIDED BY DEP FOR EACH PROJECT).

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers, _____, hereby certify that my firm is engineer for the acquisition and construction of _____ to the _____ system (herein called the "Project") of _____ (the "Issuer") to be constructed primarily in _____ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the _____ passed by the _____ of the Issuer on _____, 19____, effective _____, 19____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated _____, 19____.

1. The Bonds are being issued for the purpose of _____ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the _____ of the Issuer are sufficient to comply with the provisions

of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this _____ day of _____, 19____.

By _____

West Virginia License No. _____

[SEAL]

EXHIBIT E

[Special Conditions]

The recipient agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

EXHIBIT F

[Monthly Payment Form]

West Virginia Water Development
Authority
1201 Dunbar Avenue
Dunbar, WV 25064

Re: [Name of bond issue]

Dear Sirs:

The following deposits were made to the West Virginia
Municipal Bond Commission on behalf of [Local Government] on
_____, ____.

Sinking Fund:

Interest \$ _____

Principal \$ _____

Total: \$ _____

Reserve Fund: \$ _____

Witness my signature this ____ day of _____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Gentlemen:

We are bond counsel to _____
(the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, 19__ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$_____, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable _____ 1, _____ 1, _____ 1, and _____ 1 of each year, beginning _____ 1, 19__, at the respective rate or rates and with principal payable in installments on _____ 1 in each of the years, all as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
-------------	--------------------	----------------------

The Local Bonds are issued for the purpose of _____
_____ and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____
_____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly enacted by the Local Government on _____ (the "Local

Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Local Government without the consent of the Authority.
3. The Local Government is a duly organized and presently existing _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.
4. The Local Government has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.
5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.
6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	\$ 300,000
Purchase Price of Bonds	\$ 300,000

Interest on the Bonds shall be zero percent from the date of delivery to and including May 31, 1997. Principal and interest on the Bonds is payable quarterly, commencing September 1, 1997, at a rate of 2% per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has ~~no~~ other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds ~~or~~ ~~(provide list of outstanding debt)~~. *

The Local Government shall submit its payments monthly to the West Virginia Municipal Bond Commission with instructions that the West Virginia Municipal Bond Commission will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the Bond Commission in writing by the Authority. If the Reserve Fund is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Bond Commission. The Local Government shall instruct the Bond Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and interest and such Bonds shall grant the Authority a first lien on the net revenues of the Local Government's system.

The Local Government may prepay the Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Bonds which request must be filed at least 60 days prior to the intended date of issuance.

*Water Development Authority - Sewer Revenue Bonds, Series 1986A, issued April 28, 1986, in the original principal amount of \$1,037,970.

SCHEDULE Y

City of Elkins \$300,000 2% interest rate, 1% annual fee				
DEBT SERVICE SCHEDULE				
DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
6/01/1997				
9/01/1997	3,059.00	2.00000%	1,500.00	4,559.00
12/01/1997	3,074.00	2.00000%	1,484.71	4,558.71
3/01/1998	3,090.00	2.00000%	1,469.34	4,559.34
6/01/1998	3,105.00	2.00000%	1,453.89	4,558.89
9/01/1998	3,121.00	2.00000%	1,438.36	4,559.36
12/01/1998	3,136.00	2.00000%	1,422.76	4,558.76
3/01/1999	3,152.00	2.00000%	1,407.08	4,559.08
6/01/1999	3,168.00	2.00000%	1,391.32	4,559.32
9/01/1999	3,184.00	2.00000%	1,375.48	4,559.48
12/01/1999	3,200.00	2.00000%	1,359.56	4,559.56
3/01/2000	3,216.00	2.00000%	1,343.56	4,559.56
6/01/2000	3,232.00	2.00000%	1,327.48	4,559.48
9/01/2000	3,248.00	2.00000%	1,311.32	4,559.32
12/01/2000	3,264.00	2.00000%	1,295.08	4,559.08
3/01/2001	3,280.00	2.00000%	1,278.76	4,558.76
6/01/2001	3,297.00	2.00000%	1,262.36	4,559.36
9/01/2001	3,313.00	2.00000%	1,245.87	4,558.87
12/01/2001	3,330.00	2.00000%	1,229.31	4,559.31
3/01/2002	3,346.00	2.00000%	1,212.66	4,558.66
6/01/2002	3,363.00	2.00000%	1,195.93	4,558.93
9/01/2002	3,380.00	2.00000%	1,179.11	4,559.11
12/01/2002	3,397.00	2.00000%	1,162.21	4,559.21
3/01/2003	3,414.00	2.00000%	1,145.23	4,559.23
6/01/2003	3,431.00	2.00000%	1,128.16	4,559.16
9/01/2003	3,448.00	2.00000%	1,111.00	4,559.00
12/01/2003	3,465.00	2.00000%	1,093.76	4,558.76
3/01/2004	3,483.00	2.00000%	1,076.44	4,559.44
6/01/2004	3,500.00	2.00000%	1,059.02	4,559.02
9/01/2004	3,518.00	2.00000%	1,041.52	4,559.52
12/01/2004	3,535.00	2.00000%	1,023.93	4,558.93
3/01/2005	3,553.00	2.00000%	1,006.26	4,559.26
6/01/2005	3,571.00	2.00000%	988.49	4,559.49
9/01/2005	3,588.00	2.00000%	970.64	4,558.64
12/01/2005	3,606.00	2.00000%	952.70	4,558.70
3/01/2006	3,624.00	2.00000%	934.67	4,558.67
6/01/2006	3,643.00	2.00000%	916.55	4,559.55
9/01/2006	3,661.00	2.00000%	898.33	4,559.33
12/01/2006	3,679.00	2.00000%	880.03	4,559.03
3/01/2007	3,697.00	2.00000%	861.63	4,558.63
6/01/2007	3,716.00	2.00000%	843.15	4,559.15
9/01/2007	3,734.00	2.00000%	824.57	4,558.57
12/01/2007	3,753.00	2.00000%	805.90	4,558.90
3/01/2008	3,772.00	2.00000%	787.13	4,559.13
6/01/2008	3,791.00	2.00000%	768.27	4,559.27
9/01/2008	3,810.00	2.00000%	749.32	4,559.32
12/01/2008	3,829.00	2.00000%	730.27	4,559.27
3/01/2009	3,848.00	2.00000%	711.12	4,559.12
6/01/2009	3,867.00	2.00000%	691.88	4,558.88
9/01/2009	3,887.00	2.00000%	672.55	4,559.55
12/01/2009	3,906.00	2.00000%	653.11	4,559.11

City of Elkins
\$300,000
2% interest rate, 1% annual fee

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
3/01/2010	3,925.00	2.00000%	633.58	4,558.58
6/01/2010	3,945.00	2.00000%	613.96	4,558.96
9/01/2010	3,965.00	2.00000%	594.23	4,559.23
12/01/2010	3,985.00	2.00000%	574.41	4,559.41
3/01/2011	4,005.00	2.00000%	554.48	4,559.48
6/01/2011	4,025.00	2.00000%	534.46	4,559.46
9/01/2011	4,045.00	2.00000%	514.33	4,559.33
12/01/2011	4,065.00	2.00000%	494.11	4,559.11
3/01/2012	4,085.00	2.00000%	473.78	4,558.78
6/01/2012	4,106.00	2.00000%	453.36	4,559.36
9/01/2012	4,126.00	2.00000%	432.83	4,558.83
12/01/2012	4,147.00	2.00000%	412.20	4,559.20
3/01/2013	4,168.00	2.00000%	391.46	4,559.46
6/01/2013	4,188.00	2.00000%	370.62	4,558.62
9/01/2013	4,209.00	2.00000%	349.68	4,558.68
12/01/2013	4,230.00	2.00000%	328.64	4,558.64
3/01/2014	4,252.00	2.00000%	307.49	4,559.49
6/01/2014	4,273.00	2.00000%	286.23	4,559.23
9/01/2014	4,294.00	2.00000%	264.86	4,558.86
12/01/2014	4,316.00	2.00000%	243.39	4,559.39
3/01/2015	4,337.00	2.00000%	221.81	4,558.81
6/01/2015	4,359.00	2.00000%	200.13	4,559.13
9/01/2015	4,381.00	2.00000%	178.33	4,559.33
12/01/2015	4,403.00	2.00000%	156.43	4,559.43
3/01/2016	4,425.00	2.00000%	134.41	4,559.41
6/01/2016	4,447.00	2.00000%	112.29	4,559.29
9/01/2016	4,469.00	2.00000%	90.05	4,559.05
12/01/2016	4,491.00	2.00000%	67.71	4,558.71
3/01/2017	4,514.00	2.00000%	45.25	4,559.25
6/01/2017	4,536.00	2.00000%	22.68	4,558.68
TOTAL	300,000.00	-	64,728.97	364,728.97

*Plus a one-percent annual administrative fee paid quarterly in the amount of \$404.55. The total administrative fee over the life of the loan is \$32,364.

YIELD STATISTICS

Accrued Interest from 06/01/1997 to 06/01/1997...	-
Average Life.....	10.788 YEARS
Bond Years.....	3,236.44
Average Coupon.....	2.0000000%
Net Interest Cost (NIC).....	2.0000000%
Bond Yield for Arbitrage Purposes.....	3.0112568%
True Interest Cost (TIC).....	2.0050000%
Effective Interest Cost (EIC).....	3.0112568%



STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY

1201 DUNBAR AVENUE
DUNBAR, WV 25064

Telephone (304) 558-3612
Telecopier (304) 558-0299

June 9, 1995

The Honorable Jimmy D. Hammond
Mayor, City of Elkins
401 Davis Street
Elkins WV 26241

PRELIMINARY APPLICATION -
CITY OF ELKINS (SEWER PROJECT)

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Preliminary Application for the above-referenced project and has determined that the project is technically and financially feasible within the guidelines of the Act. (See attached Sewer Assessment Committee comments.)

The Council recommends that the City of Elkins obtain a State Revolving Fund loan of \$280,200 from the Division of Environmental Protection to finance this project.

If you have any questions concerning this recommendation, please contact Daniel Yonkosky, Director of the Water Development Authority, who serves as chairman of the Council's Funding Committee.

A handwritten signature in cursive script that reads "Daniel B. Yonkosky".

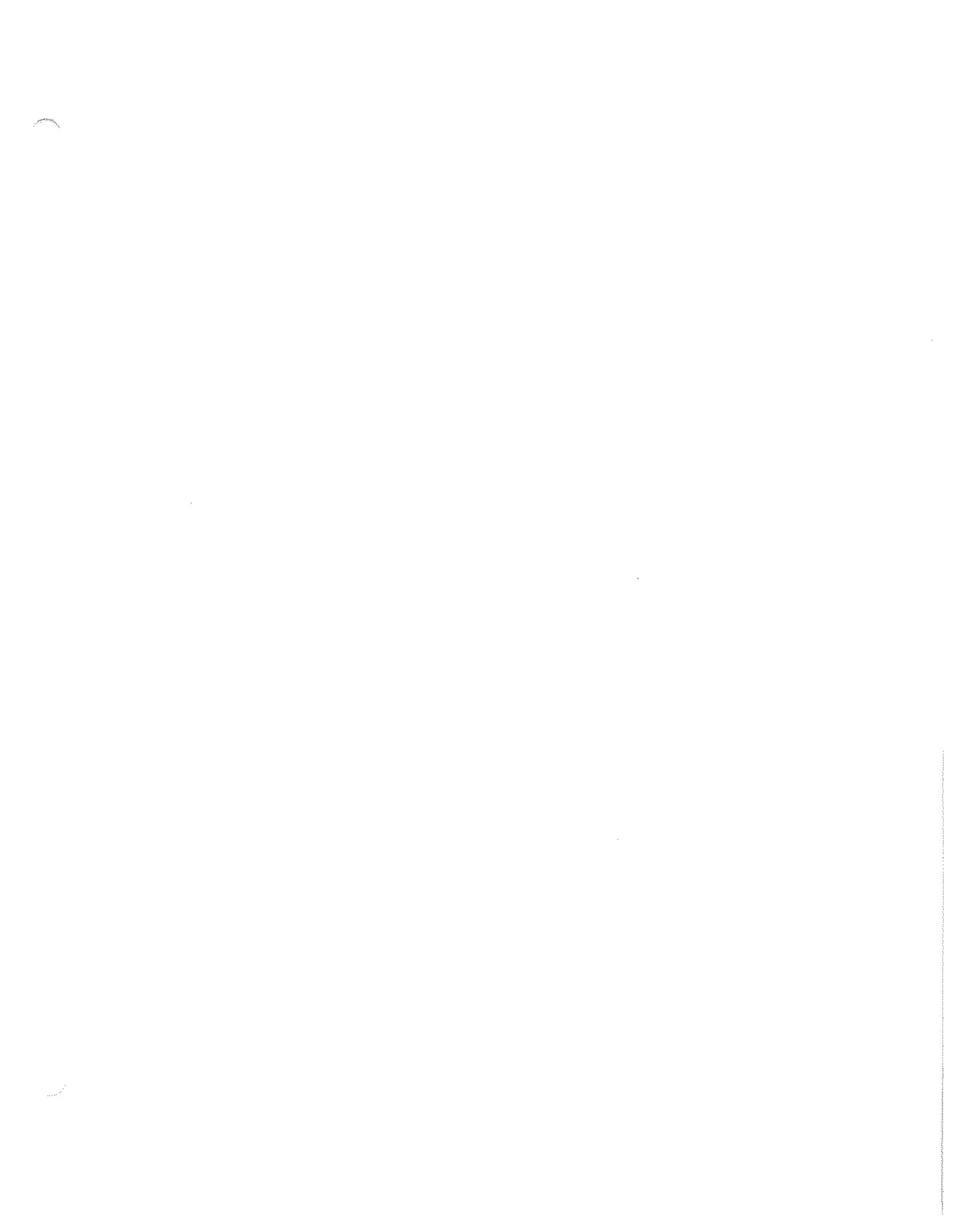
for RUSSELL L. ISAACS, CHAIRMAN
WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

db

Attachment

c Mike Johnson, Division of Environmental Protection
Mr. Terry Smith, Kelley, Gidley, Blair & Wolfe

ansina



THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Mayor of The City of Elkins (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

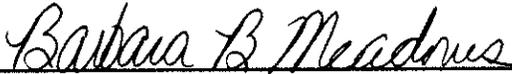
1. On the 22nd day of August, 1996, the Authority received the entire original issue of \$300,000 principal amount of the Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer (the "Bonds"), issued as a single, fully registered Bond, numbered AR-1, and dated August 22, 1996.

2. At the time of such receipt of the Bonds upon original issuance, the Bonds had been executed by the Mayor and the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

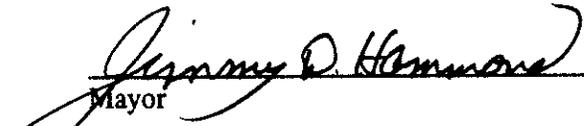
3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Bonds, of \$23,600, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced by the Authority and the West Virginia Division of Environmental Protection to the Issuer as acquisition and construction of the Project progresses.

WITNESS our respective signatures on this 22nd day of August, 1996.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY


Authorized Representative

THE CITY OF ELKINS


Mayor

07/24/96
ELKSJM.D4
255620/95001

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

One Valley Bank, National Association,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith:

(1) Bond No. AR-1, constituting the entire original issue of The City of Elkins Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), in the principal amount of \$300,000, dated August 22, 1996 (the "Bonds"), executed by the Mayor and the City Clerk of The City of Elkins (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on August 1, 1996, and a Supplemental Resolution duly adopted by the Issuer on August 1, 1996 (collectively, the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-described Bond issue, duly certified by the City Clerk of the Issuer;

(3) Executed counterparts of the loan agreement dated June 10, 1996, by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP") and the Issuer (the "Loan Agreement"); and

(4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the Issuer of the sum of \$23,600, representing a portion of the principal amount of the Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated this 22nd day of August, 1996.

THE CITY OF ELKINS



Mayor

07/18/96
ELKSJM.E3
255620/95001

(SPECIMEN SERIES 1996 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BOND, SERIES 1996 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1

\$300,000

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1997, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation), shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1997, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan

Agreement by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, dated June 10, 1996.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on August 1, 1996, and a Supplemental Resolution duly adopted by the Issuer on August 1, 1996 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWER REVENUE BOND, SERIES 1986 (THE "SERIES 1986 PRIMARY BOND"), DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,037,970.

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SUPPLEMENTAL SUBORDINATE SEWER REVENUE BOND, SERIES 1986 (THE "SERIES 1986 SUPPLEMENTAL BOND"), DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$517,001;

THE SERIES 1986 PRIMARY BOND AND THE SERIES 1986 SUPPLEMENTAL BOND ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on parity with the pledge of Net Revenues in favor of the holders of the Series 1986 Primary Bond, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1996 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which

may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 1996 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 1996 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding prior to or on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated August 22, 1996.

[SEAL]

Mayor

ATTEST:

City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1996 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: August 22, 1996.

ONE VALLEY BANK, NATIONAL
ASSOCIATION, as Registrar

By _____
Its Authorized Officer

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

City of Elkins \$300,000 2% interest rate, 1% annual fee				
DEBT SERVICE SCHEDULE				
DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
6/01/1997				
9/01/1997	3,059.00	2.00000%	1,500.00	4,559.00
12/01/1997	3,074.00	2.00000%	1,484.71	4,558.71
3/01/1998	3,090.00	2.00000%	1,469.34	4,559.34
6/01/1998	3,105.00	2.00000%	1,453.89	4,558.89
9/01/1998	3,121.00	2.00000%	1,438.36	4,559.36
12/01/1998	3,136.00	2.00000%	1,422.76	4,558.76
3/01/1999	3,152.00	2.00000%	1,407.08	4,559.08
6/01/1999	3,168.00	2.00000%	1,391.32	4,559.32
9/01/1999	3,184.00	2.00000%	1,375.48	4,559.48
12/01/1999	3,200.00	2.00000%	1,359.56	4,559.56
3/01/2000	3,216.00	2.00000%	1,343.56	4,559.56
6/01/2000	3,232.00	2.00000%	1,327.48	4,559.48
9/01/2000	3,248.00	2.00000%	1,311.32	4,559.32
12/01/2000	3,264.00	2.00000%	1,295.08	4,559.08
3/01/2001	3,280.00	2.00000%	1,278.76	4,558.76
6/01/2001	3,297.00	2.00000%	1,262.36	4,559.36
9/01/2001	3,313.00	2.00000%	1,245.87	4,558.87
12/01/2001	3,330.00	2.00000%	1,229.31	4,559.31
3/01/2002	3,346.00	2.00000%	1,212.66	4,558.66
6/01/2002	3,363.00	2.00000%	1,195.93	4,558.93
9/01/2002	3,380.00	2.00000%	1,179.11	4,559.11
12/01/2002	3,397.00	2.00000%	1,162.21	4,559.21
3/01/2003	3,414.00	2.00000%	1,145.23	4,559.23
6/01/2003	3,431.00	2.00000%	1,128.16	4,559.16
9/01/2003	3,448.00	2.00000%	1,111.00	4,559.00
12/01/2003	3,465.00	2.00000%	1,093.76	4,558.76
3/01/2004	3,483.00	2.00000%	1,076.44	4,559.44
6/01/2004	3,500.00	2.00000%	1,059.02	4,559.02
9/01/2004	3,518.00	2.00000%	1,041.52	4,559.52
12/01/2004	3,535.00	2.00000%	1,023.93	4,558.93
3/01/2005	3,553.00	2.00000%	1,006.26	4,559.26
6/01/2005	3,571.00	2.00000%	988.49	4,559.49
9/01/2005	3,588.00	2.00000%	970.64	4,558.64
12/01/2005	3,606.00	2.00000%	952.70	4,558.70
3/01/2006	3,624.00	2.00000%	934.67	4,558.67
6/01/2006	3,643.00	2.00000%	916.55	4,559.55
9/01/2006	3,661.00	2.00000%	898.33	4,559.33
12/01/2006	3,679.00	2.00000%	880.03	4,559.03
3/01/2007	3,697.00	2.00000%	861.63	4,558.63
6/01/2007	3,716.00	2.00000%	843.15	4,559.15
9/01/2007	3,734.00	2.00000%	824.57	4,558.57
12/01/2007	3,753.00	2.00000%	805.90	4,558.90
3/01/2008	3,772.00	2.00000%	787.13	4,559.13
6/01/2008	3,791.00	2.00000%	768.27	4,559.27
9/01/2008	3,810.00	2.00000%	749.32	4,559.32
12/01/2008	3,829.00	2.00000%	730.27	4,559.27
3/01/2009	3,848.00	2.00000%	711.12	4,559.12
6/01/2009	3,867.00	2.00000%	691.88	4,558.88
9/01/2009	3,887.00	2.00000%	672.55	4,559.55
12/01/2009	3,906.00	2.00000%	653.11	4,559.11

City of Elkins \$300,000 2% interest rate, 1% annual fee				
DEBT SERVICE SCHEDULE				
DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
3/01/2010	3,925.00	2.00000%	633.58	4,558.58
6/01/2010	3,945.00	2.00000%	613.96	4,558.96
9/01/2010	3,965.00	2.00000%	594.23	4,559.23
12/01/2010	3,985.00	2.00000%	574.41	4,559.41
3/01/2011	4,005.00	2.00000%	554.48	4,559.48
6/01/2011	4,025.00	2.00000%	534.46	4,559.46
9/01/2011	4,045.00	2.00000%	514.33	4,559.33
12/01/2011	4,065.00	2.00000%	494.11	4,559.11
3/01/2012	4,085.00	2.00000%	473.78	4,558.78
6/01/2012	4,106.00	2.00000%	453.36	4,559.36
9/01/2012	4,126.00	2.00000%	432.83	4,558.83
12/01/2012	4,147.00	2.00000%	412.20	4,559.20
3/01/2013	4,168.00	2.00000%	391.46	4,559.46
6/01/2013	4,188.00	2.00000%	370.62	4,558.62
9/01/2013	4,209.00	2.00000%	349.68	4,558.68
12/01/2013	4,230.00	2.00000%	328.64	4,558.64
3/01/2014	4,252.00	2.00000%	307.49	4,559.49
6/01/2014	4,273.00	2.00000%	286.23	4,559.23
9/01/2014	4,294.00	2.00000%	264.86	4,558.86
12/01/2014	4,316.00	2.00000%	243.39	4,559.39
3/01/2015	4,337.00	2.00000%	221.81	4,558.81
6/01/2015	4,359.00	2.00000%	200.13	4,559.13
9/01/2015	4,381.00	2.00000%	178.33	4,559.33
12/01/2015	4,403.00	2.00000%	156.43	4,559.43
3/01/2016	4,425.00	2.00000%	134.41	4,559.41
6/01/2016	4,447.00	2.00000%	112.29	4,559.29
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3/01/2017	4,514.00	2.00000%	45.25	4,559.25
6/01/2017	4,536.00	2.00000%	22.68	4,558.68
TOTAL	300,000.00	-	64,728.97	364,728.97

*Plus a one-percent annual administrative fee paid quarterly in the amount of \$404.55. The total administrative fee over the life of the loan is \$32,364.

YIELD STATISTICS

Accrued Interest from 06/01/1997 to 06/01/1997...	-
Average Life.....	10.788 YEARS
Bond Years.....	3,236.44
Average Coupon.....	2.0000000%
Net Interest Cost (NIC).....	2.0000000%
Bond Yield for Arbitrage Purposes.....	3.0112568%
True Interest Cost (TIC).....	2.0050000%
Effective Interest Cost (EIC).....	3.0112568%

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond
on the books kept for registration of the within Bond of the said Issuer with full power of
substitution in the premises.

Dated: _____, _____.

In the presence of:

STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

BANK ONE CENTER

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

August 22, 1996

The City of Elkins
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26607-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, FOURTH FLOOR
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

FOURTH FLOOR - RILEY BUILDING
P. O. BOX 150
14TH AND CHARLIE STREETS
WHEELING, W. VA. 26003-0020
(304) 233-0000
FACSIMILE (304) 233-0014

THE PMC BUILDING, SUITE 101
P. O. BOX 628
417 GRAND PARK DRIVE
PARKERSBURG, W. VA. 26102-0628
(304) 422-6463
FACSIMILE (304) 422-6462
WRITER'S DIRECT DIAL NUMBER

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

West Virginia Division of
Environmental Protection
617 Broad Street
Charleston, West Virginia 25301

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by The City of Elkins (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$300,000 Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated June 10, 1996, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection (the "DEP") and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal installments and interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1997, and ending June 1, 2017, all as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on August 1, 1996, as supplemented by a Supplemental Resolution duly adopted by the Issuer on August 1, 1996 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing, and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Bond Legislation and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's outstanding Sewer Revenue Bonds, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$1,037,970, and senior and prior to the Issuer's outstanding Supplemental Subordinate Sewer Revenue Bonds, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$517,001, pursuant to an ordinance enacted by the Issuer on March 13, 1986 (the "Prior Ordinance"), all in accordance with the terms of the Bonds and the Bond Legislation. The Issuer has met the coverage requirements for issuance of parity bonds under the Prior Ordinance based upon the certificate of the certified public accountant dated the date hereof, and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature.

5. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. Except as set forth in paragraph 6 below, we express no opinion regarding other federal tax consequences arising with respect to the Bonds.

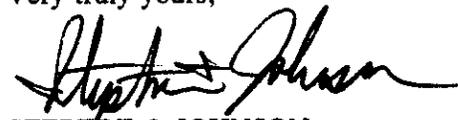
6. Based upon the certifications of the Issuer set forth in the Certificate as to Arbitrage and under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the proceeds of the Bonds are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code. The opinion set forth above is subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code relating to the applicable exceptions to rebate. The Issuer has covenanted to comply with all such requirements. Failure to comply with such requirements could cause proceeds of the Bonds to be subject to such arbitrage rebate requirements retroactive to the date of issuance of the Bonds.

7. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, and the interest on the Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Loan Agreement and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,



STEPH & JOHNSON

Busch & Talbott, L.C.

Attorneys at Law
High & Court Streets
P. O. Box 1819
Elkins, WV 26241

John E. Busch
Richard H. Talbott, Jr.
Cynthia S. Gustke
Peter G. Zurbuch

Bridgette R. Wilson
David E. Thompson
Randy K. Miller

Legal Assistants:
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Lisa S. Severino, CLA

Telephone (304) 636-3560
Telecopier (304) 636-2290

August 22, 1996

The City of Elkins
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

West Virginia Division of
Environmental Protection
617 Broad Street
Charleston, West Virginia 25301

Step toe & Johnson
Post Office Box 2190
Clarksburg, West Virginia 26302

Ladies and Gentlemen:

We are counsel to The City of Elkins in Randolph County, West Virginia (the "Issuer"). As such counsel, we have examined copies of the approving opinion of Step toe & Johnson, as bond counsel, a loan agreement dated June 10, 1996, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP"), and the Issuer, a Bond Ordinance duly enacted by the Issuer on August 1, 1996, as supplemented by a Supplemental Resolution duly adopted by the Issuer on August 1, 1996 (collectively, the "Bond Legislation"), and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). Capitalized terms used herein and not otherwise defined

herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

We are the opinion that:

1. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.

2. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, City Clerk and members of the council of the Issuer and the Sanitary Board have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.

3. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

4. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Loan Agreement and the Bond Legislation and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.

5. The Issuer has received all permits, licenses, approvals and authorizations required by law for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of the approval of the West Virginia Infrastructure and Jobs Development Council, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges. The time for appeal of such rate ordinance has expired prior to the date hereof without any appeal.

6. Based upon our examination of the components of the Project, we are of the opinion that a certificate of public convenience and necessity from the Public Service Commission of West Virginia under West Virginia Code § 24-2-11 is not required for this Project because it consists only of ordinary extensions of the existing System in the usual course of business.

7. To the best of our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the net Revenues thereof.

All Counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. K. Miller", with a long horizontal flourish extending to the right.

Randy K. Miller
BUSCH & TALBOTT, L.C.

/aah

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDER
16. PRIVATE USE OF FACILITIES
17. NO FEDERAL GUARANTY
18. IRS INFORMATION RETURN
19. SPECIMEN BOND
20. CONFLICT OF INTEREST
21. CLEAN WATER ACT
22. GRANTS

We, the undersigned MAYOR AND CITY CLERK of The City of Elkins in Randolph County, West Virginia (the "Issuer"), and the undersigned Counsel to the Issuer, hereby certify in connection with the \$300,000 principal amount of The City of Elkins Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated the date hereof (the "Bonds" or the "Series 1996 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance of the Issuer duly enacted August 1, 1996, and the Supplemental Resolution duly adopted August 1, 1996 (collectively, the "Bond Legislation").

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the pledge or application of moneys and security or the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement entered into among the Issuer, the DEP and the Authority. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are outstanding obligations of the Issuer which will rank either on a parity with or junior and subordinate to the Series 1996 A Bonds as to liens, pledge, source of and security for payment, which obligations are designated and have the lien positions with respect to the Series 1996 A Bonds as follows:

<u>Designation</u>	<u>Lien Position</u>
Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$1,037,970 (the "Series 1986 Primary Bond")	First Lien
Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of \$517,001 (the "Series 1986 Supplemental Bond")	Second Lien

The Series 1986 Primary Bond and the Series 1986 Supplemental Bond are hereinafter collectively called the "Prior Bonds". The ordinance which authorized the issuance of the Prior Bonds is herein referred to as the "Prior Ordinance".

The Series 1996 A Bonds shall be issued on a parity with the Series 1986 Primary Bond, and senior and prior to the Series 1986 Supplemental Bond with respect to liens, pledge and source of and security for payment and in all other respects. Based upon the certificate of the certified public accountant delivered on the date hereof, Issuer has met the coverage requirements for issuance of parity bonds of the Series 1986 Primary Bond and the Prior Ordinance and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained the consent of the Holder of the Series 1986 Primary Bond to the issuance of the Series 1996 A Bonds on a parity with the Series 1986 Primary Bond. The Issuer has also obtained the consent of the Holder of the Series 1986 Supplemental Bond to the issuance of the Series 1996 A Bonds senior and prior to the Series 1986 Supplemental Bond.

Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1996 A Bonds as to liens, pledge and/or source of and security for payment or in any other respects.

5. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

City Charter.

Oaths of Office of City Officers and Councilmembers.

Ordinance Creating Sanitary Board.

Petition of Sanitary Board.

Sewer Rate Ordinance.

Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing.

Minutes on Adoption and Enactment of Sewer Rate Ordinance.

Bond Ordinance.

Supplemental Resolution.

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Hearing.

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution.

1986 Ordinance and Supplemental Resolution.

Consent of Prior Bondholder to Issuance of Parity Bonds.

Loan Agreement.

NPDES Permit.

Infrastructure and Jobs Development Council Approval dated June 9, 1995.

6. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "The City of Elkins." The Issuer is a municipal corporation in Randolph County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Council, consisting of a Mayor and 10 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Jimmy D. Hammond	- Mayor	April 1, 1995	March 31, 1997
Bruce A. Kolsun	- Councilmember	April 1, 1993	March 31, 1997
Thomas F. Waller	- Councilmember	April 1, 1995	March 31, 1999
Doris G. George	- Councilmember	April 1, 1993	March 31, 1997
Harold R. Elbon	- Councilmember	April 1, 1995	March 31, 1999
H. Kenneth Reed	- Councilmember	April 1, 1993	March 31, 1997
Hazel K. Burford	- Councilmember	April 1, 1995	March 31, 1999
John E. Lothes	- Councilmember	April 1, 1993	March 31, 1997
Hollis C. Vance	- Councilmember	April 1, 1995	March 31, 1999
Karen Sue Vance	- Councilmember	April 1, 1993	March 31, 1997
Roseann Marshall	- Councilmember	April 1, 1995	March 31, 1999

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman	-	Jimmy D. Hammond
Member	-	David L. Ice
Member	-	Lynn Hicks, P.E.

The duly appointed and acting City Clerk and City Treasurer of the Issuer are Philip J. Graziani, Jr. and T. Robert Valentine, respectively. The duly appointed and acting Counsel to the Issuer is Busch & Talbott, L.C. in Elkins, West Virginia.

7. **LAND AND RIGHTS-OF-WAY:** All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

8. **MEETINGS, ETC.:** All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A, of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. **CONTRACTORS' INSURANCE, ETC.:** All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation is in full force and effect.

10. **LOAN AGREEMENT:** As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not

misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

11. **RATES:** The Issuer has duly enacted a sewer rate ordinance on August 4, 1994, setting rates and charges for the services of the System. The time for appeal of such sewer rate ordinance has expired prior to the date hereof without any appeal, and such rates will become effective upon substantial completion of the Project.

12. **SIGNATURES AND DELIVERY:** On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature, and the undersigned City Clerk did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by his manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

13. **BOND PROCEEDS:** On the date hereof, the Issuer received \$23,600 from the Authority and the DEP, being a portion of the principal amount of the Bonds and more than a de minimis amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

14. **PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE:** Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the *Elkins Inter-Mountain*, a newspaper published and of general circulation in The City of Elkins, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 1st day of August, 1996, at 7:00 p.m., at the Elkins City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

15. **PUBLIC SERVICE COMMISSION ORDER:** In reliance upon the opinion of the Counsel to the Issuer that the Project consists only of ordinary extensions of the existing System in the usual course of business, the Issuer has determined that it is not required to obtain a certificate of public convenience and necessity from the Public Service Commission of West Virginia for this Project.

16. **PRIVATE USE OF FACILITIES:** The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

17. **NO FEDERAL GUARANTY:** The Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

18. **IRS INFORMATION RETURN:** On the date hereof, the undersigned Mayor did officially execute a properly completed IRS Form 8038-G in connection with the Bonds and will cause such executed IRS Form 8038-G to be filed in a timely manner pursuant to Section 149(e) of the Code with the Internal Revenue Service Center, Philadelphia, Pennsylvania. The information contained in such executed Form 8038-G is true, correct and complete.

19. SPECIMEN BOND: Delivered concurrently herewith is a true and accurate specimen of the Bond.

20. CONFLICT OF INTEREST: No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

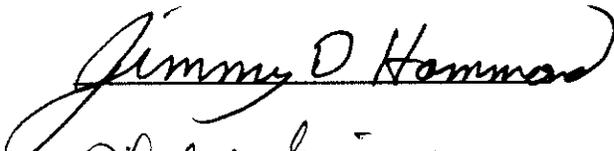
21. CLEAN WATER ACT: The Project as described in the Bond Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

WITNESS our signatures and the official seal of THE CITY OF ELKINS on this 22nd day of August, 1996.

[CORPORATE SEAL]

SIGNATURE

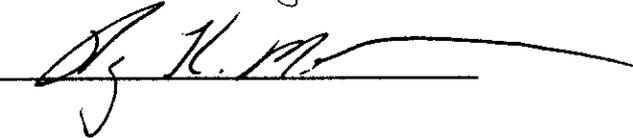
OFFICIAL TITLE



Mayor



City Clerk



Counsel to Issuer

08/05/96
ELKSJM.H5
255620/95001

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

CERTIFICATE AS TO ARBITRAGE

I, Jimmy D. Hammond, Mayor of The City of Elkins in Randolph County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of the \$300,000 principal amount Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer, dated the date hereof (the "Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986 and applicable regulations (the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances, and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the ordinance authorizing the Bonds duly enacted by the Issuer on August 1, 1996 (as supplemented, the "Bond Ordinance").

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its bonds or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on August 22, 1996, the date on which the Bonds are to be physically delivered in exchange for more than a de minimis amount of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Bonds were sold on August 22, 1996, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated June 10, 1996, by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection (the "DEP") for an aggregate purchase price of \$300,000 (100% of par), at which time, the Issuer received \$23,600 from the Authority and the DEP, being more than a de minimis amount of the principal amount of the Bonds. No accrued interest

has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Issuer has covenanted in the Bond Ordinance not to take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted not to intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Bond Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying costs of issuance and related costs thereof.

8. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend in excess of \$100,000 on the Project, constituting a substantial binding commitment. Acquisition, construction and equipping of the Project shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest (if any) and proceeds deposited in the Reserve Account for the Bonds (if any), all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before December, 1996. Construction of the Project is expected to be completed by December, 1996.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at \$344,000. Sources and uses of funds for the Project are as follows:

SOURCES

Gross Proceeds of the Bonds	\$300,000
Issuer's Funds	<u>44,000</u>
Total Sources	<u>\$344,000</u>

USES

Costs of Acquisition and Construction of the Project	\$334,500
Capitalized Interest	-0-
Fund Reserve Account	-0-
Costs of Issuance	<u>9,500</u>
Total Uses	<u>\$344,000</u>

The amount of the costs of the Project is estimated to be at least equal to the gross proceeds of the Bonds and certain funds of the Issuer designated above. Except for the proceeds of the Bonds and certain funds of the Issuer designated above, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1(c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created (or continued if previously established by the Prior Ordinances):

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Bond Construction Trust Fund;
- (5) Series 1986 Primary Bond Sinking Fund;

(6) Within the Series 1986 Primary Bond Sinking Fund, the Series 1986 Primary Bond Reserve Account;

(7) Series 1986 Supplemental Bond Sinking Fund;

(8) Within the Series 1986 Supplemental Bond Sinking Fund, the Series 1986 Supplemental Bond Reserve Account;

(9) Series 1996 A Bonds Sinking Fund; and

(10) Within the Series 1996 A Bonds Sinking Fund, the Series 1996 A Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Series 1996 A Bonds proceeds in the amount of \$-0- will be deposited in the Series 1996 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Bonds during acquisition and construction of the Project and for not more than six months thereafter.

(2) Series 1996 A Bonds proceeds in the amount of \$-0- will be deposited in the Series 1996 A Bonds Reserve Account.

(3) The balance of the proceeds of the Series 1996 A Bonds will be deposited in the Bond Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 1996 A Bonds and related costs.

Amounts in the Bond Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years, except as otherwise set forth herein. All of such moneys are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treas. Reg. §1.150-2(f)(2), none of the proceeds of the Series 1996 A Bonds will be used to reimburse the Issuer for costs of the Project previously incurred and paid by the Issuer with its own or other funds.

12. Moneys held in the Series 1996 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 1996 A Bonds Sinking Fund and Series 1996 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Bond Construction Trust Fund during

construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan producing a yield in excess of the yield on the Bonds have been or will be pledged to payment of the Bonds. Less than 10% of the moneys received from the sale of the Bonds, if any, will be deposited in the Series 1996 A Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 1996 A Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Bonds and will not exceed 125% of average annual principal of and interest on the Bonds. Amounts in the Series 1996 A Bonds Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 1996 A Bonds Reserve Account is required by the Authority, is vital to its purchase of the Bonds, and is reasonably required to assure payments of debt service on the Bonds.

Because amounts in the Renewal and Replacement Fund may be expended for other purposes, there is no reasonable assurance that any such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation.

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Bonds or \$100,000.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The Project is expected to be completed within 4 months of the date hereof.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding

investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

17. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Authority.

18. With the exception of the amount deposited in the Series 1996 A Bonds Sinking Fund for payment of interest on the Bonds, if any, and the amounts deposited in the Series 1996 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 4 months from the date of issuance thereof.

19. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

20. The Series 1996 A Bonds Sinking Fund (other than the Series 1996 A Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Bonds each year. The Series 1996 A Bonds Sinking Fund (other than the Series 1996 A Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Bonds, or 1 year's interest earnings on the Series 1996 A Bonds Sinking Fund (other than the Series 1996 A Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 1996 A Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 1996 A Bonds Reserve Account therein), will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 1996 A Bonds Sinking Fund (other than in the Series 1996 A Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

21. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

22. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

23. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

24. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

25. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

26. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

27. The Bonds are not and will not be, in whole or in part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

28. The Issuer is a governmental unit and has general taxing powers; no Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the aggregate face amount of all tax-exempt bonds or obligations (other than private activity bonds) issued by the Issuer during the calendar year 1996, the calendar year in which the Bonds are issued, is not reasonably expected to exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code. For purposes of this paragraph and for purposes of applying such Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer. No portion of the Bonds is issued to refund other obligations.

29. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

30. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

31. The Issuer has either (a) funded the Series 1996 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become

due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 1996 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 1996 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 1996 A Bonds Reserve Account and the Series 1996 A Bonds Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

32. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

33. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

34. The transactions contemplated herein do not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

35. The Issuer will rebate to the United States the amount, if any, required by the Code and will take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

36. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

37. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

38. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

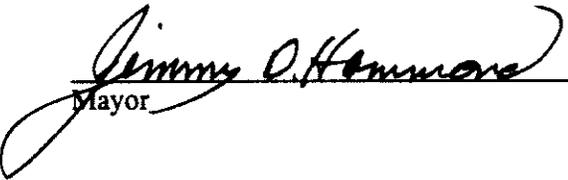
39. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

40. Steptoe & Johnson is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

41. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature on this 22nd day of August, 1996.

THE CITY OF ELKINS



Mayor

07/24/96
ELKSJM.I4
255620/95001

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

CERTIFICATE OF ENGINEER

I, Thomas J. Blair, III, Registered Professional Engineer, West Virginia License No. 003743, of Kelley Gidley Blair & Wolfe, Charleston, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of The City of Elkins (the "Issuer") to be constructed primarily in Randolph County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance enacted by the Issuer on August 1, 1996, as supplemented by the Supplemental Resolution adopted by the Issuer on August 1, 1996, and the Loan Agreement, by and among the Issuer, the West Virginia Division of Environmental Protection (the "DEP"), and the West Virginia Water Development Authority (the "Authority"), dated June 10, 1996.

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying costs of issuance and related costs.

3. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the DEP and the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least 20 years, (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project, (v) the rates and charges for the System as adopted by the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the

Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature and seal on this 22nd day of August, 1996.

KELLEY GIDLEY BLAIR & WOLFE

A handwritten signature in black ink, appearing to read "T. G. Blair, III", written over a horizontal line.

West Virginia License No. 003743

08/06/96
ELKSJM.J4
255620/95001

SCHEDULE A

REVISED
5/22/94

NAME OF GOVERNMENTAL AGENCY: CITY OF ELKINS

**ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS
AND COST OF FINANCING**

A. Cost of Project

1. Construction	\$	<u>282,000.00</u>
2. Technical Services	\$	<u>36,360.00</u>
3. Legal and Fiscal	\$	<u>1,000.00</u>
4. Administrative	\$	<u>7,650.00</u>
5. Site and Other Lands	\$	<u> </u>
6. Step I and/or Step II (Design) or other Loan Repayment (Specify Type: _____)	\$	<u> </u>
7. Interim Financing Costs	\$	<u> </u>
8. Contingency	\$	<u>12,500.00</u>
9. Total of Lines 1 Through 8	\$	<u> </u>

B. Sources of Funds

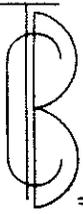
0. Federal Grants: (Specify Sources)	_____	\$	_____
1. State Grants: (Specify Sources)	_____	\$	_____
2. Other Grants: (Specify Sources)	_____	\$	_____
3. Any Other Source (Specify)	<u>CITY OF ELKINS SEWER</u>	\$	<u>44,000.00</u>
4. Total of Lines 10 Through 13		\$	<u>44,000.00</u>
5. Net Proceeds Required from Bond Issue (Line 9 Less than 14)		\$	<u>290,500.00</u>

• 334,500.00

C. Cost of Financing

6. Capitalized Interest (Construction period plus six months)	\$	<u> </u>
7. Funded Reserve Account:	\$	<u> </u>
8. Other Costs:	\$	<u>9,500.00</u>
9. Total Cost of Financing (lines 16 through 18)	\$	<u>9,500.00</u>
10. Size of Bond Issue (Line 15 plus Line 19)	\$	<u>300,000.00</u>

• not allowable for State Revolving Fund Assistance



Tetrick, Bartlett & Co.

CERTIFIED PUBLIC ACCOUNTANTS

122 N. Oak St. • P. O. Box 1916 • Clarksburg, WV 26302-1916 • Telephone: (304) 624-5564 • (800) 227-8538 • FAX: (304) 624-5582

The City of Elkins
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

West Virginia Water
Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25065

West Virginia Division of
Environmental Protection
617 Broad Street
Charleston, West Virginia 25301

Ladies and Gentlemen:

Based upon the rates and charges as set forth in the sewer rate ordinance of The City of Elkins (the "Issuer") enacted July 7, 1994, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Kelly Gidley Blair & Wolfe, Consulting Engineers, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system of the Issuer (the "System"), will pay all operation and maintenance expenses and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program) (the "Bonds"), to be issued to the West Virginia Water Development Authority and all other obligations secured by or payable from the revenues of the System prior to, on a parity with or junior to the Bonds, including the Issuer's Sewer Revenue Bonds, Series 1986, and Supplemental Subordinate Sewer Revenue Bonds, Series 1986 (collectively, the "Prior Bonds"). It is our further opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three succeeding years after the completion of the improvements to be financed by the Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the Bonds and the Prior Bonds.

Very truly yours,

Tetrick, Bartlett & Co.

Tetrick, Bartlett & Co.
August 22, 1996

13

MEMBER

• AMERICAN INSTITUTE
OF CERTIFIED PUBLIC
ACCOUNTANTS

• WEST VIRGINIA SOCIETY
OF CERTIFIED PUBLIC
ACCOUNTANTS

• DIVISION FOR CPA FIRMS
PRIVATE COMPANIES
PRACTICE SECTION

• TAX DIVISION OF THE AMERICAN
INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS

• NATIONAL ASSOCIATED
CPA FIRMS

PART I.

THE CHARTER.

Editor's note.--The city Charter herein set out is Acts 1901, Chapter 151, as amended by the state legislature and by Home Rule Amendment pursuant to law as indicated by the historical citation following affected sections. A frontal analysis has been added for the convenience of the user. Some section catchlines have been altered and some material has been inserted in brackets for the purpose of clarification, no portion of which should be regarded as official. A uniform system of capitalization has been used and numbers have been spelled out rather than set out in arabic numerals. Editor's notes have been added to certain sections where the section is no longer accurate.

The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions."

Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary

Elkins City Code

rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this city Code refer to W. Va. Code, § 8-1-6, in determining the present construction and applicability of any portion of the Elkins Charter to any given situation.

- § 1. Corporate name and powers.
- § 2. Corporate limits.
- § 3. Wards.
- § 4. Elective municipal authorities.
- § 5. Council to exercise corporate powers.
- § 6. Qualification of mayor and councilmen.
- § 7. Appointive officers and their qualifications.
- § 8. Election of mayor and other officers.
- § 9. Election of councilmen; vacancies.
- § 10. Qualifications and registration of voters.
- § 11. Elections; mode of voting; law governing.
- § 12. Determination of ties.
- § 13. Determination of contested elections.
- § 14. Vacancies.
- § 15. Council to have power to provide for additional officers and to set forth the power, duties, bonds, compensation, etc., of all officers; certain officers set forth.
- § 16. To whom official bonds made payable and proceedings thereon.
- § 17. Oaths of officers.
- § 18. When officers' duties begin.
- § 19. Procedure when officer-elect is ineligible or fails to qualify.
- § 20. Executive and judicial powers of mayor.
- § 21. City clerk to keep records, etc., and act as mayor in his absence.
- § 22. Quorum.
- § 23. Powers and duties and books required to be kept by city clerk.
- § 24. Minutes of previous meeting to be read; roll call of council.
- § 25. Mayor to vote only in case of a tie.
- § 26. Regular and special meetings and compulsory attendance thereto.
- § 27. City Collector and treasurer to keep all city moneys; how paid out.
- § 28. General corporate powers of council.
- § 28-(a). Authority to erect community building.
- § 29. Mayor's docket and what shall be contained therein; record of cases.
- § 30. Annual estimate of expenses and levy of taxes; statement of receipts and expenditures to be published annually.
- § 31. City assessor--Powers and duties generally.
- § 32. Same--Assessment books.
- § 33. Lien for taxes, fines, etc., and enforcement thereof.
- § 34. Duties, bond, etc., of city collector and treasurer.
- § 35. License ordinances and payment of tax thereon.
- § 36. Provisions of law applicable to licenses and expiration date of certain licenses.

- § 37. Condemnation of real estate for public use.
- § 38. Charter of South Elkins abolished.
- § 39. Ordinances, etc., not inconsistent and bonds, etc., remain in effect.
- § 40. City to take over corporate assets and assume obligations of town of South Elkins.
- § 41. Duties of council as to first election, etc.
- § 42. Former rights, powers, etc., of city undisturbed.
- § 43. Inconsistent ordinances and acts repealed.

Sec. 1. Corporate name and powers.

The inhabitants of so much of the county of Randolph as is within the bounds prescribed by section two of this act [this Charter], and their successors, shall be and remain and they are hereby made a body politic and corporate by the name of "The City of Elkins," and as such shall have perpetual succession and a common seal; and by that name may sue and be sued, plead and be impleaded, purchase, lease and hold real estate, and personal property necessary for the purpose of said corporation. (1901, ch. 151, § 1.)

Sec. 2. Corporate limits.

The corporate limits of said city shall hereafter be as follows: Beginning at the southern abutment of Bridge Number two of the Western Maryland Railway, across the Tygarts Valley River on its Huttonsville branch; being the bridge of said railway, situated about one thousand feet south of the junction of the Belington extension and Huttonsville branch of said railway, and running thence down said Tygarts Valley River on the east bank thereof to a stone the southwest corner of the Davis and Elkins College property; thence with six lines thereof S. 60 E. 478.5 feet to a white oak; N. 47.30 E. 316.8 feet to a stone; N. 48 E. 268.6 feet to a white oak; N. 59 E. 255.5 feet to a stone; N. 21.30 E. 115.5 feet to a stone; N. 68 E. 328 feet to a stone in the west lines of the Beverly and Fairmont Pike; thence with the western line of said pike in a northerly direction 489 feet to a stake; thence N. 62.15 E. 582 feet to a small oak tree; thence N. 38.55 E. 1405 feet to a small oak; thence N. 19.15 E. 957 feet to the Woolwine Run; thence S. 58 E. 1885 feet to a post in the line between Woolwine and Taylor 40 Feet southeast of Judson Goddin's corner; thence N. 17 E. 900 feet to a stone, corner to Wees, Woolwine and Taylor; thence N. 26 W. 2662 feet to the southeastern corner of the reservoir lot on the top of "Wees Hill"; thence with the back line of said reservoir lot to the northern corner thereof; the same being an oak; thence by a straight line to a point where the Buffalo and Leading Creek Pike crosses Cravens Run; thence by a straight line to the nearest corner of Maplewood Cemetery; thence with the line of said cemetery on the northern boundary thereof to the northwestern corner of the new addition to said cemetery; thence by a straight line due west to a stake in the elongation of Isaac Scott's eastern line; thence with said line S. 13.45 W. to a large chestnut, a corner of said Scott's land; thence with another line of said Scott's land S. 24.30 W. 1333.7 feet to the western line of Harrison Avenue; thence with the western line of said avenue S. 77 E. 201.8 feet to a stake; thence S. 25 W. 1024.5 feet to

a stake; thence S. 65 E. 166 feet to the western line of Robert E. Lee Avenue; thence with western line of said avenue; S. 25 W. 690 feet to a stake standing N. 65 W. 30 feet from a stone monument; thence S. 14.40 W. 940 feet to the river; thence with a straight line to the beginning. (1901, ch. 151, § 2; 1911, ch. 81; 1915, Munl. Chtr., ch. 16; 1921, Munl. Chtr., ch. 8.)

Editor's note.--The corporate limits description set out in this section is no longer valid as there have been subsequent additions to the city by annexations as provided for by state law. Copies of such annexations are on file in the city clerk's office.

Sec. 3. Wards.

The territory of said city shall be divided into wards as follows:

First ward. Beginning at the beginning point of the corporate boundary, at Bridge Number two, and running thence down the Tygarts Valley River, with the meanders thereof, to the point where said river crosses the western boundary of said city and with said western boundary to the place of beginning.

Second ward. Beginning at the point where the second corporate boundary line crosses the Beverly and Fairmont Pike, near the residence of W. H. Head and running thence with said Beverly and Fairmont Pike to the point where it intersects the Buffalo and Leading Creek Pike; thence with said last mentioned pike to the point where it crosses Cravens Run on the corporate boundary and shall include all the territory lying between said two pikes and the eastern boundary of the city.

Third ward. Beginning at the point where the boundary of the First Ward crosses the West Virginia Central and Pittsburgh Railway, in the Tygarts Valley River, at Bridge Number one, near the intersection of Railroad Avenue and First Street, and running thence down said river with the meanders thereof to the point where the said river crosses the northern boundary of the city, thence with said northern boundary, in a northern direction to the point where said boundary line crosses said railroad, near Maplewood Cemetery, thence with said railroad to the place of beginning.

Fourth ward. Beginning on the West Virginia Central and Pittsburgh Railway at the junction of Railroad Avenue and Second Street and running thence with Second Street to John Street; thence with John Street to Randolph Avenue, thence with Randolph Avenue to the junction of said avenue with Buffalo Street (a point in the boundary of the second ward) and shall include all the territory lying west and south of the streets just named which is not embraced in the First and Second Wards as above bounded.

Fifth ward. Shall include all the territory within the corporate boundary lying north of the fourth ward, between the Second and Third Wards as above bounded.

The number and boundary of the wards of said city may be changed at any time by the council thereof, but the number of wards shall not be reduced below three or increased above seven in number and shall be made as nearly equal in population as practical; provided, however, that no change in number or boundary of said wards shall be made nearer than sixty days before any general or special election to be held in said city; and provided, further, that no such change shall be made until public notice is given for at least thirty days, such notice to be posted at the front door of the mayor's office and at five or more public places in said city at least one of which notices shall be posted in each ward. (1901, ch. 151, § 3.)

Editor's note. --The ward descriptions set out in this section are no longer valid because of annexations to the city. Present ward boundary descriptions are on file in the city clerk's office.

Sec. 4. Elective municipal authorities.

The municipal authorities of said city shall consist of a mayor, to be elected by the voters of the whole city, and two councilmen from each ward, to be elected by the voters of such wards, (ten councilmen as provided by this Charter but the number thereof to be increased or diminished if the number of wards be increased or diminished), who together shall form a common council and who shall receive such compensation as the council shall from time to time determine, and which shall not be increased or diminished during their term of office. (1901, ch. 151, § 4.)

For related provisions of general law, see W. Va. Code, § 8-5-7, subsecs. (a) and (b).

Sec. 5. Council to exercise corporate powers.

All the corporate powers of said corporation shall be exercised by said council or under their authority, except when otherwise provided. (1901, ch. 151, § 5.)

Sec. 6. Qualification of mayor and councilmen.

The mayor and councilmen must severally at the time of their election, be assessed with property, real or personal, or both in the aggregate, of the value of at least two hundred dollars and have paid taxes for the preceding year on property situated within the corporate limits of said city of an assessed value of

at least two hundred dollars, and at the time of their election be entitled to vote in said city for members of the common council thereof. (1901, ch. 151, § 6.)

Editor's note. --The provisions of this section have been declared unconstitutional. *State ex rel City of Follansbee, 233 SE2d 419 (1977).*

For related provisions of general law, providing, *inter alia*, that mayors and councilmen of municipalities must be assessed with only \$100 worth of property, with exceptions thereto for honorably discharged veterans of the armed forces of the U.S. for two years after discharge, see *W. Va. Code, § 8-5-7, subsec. (c).*

Sec. 7. Appointive officers and their qualifications.

There shall be a chief of police, city attorney, superintendent of streets, commissioner of waterworks, city assessor, city collector and treasurer, and city clerk, who at the time of their election or appointment shall be entitled to vote for members of the common council. These several offices or any two or more of them may be held by the same person, except that the offices of city clerk and city attorney shall be deemed incompatible with any other city office. These several offices shall be filled by appointment by the common council and to be held by the appointee during the pleasure of the council, and until his successor shall have been appointed and qualified; provided, however, that the common council by ordinance may provide for the election of any of said officers and prescribe their term of office at not less than one, nor more than two years. (1901, ch. 151, § 7.)

Editor's note. --Inasmuch as county assessors now perform the duties heretofore performed by municipal assessors, a city assessor is no longer appointed.

Sec. 8. Election of mayor and other officers.

On the first Tuesday in March, one thousand nine hundred and eleven, and every two years thereafter, on the first Tuesday in March, there shall be elected by the qualified voters of said city, a mayor and such other officers as may be prescribed by ordinance as provided for in the preceding section. The mayor shall hold his office for the term of two years, commencing on the first day of April after his election until his successor shall be elected and qualified.

Sec. 9. Election of councilmen; vacancies.

On the same day mentioned in the preceding section, one member of the common council shall be elected in each ward of the city, who shall reside in

the ward from which they were [he is] elected, and shall hold their [his] office for the term of two years, or until their successors are [his successor is] elected and qualified. On the first Tuesday in March, 1912, one member of the common council shall be elected in each ward of the said city, who shall reside in the ward from which they are [he is] elected, and shall hold their [his] office for the period of three years from the first day of April next succeeding their [his] election, or until their successors are [his successor is] elected and qualified; on the first Tuesday in March, 1913, and on the same day of every second year thereafter, one member of [the common] council shall be elected in each ward, whose term of office shall begin on the first day of April next succeeding his election, and continue for the term of four years, and until his successor is elected and qualified; but if any member of the common council remove from the ward in which he was elected, his office shall thereby become vacant, and the council, shall fill such vacancy by appointment, until the next general election, of some qualified person residing in the ward. Each ward shall constitute an election precinct, and the council of the city, in office at the time of the passage of this act [this Charter], shall establish a voting place in each ward, at which the first election above provided for shall be held, and unless such new places be established, the election shall be held at the several places now established therefor. No voter shall be allowed to vote at any city election, excepting in the ward in which he resides. (1901, ch. 151, § 9; 1911, ch. 81.)

For general law relating to municipal voting precincts and duty of governing bodies to establish them so as to coincide with county precincts, see W. Va. Code, § 3-1-6. As to municipal precinct registration records, see W. Va. Code, § 3-1-27.

Sec. 10. Qualifications and registration of voters.

Editor's note.--The text of this section (being Acts 1901, ch. 151, § 10; 1911, ch. 81; 1915, Munl. Chtr., ch. 16; 1921, Munl. Chtr., ch. 8) is omitted as obsolete in all respects.

For general law as to qualifications and registration of voters, see W. Va. Code, ch. 3, arts. 1 and 2; see also, § 8-5-13.

Sec. 11. Elections; mode of voting; law governing.

The mode of voting shall be by ballot, but the voter shall be left free to vote an open, sealed or secret ballot, as he may elect. The elections in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this state, relating to general elections, as they exist at the time any such election is being held, except that the persons conducting said elections shall on the day after the election is held deliver the ballots, tally sheets and poll books to the city clerk, and thereafter

the common council of said city shall meet on the sixth day succeeding said election and canvass the returns of said election, and declare the result thereof, and in all respects comply with the requirements of the statutes relating to general elections as they are in force at the time of holding said election. The corporate authorities of said city shall perform all the duties in relation to such election required by general law of county courts [county commissions] and officers in the general election laws of this state, and the provisions of chapter 3 of the Code of West Virginia, in effect at the date of such election, concerning elections by the people, shall govern such elections and be applicable thereto, and the penalties therein prescribed for offenses relating to elections shall be enforced against the offenders at such corporate election; and the said general election laws shall have the same force and effect as if they were specially enacted for corporate elections and were by this act [this Charter] specially reenacted in extenso, except as modified in this amended Charter to the city of Elkins. (1901, ch. 151, § 11; 1911, ch. 81.)

For general law as to applicability of state election laws to municipal elections, see W. Va. Code, § 8-5-6. As to the canvassing of municipal elections, see W. Va. Code, § 8-5-17.

Sec. 12. Determination of ties.

Whenever two or more persons shall receive an equal number of votes for mayor, councilman or other city office, such tie shall be decided by the council in being at the time the election was held. (1901, ch. 151, § 12.)

For general law as to determination of tie votes in municipal elections, see W. Va. Code, § 8-5-15.

Sec. 13. Determination of contested elections.

All contested elections shall be heard and determined by the common council and the contest shall be made and conducted in the same manner as provided for in contests for county and district officers, and the common council by their proceedings in such cases shall comply as nearly as practicable in conformity with like proceedings of the county courts [county commissions] in such cases. (1901, ch. 151, § 13.)

For general law as to determination of contested municipal elections, see W. Va. Code, § 8-5-17.

Sec. 14. Vacancies.

Whenever a vacancy from any cause shall occur in any office the council shall by a majority vote of those present fill such vacancy. (1901, ch. 151, § 14.)

For general law as to filling vacancies in elective municipal offices, see W. Va. Code, § 8-5-10.

Sec. 15. Council to have power to provide for additional officers and to set forth the power, duties, bonds, compensation, etc., of all officers; certain officers set forth.

(a) The council shall also have authority to provide by ordinance for the appointment of such other officers as shall be necessary and proper to carry into full force and authority the power, capacity, jurisdiction and duties of said city which is [are] or shall be vested therein, or in the council, or in the mayor or any other officer or body of officers thereof, and to grant to the officers so appointed the power necessary or proper for the purposes above mentioned. The council by ordinance shall define the duties of all officers so appointed or elected as aforesaid, and allow them reasonable compensation which shall be by monthly or quarterly salaries and not otherwise, except as to the collection of taxes, and fees to the mayor and chief of police in criminal convictions where-in the fees are recovered from the defendant, which compensation shall not be increased or diminished during their term of office; and shall require and take from all of them whose duty it shall be to receive its funds, assets or property, or have charge of the same, such bonds, obligations or other writings as they shall deem necessary or proper to insure the faithful performance of their several duties. All officers whether appointed or elected may be removed from office for malfeasance, nonfeasance or misfeasance by the council; but provided always that any appointed officer who holds his office at the pleasure of the council may be removed from his office at any time without notice.

For 1974 amendment to state constitution providing, in pertinent part, that no "judge of a municipal, police or mayor's court or any officer thereof shall be compensated for his services on a fee base or receive for his own use for his services any pecuniary compensation, reward or benefit other than the salary prescribed therefor," see Const., art. 8, § 11.

(b) Powers, duties, etc., of chief of police. The chief of police shall have all powers, rights and privileges within the corporate limits of said city in regard to the arrests of persons, the collection of claims, the execution and return of process, that can be legally exercised by a constable of a district within this state; and may without having any warrant or other process therefor arrest any person who commits any offense against the laws of this state or infraction of the ordinances of said city, in his presence. He shall be ex officio the keeper of the jail and have charge of the city prisoners confined therein, and may confine any persons arrested by him in the city jail until such time as the charges against such person can be inquired into by the mayor. Any person fined by the mayor for infraction of any of the ordinances of the city may pay such fine to either the mayor or chief of police; and the said chief of police and his sureties shall be liable to all fines, penalties and forfeitures that a constable of a district is liable to for any failure or dereliction in his said office to be recovered in the same manner and in the same courts that the said fines, penalties and forfeitures are now recovered against a district constable.

(c) Powers, duties, etc., of collector and treasurer. It shall be the duty of the collector and treasurer to collect city taxes, licenses, levies, assessments, and other such city claims as are placed in his hands for collection by the council, and [he] may distrain and sell therefor in like manner as a sheriff may distrain and sell for state taxes, and he shall in all other respects have the same powers as the sheriff to enforce the payment and collection thereof. (1901, ch. 151, § 15.)

Sec. 16. To whom official bonds made payable and proceedings thereon.

All bonds, obligations or other writings taken in pursuance of any provision of this act, [this Charter], or under the provisions of any ordinance of said city, shall be made payable to "The City of Elkins," and the obligors therein and their heirs, executors, administrators and assigns, bound thereby shall be subject to the same proceedings on such bonds, obligations or writings for enforcing the conditions of the terms thereof, by motion or otherwise before any court of record or justice of the peace having jurisdiction thereof, held or acting in, or for said Randolph county, or any district thereof or elsewhere, that the sheriff or collector of said county and his sureties are or shall be subject to on his bond taken for the enforcement of his duties in the payment of the county levies. (1901, ch. 151, § 16.)

For constitutional provision abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Sec. 17. Oaths of officers.

The mayor and council and all other officers provided for in this act [this Charter] shall each, before entering upon the duties of their office, and within thirty days after their election or appointment, take the oath or affirmation prescribed by law for all officers in this state, and make oath or affirmation that they will truly, faithfully and impartially, to the best of their ability, discharge the duties of their respective offices so long as they continue therein. Said oath or affirmation may be taken before any person authorized to administer oaths under the laws in force at the time the same is taken, or before the mayor or city clerk of said city, but in any event a copy of said oath of said officers shall be filed with the city clerk. (1901, ch. 151, § 17.)

For general law as to oath of office of municipal officers, and requirement for filing certified copy in office of the county clerk, see W. Va. Code, § 8-5-5.

Sec. 18. When officers' duties begin.

The mayor and councilmen, and all other elected officers, shall enter upon the duties of their office on the first day of April next after their election, or as soon thereafter as they have qualified, and all appointed officers shall enter upon the duties of their offices as soon as they have qualified; and all officers shall remain in office until their successors are elected and qualified or until removed therefrom. (1901, ch. 151, § 18.)

Sec. 19. Procedure when officer-elect is ineligible or fails to qualify.

If any person elected to any office shall not be eligible thereto under the provisions of this act [this Charter] or shall fail to qualify as herein required, the council shall declare his said office vacant and proceed to fill the vacancy as required by this act. (1901, ch. 151, § 19.)

Sec. 20. Executive and judicial powers of mayor.

The mayor shall be the chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be ex officio a justice and conservator of the peace within the city, and shall within the same have, possess and exercise all the powers and perform all the duties vested by law in a justice of the peace, except [that] he shall have no jurisdiction in civil cases or causes of action arising out of the corporate limits of the city unless the defendant resides or is found therein and process therein served upon him. He shall have the same power to issue attachments in a civil suit as a justice of his county has, but in such cases he shall have no power to try the same, but such attachments shall be made returnable and heard before a justice of the peace of his county. Any warrant or other process issued by him may be executed at any place in

the county. He shall have control of the police of the city and may appoint special police officers whenever he deems it necessary, and may suspend any police officer until the next regular meeting of the council. And it shall be his duty especially to see that the peace and good order of the city are preserved, and that persons and property therein are protected, and to this end he may arrest, or cause the arrest and detention of, all violators of the laws of the state and the ordinances of the city, before issuing his warrant therefor if the offence is committed in his presence. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof and in default of such payment he may commit the party in default to the jail of the county of Randolph or other place of imprisonment in such corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such cases shall not exceed thirty days. And in all cases when a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more (and in no case shall a judgment for a fine be for less than ten dollars if the defendant, his agent or attorney object to a less fine being imposed), such person shall be allowed an appeal from such decision to the circuit court of the county of Randolph upon the execution of an appeal bond with security deemed sufficient by the mayor, in a penalty sufficient to cover said fine and costs before the mayor, and the costs in the circuit court in case said judgment be affirmed, with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. If such appeal be taken the warrant of arrest (if any), a transcript of the judgment, the appeal bond and other papers in the case, shall be forthwith delivered by the mayor to the clerk of said court, and the court shall proceed to try the case as upon indictment or presentment, and render such judgment, including costs, as the law and the evidence may require. The mayor shall from time to time recommend to the council such measures as he may deem needful for the welfare of the city. The expense of maintaining any person committed to the jail of the county by him, except it be to answer an indictment, shall be paid by the city and taxed as costs against the defendant. The mayor before acting shall execute bond with good security in the penalty of not less than one thousand dollars, or in such additional penalty as the council may require, subject to the approval of the council, with the same conditions as required in bonds executed by [a] justice of the peace by chapter 50 of the said Code [of West Virginia]; and all the provisions of said chapters relating to money received by a justice shall apply to like moneys received by the mayor. (1901, ch. 151, § 20.)

For constitutional provisions that mayor's courts in incorporated cities shall have jurisdiction to enforce municipal ordinances, but that on and after January 1, 1977, any other jurisdiction theretofore exercised by such courts shall cease, see W. Va. Const., art. 8, § 11. As to abolition of office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Sec. 21. City clerk to keep records, etc., and act as mayor in his absence.

The city clerk shall keep an accurate record of the proceedings of the council, and have charge of and preserve the records of the city, and in case of the absence from the city, or in case of the sickness or inability of the mayor to act, or during any vacancy in the office of mayor, he shall perform such duties of the mayor as pertain to him as chief executive of the city and be vested with all power necessary for the performance of such duties, but shall not be vested with any of the authority of the mayor, pertaining to civil suits. He shall be a conservator of the peace within the city. (1901, ch. 151, § 21.)

For constitutional provision divesting municipal mayor of jurisdiction over civil suits, see W. Va. Const., art. 8, § 11.

Sec. 22. Quorum.

The presence of a majority of the council shall be necessary to make a quorum for the transaction of business. (1901, ch. 151, § 22.)

For general law as to quorum at meetings of municipal governing bodies, see W. Va. Code, § 8-9-1.

Sec. 23. Powers and duties and books required to be kept by city clerk.

The council shall cause to be kept by the clerk in a well bound book to be called the "Minute Book," an accurate record of all its proceedings, ordinances, acts, orders and resolutions, and in another to be called "Ordinance Book," accurate copies of all general ordinances adopted by the council; both of which shall be accurately indexed and open to [the] inspection of anyone required to pay taxes in the city, or who may be otherwise interested therein. All oaths and bonds of officers in the town, and all papers of the council shall be endorsed, filed and securely kept by the clerk. The bond of officers shall be recorded in a well bound book to be called "Record of Bonds." The clerk shall perform such other duties as may by ordinance of the council be prescribed. The transcripts of ordinances, acts, orders and resolutions certified by the clerk under the seal of the city shall be deemed prima facie correct when sought to be used in any court or before any justice. (1901, ch. 151, § 23.)

For constitutional provisions abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

For general law as to records and minutes of municipal governing bodies, and duties of clerks and recorders with respect thereto, see W. Va. Code, §§ 8-9-3, 8-10-3.

Sec. 24. Minutes of previous meeting to be read; roll call of council.

At each meeting of the council the proceedings of the last meeting shall be read and corrected if erroneous and signed by the presiding officer for the time being. Upon the call of any member the ayes and noes on any question shall be taken and recorded by the clerk in the minute book. The call of the members for such vote shall be made alphabetically. (1901, ch. 151, § 24.)

*For corresponding provisions of general law, see
W. Va. Code, § 8-9-3.*

Sec. 25. Mayor to vote only in case of a tie.

The mayor shall have no vote upon any proceedings before the council except in the case of a tie. (1901, ch. 151, § 25.)

*For general law as to authority of municipal mayor
to cast tie-breaking vote "unless he has previous-
ly voted," see W. Va. Code, § 8-9-2.*

Sec. 26. Regular and special meetings and compulsory attendance thereto.

The regular meeting of the council shall be held at such time and at such places in the city as they shall from time to time ordain and appoint; and it shall be lawful for the council by ordinance to vest in any officer of the city, or in any member or number of members of their own body, the authority to call special meetings and prescribe the modes in which notice of such special meetings shall be given. If a majority of the members of the council do not attend any regular or special meeting, those in attendance shall have authority to compel the attendance of absent members under such reasonable penalties as they may think proper to impose; all questions put to a vote, except such matters as are hereinafter provided for, shall be decided by a majority of the members present. (1901, ch. 151, § 26.)

*For general law as to proceedings of municipal gov-
erning bodies, see W. Va. Code, §§ 8-9-1 through
8-9-3.*

Sec. 27. City collector and treasurer to keep all city moneys; how paid out.

All moneys belonging to the city shall be paid over to the city collector and treasurer; and no money shall be paid out by him except as the same shall have been appropriated by the council and upon an order signed by the mayor and city clerk, and not otherwise, except [that] at the expiration of his term of office upon the order of the council, signed by the mayor and clerk, he shall pay over to his successor all the money remaining in his hands. (1901, ch. 151, § 27.)

Sec. 28. General corporate powers and duties of council.

Editor's note. --The subsection numbers in this section are supplied by the editors to facilitate reference thereto, and are not to be regarded as official. For state law as to general powers of municipalities, see W. Va. Code, § 8-12-1 et seq.

- (1) The council of said city shall have the following general powers, and may provide by ordinance and resolution for the exercise and enforcement of the same, namely:
- (2) To lay off, open, close, vacate and maintain public grounds, parks and public places, and name and re-name the same.
- (3) To regulate the planting, trimming and preservation of shade trees by persons and corporations in streets, alleys, roads, public grounds and places, and to provide for the planting, removal, trimming and preservation of such trees and other ornamental shrubbery by the municipality.
- (4) To declare as public nuisances any trees, shrubbery, etc., growing on private property within said city, the roots of which clog or choke any public sewer belonging to said city, or damage the streets or sidewalks of said city, and provide for the removal or destruction of said trees or shrubbery.
- (5) To establish, maintain and regulate free public libraries and reading rooms, and to purchase books, papers, maps, and manuscripts therefor, and receive donations and bequests of money or property for the same, in trust or otherwise, and to provide for the rent and compensation for the use of any existing free public libraries established or managed by private corporations or associations organized for that purpose.
- (6) To protect divine worship in or about the premises where held.
- (7) To locate, lay off, close, open, alter, grade, straighten, widen, narrow, vacate, pave, repave, construct and keep in repair bridges, viaducts, undergrade crossings, roads, streets, alleys, sidewalks, crosswalks, drains and gutters, for the use of the public, or any of the citizens thereof, and to improve and light the same, and keep them clean and free from obstruction on or over them; provided, the municipality shall not be liable for or respond in damages for injury to persons or property caused by or from a defect or obstruction in or on the plat [plot] of ground between the gutter or curb of any street and the paved or plank sidewalk extending there along, or between any such sidewalks and the property lying next adjacent thereto, unless the municipality had actual notice of such defect or obstruction prior to the time of the injury complained of.
- (8) To enter into a contract with any internal improvement company for the joint ownership of any bridge erected by the municipality and such improve-

ment company, upon such terms as may be prescribed in the contract between them, but such bridge or bridges shall be in a public highway, and the interest of the company shall only be such proportionate part thereof as it may pay for, or that [which] may be named in the contract.

(9) To regulate the width of sidewalks and streets, and the width and care of public grounds or grass plots abutting thereon, and to order the sidewalks, footways, crosswalks, drains and gutters to be curbed and paved, or repaved and kept in good order, free and clean, and to provide for the removal of ice and snow therefrom and for sprinkling the same, by the owners or occupants of the real estate next adjacent thereto.

(10) To regulate the use of walks, highways and bridges and the rate of speed or travel thereon, and to prevent and punish for fast driving or riding thereon of any horse, bicycle, wheeled vehicle, wagon, steam or electric or traction engine, motor car or automobile, and to prevent injury to or waste on such streets, alleys, roads or highways from overloaded or improperly loaded vehicles.

(11) To regulate the making of division fences and party walls by the owners of adjoining and adjacent premises and lots, and to regulate or require drainage by the owner of such lots or other real estate by the proper drains, ditches and sewers, and to fill and cause to be filled any lot below the established elevation or grade.

For a case holding that the legislative grant to regulate division fences does not authorize the municipal council to declare a fence a nuisance unless and until it has, by a general ordinance, in fact declared the nature and character of the fences that may properly be built and maintained, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(12) To regulate the erection and use of radio aeriels and other radio equipment.

(13) To regulate or prohibit street carnivals, street fairs, or street parades, advertising exhibitions or other exhibitions thereon, or the exhibition of natural or artificial curiosities thereon.

(14) To regulate or prohibit the ringing of bells, blowing of steam whistles, sounding of motor car or automobile horns, or use of hand organs or other musical instruments of any annoying character or other music of itinerant performers in the streets, roads, parks or public places of the municipality; provided, however, that this regulation shall not apply to common carriers in the ordinary discharge of their duties.

- (15) To license, regulate or prohibit auctioneering.
- (16) To license or prohibit the sale of goods, wares, merchandise, drugs or medicines on the streets or other public places.
- (17) To impose a license tax on persons keeping for hire taxis, carriages, hacks, buggies, wagons or for carrying for hire persons or baggage in such vehicles, and to regulate the charge for such services within the corporate limits of said city.
- (18) To establish and regulate hack stands and stands for automobiles, coaches, cabs and omnibuses kept on the streets for hire.
- (19) To regulate, assess and collect a license fee for the use of the municipality on anything or business for which a state license is required by chapter 32 of the Code, subject to the exemption as provided therein; and excepting herefrom the right to require licenses under subsections (s) and (t) of section 1 of chapter 32 of the Code.

Editor's note.--The statutory citations in subsection (19) are to Barne's Code, Annotated, 1923, which were carried over into the Official Code of West Virginia, 1931, as article 12, chapter 11 thereof. What was § 1 of ch. 32 of Barne's Code has since been repealed; and the whole of article 12, chapter 11 of the Official Code of 1931, relating to state license taxes, was repealed and reenacted so as to provide for state business franchise certificates instead; but see W. Va. Code, § 11-12-4 as to authority of municipalities to impose license taxes pursuant to W. Va. Code, § 8-13-4, up to the amount of the state license tax in effect on January 1, 1970, "with like effect as if this article [art. 12, ch. 11] had not been enacted."

- (20) To establish, locate and keep in repair market places and market houses, and regulate markets, prescribe the time for holding the same and to authorize the seizure thereof and destruction of any and all such foods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for its [the] cost or value.
- (21) To regulate the sale of all food or drink products, milk, fresh meats, fish and vegetables, and provide for inspection of the same.
- (22) To appoint market masters and invest them with power to make arrests for the violation of the municipal ordinances or regulations.
- (23) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets.

(24) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, and to prevent and [or] regulate the distribution by canvassers, agents or other persons of sample packages of drugs, medicine, powders, paint, or other articles which may be dangerous or unwholesome for children.

For a case holding that, under the grant of power "To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome. . . .," the common council may abate only that as a nuisance which is recognized as such per se or branded as such by lawful statute or ordinance, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(25) To regulate or prohibit the keeping, handling and transportation of explosives and dangerous combustibles within the municipality.

(26) To regulate or prohibit the erection or maintenance, in what council deems an improper locality within the municipality, of any blacksmith shop, livery stable, cow house, cattle pen, poultry house, pigpen, privy, billboard, signboard, gas or other engine, or the use of walls and walks for signs, and to abate by summary proceedings whatever in the opinion of the council is a nuisance; provided, that nothing in this paragraph shall apply to common carriers in the construction, erection or maintenance of shops, engines, machinery, or structures upon their own property.

For a case holding that, under the legislative grant of power to the common council "to abate or cause to be abated anything which in the opinion of a majority of the whole council shall be a nuisance," the council may abate only that as a nuisance which is recognized as such per se or branded as such by lawful statute or ordinance, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(27) To regulate or prohibit the distribution of hand-bills, circulars and other advertisements of like kind on the streets, roads, alleys and public places, or in private yards or buildings, without first having procured the consent of the owner or occupier thereof.

(28) To prohibit within the municipality or within one mile of its corporate limits the erection or maintenance of any slaughter house, soap factory, glue factory, lampblack factory, tannery or other house, shop or factory, of like kind or character.

(29) To establish, regulate and maintain baths, bath houses, swimming pools, drinking fountains, water troughs and public toilet stations and free

public band concerts, and to regulate the time and place of bathing in pools, streams and public waters within the police jurisdiction of the municipal corporation.

(30) To prevent hogs, cattle, sheep, horses and other animals and fowls of all kinds from going at large in the municipality and to establish and maintain places for their detention, to make regulations respecting the keeping and sale of same, and to appoint a poundmaster and define his duties.

(31) To arrest, convict and punish any person for keeping an assignation house, house of ill fame, or for leasing or letting to another person any house or other building for the purpose of being used or kept as an assignation house or house of ill fame, or for knowingly permitting any house owned by him or under his control to be used as an assignation house or house of ill fame or loafing, boarding or loitering in an assignation house or house of ill fame, or frequenting the same.

(32) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any book, picture or device or other thing containing obscene language or pictures, or making indecent representations.

(33) To restrain and punish vagrants, mendicants, beggars, tramps, common prostitutes and their associates, and drunken and disorderly persons within the municipality, and to provide for their arrest and manner of punishment.

(34) To establish a board of health and invest it with the necessary power to attain its object.

(35) To establish quarantine and to erect and maintain pest houses and places of detention, and to make and enforce necessary orders for controlling or preventing the spread of infectious and contagious diseases, and for abating pestilence.

(36) To prohibit and punish by fine any person, firm or corporation knowingly bringing into the corporate limits persons who are paupers, or persons afflicted with contagious diseases, or to punish by fine, or by fine and imprisonment, any persons so bringing within the corporate limits such pauper or diseased person.

(37) To provide for the poor of the municipality, and to that end the municipality may contract with the county court [commission] of Randolph county for keeping such poor at the county poorhouse at a price and on such terms as may be agreed upon between the county court and such municipal authorities.

(38) To authorize the taking up and provide for the safekeeping and education, for such periods of time as may be deemed expedient, of all children who are destitute or are without proper parental or other care and who are growing up in mendicancy, ignorance, idleness or vice.

(39) To arrest, convict and punish any person for cruelty, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading, overdriving or wilfully depriving of necessary sustenance, any horse or other domestic animals.

(40) To restrain fraudulent practices within the municipality.

(41) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called faro bank, table and chips used in playing such game; crap table or chips used in playing such game; or roulette or the wheel or chips used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice or otherwise, or any person who shall be a partner, or concerned in interest in the keeping or exhibiting of such gaming table, faro bank table, or chips, roulette table or chips, crap table or chips, keno table or devices, or keeping or maintaining any gambling house or place, or betting or gambling for money or anything of value, and to destroy such gambling paraphernalia as may be found in use on any such premises.

(42) To restrain all felons and persons guilty of offense against this state or the United States and deliver them over to the authorities or court having jurisdiction of the offense whereof such person is accused.

(43) To apprehend and punish any person, who, without a state license therefor, is guilty of carrying about his person within the municipality any revolver or other pistol, dirk, bowie knife, slingshot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapons of like kind and character, as provided by chapter 51 of the acts of the legislature of 1909 [W. Va. Code, § 61-7-1] and the punishment therefor, whether for the first or other offense, shall be that prescribed by said chapter for any such person guilty under the misdemeanor clause provided therein, but the place of confinement of such guilty person may be in the jail or lockup of the municipality, in lieu of the county jail; provided, that the mayor of the municipality or other person exercising the functions of his office, may, in his discretion, decline to inflict the punishment herein mentioned, and instead thereof may require or hold such guilty person to answer an indictment by the grand jury of Randolph county for the violation of such law; and it shall be the duty of the prosecuting attorney of said county, when requested by the mayor of the municipality, to appear and prosecute such offending person before such mayor; provided, further, that regularly appointed police officers of the municipality, whose services are rendered to and paid for by the municipality, shall not be required to give bond, or any bond provided by said chapter 51 of the acts of the legislature of 1909 [W. Va. Code, § 61-7-2].

(44) To provide in or near the corporate limits of the municipality a cemetery or other place for the burial of the dead, and to regulate interments therein, and to guard and police the same, and to provide for the cremation and incineration of dead human bodies when from the nature of the malady or pestilence from which death ensued, the municipal board of health may direct.

(45) To regulate the erection, construction, alteration and repair of dwelling houses, buildings and other structures within the municipality and to compel the numbering of the same by the owners or occupants thereof; provided, that the provisions of this paragraph shall not apply to common carriers in the erection, construction, alteration or repair of structures upon their own property.

(46) To regulate by license and otherwise, plumbers, electricians, sewer tappers and vault cleaners, except when such persons are employed by a common carrier upon its own property.

(47) To regulate the hanging of doors and construction of stairways, elevators and fire escapes in theatres, churches, school buildings, factories and other places where many persons are received at one time, and to require the construction of fire escapes in such buildings.

(48) To establish fire limits, and to regulate the construction of buildings and designate material to be used in the construction of buildings within such limits.

(49) To regulate the building of fire walls, fireplaces, chimneys, boilers, smokestacks and stovepipes.

(50) To take down and remove, or make safe and secure, any and all buildings hereafter erected and require the alteration and repair of any by the owners thereof, that are or may become dangerous, or to require the owners or their agents to take down and remove them or put them in a safe and sound condition at their own expense.

(51) To regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings now or hereafter erected in the municipality, and to require permits to be obtained of the municipality for such building and structures, and the repair and alteration thereof, and that plans and specifications thereof be submitted to the council or some person designated by it; provided, that the provisions of this paragraph shall not apply to buildings or structures located upon the property of common carriers.

(52) To regulate the limits within which it shall be lawful to erect any steps, porticos, bay windows, bow windows, show windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings on any street.

(53) To provide for the prevention and extinguishment of fires, and for this purpose to organize, equip and govern fire companies, and to prescribe the powers and duties of such companies and department, and of the several officers thereof, and to impose on those who fail to obey any lawful command of the officers in charge of such company any penalty which the council is authorized to impose for the violation of an ordinance, and to give authority to such fire officer to direct the pulling down of any building or the destruction of any fence, wall, building or other thing if such officer deem it necessary to prevent the spreading of fire.

(54) To protect the persons and property within the corporate limits and to preserve the peace and good order therein, and for this purpose to appoint, when necessary, a police force and such other officers as may be deemed necessary.

(55) To prescribe the powers and define the duties of the officers appointed under corporate authority, fix their term of service and compensation, if not otherwise prescribed in this chapter [Charter], and to require and take from them bonds, when deemed necessary, payable to the State of West Virginia, or the City of Elkins, with such securities and in such penalties as may be prescribed, conditioned for the faithful discharge of their duties.

(56) To erect, authorize and prohibit the erection of power plants, heating plants, gasworks, electric light works or waterworks in the municipality for public service, and to erect, purchase, own or lease and maintain within or without the corporate limits of the municipality such gasworks, electric lights, power works, waterworks and reservoir to supply the municipality or its inhabitants, water, light, heat and power, and to prevent injury to the same or the pollution of the water or to impair the healthfulness thereof and may acquire land for said purposes by purchase, lease or condemnation.

(57) To grant, by ordinance or franchise, for periods not exceeding twenty-five years, the use of its streets, roads, alleys and public places, to lay pipes, conduits, manholes, drains, and other necessary fixtures and appliances, to be used for supplying the municipality and its inhabitants with steam or hot water, or both, for heat and power purposes, or both, or for illuminating purposes, and to grant by ordinance or franchise, for periods of not exceeding twenty-five years, the use of its streets, roads, alleys and public places for the construction of movable or rolling roads for the conveying or moving of passengers, freight and other property, and those in charge of the same, upon such terms and conditions as may be prescribed.

(58) To grant by ordinance or resolution permits for the temporary use of its streets, roads, alleys and public places for the construction of moving or rolling roads for the conveying or moving of passengers, freight, vehicles, animals or other property, upon such conditions as may be prescribed.

(59) To provide a revenue for the municipality and appropriate the same to its expense; and to cause to be assessed and collected in each year an

ad valorem tax, within the limits of the general tax laws of the state, on all property in the municipality subject to state and county taxes, as valued and returned for such taxation by the county assessor.

(60) To levy an annual capitation tax of not more than two dollars upon each male resident of the municipality who has attained the age of twenty-one years, and from which persons afflicted with bodily injury and those having attained the age of fifty years shall be excepted.

Editor's note. --Sec. 2, art. 10 of the constitution of West Virginia, authorizing a capitation tax as provided in subsections (60) and (61), has been repealed.

(61) To provide for the collection of said capitation at the time, and in the manner as the regular capitation tax is collected, which may be done either through the county assessor or by any other person designated by the municipality; but if the county assessor or other person than city assessor, he shall give such bond as may be required by the council before making such collection.

(62) To issue and sell bonds in the manner provided by general laws governing the same, and in addition to other taxes, to levy for the maintenance of a sinking fund where such bonds have been issued and are unpaid, and to control such sinking fund and to make temporary loans thereof, or to make temporary investments thereof, or of any specific fund for the time such fund cannot be advantageously used for the purpose for which it was levied and collected.

(63) To provide for the rent and compensation for the use of any existing free public hospital, established or managed by a private association or corporation organized for that purpose.

(64) To provide for the removal and abatement of nuisances; and to carry out and enforce sanitary regulations.

(65) To compel the attendance at public meetings of the members of the council, or other body exercising their respective functions.

(66) To buy, lease and operate, either within or without the municipality, stone quarries, crushers and land for said purposes, for the purpose of furnishing a supply of stone or other material suitable for macadamizing or paving the streets, sidewalks and alleys and improving public property.

(67) -Subject to the approval of the public service commission, the council may regulate the running of steam and electric cars over and across any street or alley, and when deemed proper by the council, it may by resolution require any railroad company or street car company to provide at its own expense a suitable watchman at any crossing of any street or alley during such hours as may be designated by the council or otherwise regulate such crossings in order to protect persons walking or driving over them.

(69) Whenever in the opinion and judgment of the council of the municipality it is necessary, it shall have power to construct such sewers as in its opinion and judgment are needful to the comfort, health, safety and welfare of the inhabitants of said municipality or of the public, and may construct such sewers at such places within or without the corporate limits, and in such manner as in the opinion and judgment of said council may be proper; but so far as practicable, shall construct such sewers under the streets, alleys or roads of the city; and whenever in the opinion and judgment of said council any street or alley of said city should be paved or repaired with brick, or other suitable substance for paving purposes, or surfaced and repaired with amiesite or other suitable material, the said council may cause the same to be done in such manner as in the opinion and judgment of the council is most suitable for the purpose, and whenever in the opinion and judgment of the council any sidewalks or footwalks of stone, brick, cement or other suitable substances, are necessary, or beneficial, and for the best interest of the inhabitants of said city, the council may order the same to be constructed in such manner and of such material as in the opinion and judgment of the council are most suitable for the purpose, and for the purpose of paying the expenses and cost of any such sewer, paving, sidewalks or footwalks, the said council may levy a special assessment for the cost thereof against the real estate benefited thereby, and which bounds or abuts thereon, and may cause such special assessment with interest thereon after thirty days from the levying of such assessment, at the rate of six per cent per annum, to be collected as city taxes are collected against real estate in said city, as provided in chapter 151 of the acts of 1901 [this Charter], and as provided for the collection of state taxes assessed against real estate in said city; but in the case of any sewer constructed under and along any street, alley or road, or in case of any pavement constructed upon any street or alley, the bounding or abutting real estate on each side of the street or alley shall be held liable to pay one-half of the cost of such sewer and pavement, repavement or surfacing of pavement heretofore laid, and in case of any sidewalks or footwalks, the real estate next adjacent thereto shall be held liable to pay the whole cost of such sidewalks or footwalks; provided, that in case of the construction of any sewer, the amount to be assessed against the abutting property shall be ascertained by taking one-half of the total costs of such sewer, including mains and laterals, on all the streets or alleys or through private property which enters into such mains, and together make one complete sewer line, and from one-half of the total cost and total length of such sewer, the cost per foot shall be ascertained. This sum shall then be multiplied by the number of feet which any lot, part of lot, or other real estate, abuts thereon which is liable to assessment under this act, and the amount so ascertained shall be assessed against the abutting property as hereinbefore provided, but no lot already having sewer ser-

vice and occupied by a dwelling shall be assessed with any portion of the cost of any new sewer unless it is necessary for the owner of such lot to connect with such new sewer.

For a case holding that the language of this subsection to the effect that "no lot already having sewer service shall be assessed with any portion of the cost of any new sewer," does not apply to a property owner who has secured a connection to an unsanitary sewer, which renders necessary the construction by the city of the new sewer, see City of Elkins v. Haggerty, 111 W. Va. 422, 162 SE 313 (1932).

*For a case construing similar language in a predecessor of this subsection, that is " * * * and for the purpose of paying the expenses and cost of any * * * sidewalks or footwalks, the said council may levy a special assessment for the cost thereof against the real estate benefitted thereby which bounds or abuts thereon. * * * and in case of any sidewalks or footwalks the real estate next adjacent thereto shall be held liable to pay the whole cost of such sidewalks or footwalks," see Lee v. City of Elkins, 99 W. Va. 201, 128 SE 83 (1925).*

For a case construing, in the light of prior state Code provisions (now W. Va. Code, § 11A-2-2), certain language of a predecessor of this subsection which is similar to language hereof, and holding that the city's right to a personal judgment was barred five years after the assessment was laid, see City of Elkins v. Stickley, 114 W. Va. 103, 170 SE 902 (1933).

For a case construing some similar language of a predecessor of this section, and holding that "a legal severance of property is not made by a mere easement over it," and that a sewer laid through an easement over a single lot under single ownership did not create separate lots abutting the sides of such easement, see City of Elkins v. Stickley, supra.

For state law, see W. Va. Code, § 8-18-1 et seq.

(69) The said city council is hereby given full right and authority to require any person or lot owner in said city to connect a sewer leading from his or her house or lot into any public sewer which is located in any public street or alley adjoining the same, and if such house or lot owner fails or refuses so to do after having been given reasonable notice, the said council may enter upon said lot and construct such sewers and may levy the actual cost thereof against the lot upon which the same is built and collect such cost from the owner of such lot in the same manner as city or state taxes are collected.

(70) And, provided, further, that in the case of the grading, regrading, paving, repaving, and surfacing old pavements, the cost of construction, including material and labor, grading, cuts and fills, shall be charged to the bounding and abutting property ratably, according to the extent of the several parcels of real estate adjacent thereto, and assessed and collected from the owners thereof as other assessments and taxes are collected, and the amount of such assessments against the several properties shall be ascertained by the apportionment of the total cost thereof upon any particular street or part of a street or alley so paved or improved, according to the relative frontage of each parcel to the entire extent of such work; and the council may also cause certificates of the several assessments so made, showing the separate parcels of property, the owner, amount of the assessment thereon, with such general description as will identify the property, to be prepared, certified and recorded in the deed of trust record in the office of the clerk of the county court [commission] of Randolph county, and such record shall constitute a lien upon such property in favor of the said city for the amount of such assessment and may be enforced in equity as other liens are enforced. The amount so assessed and for which such certificates are issued shall be payable in ten payments as follows: One-tenth of such amount shall be payable as soon as said assessments are laid; and a like one-tenth, together with interest on the whole remaining unpaid for one year, shall be paid on or before one year thereafter until all of such assessments are paid; providing [provided], that any abutting owner so liable for any portion of the costs of such improvement shall have the right at any time after the same is certified as aforesaid to the treasurer for collection to anticipate the payment of any and all such assessments, and shall be allowed to pay the face of any and all such assessments with interest at six per cent per annum only to the time of such payment.

(71) When such assessments or certificates are perfected, as aforesaid, the council may by resolution entered of record by it, sell, assign or transfer to any person or persons for cash all or any of the assessments or certificates, perfected as herein provided, and apply the proceeds received thereby to the cost of such improvements, providing that the city in transferring such certificates shall not be held as guarantor or in any way liable therefor, except upon the direct action of the council, expressed by resolution of record before sale.

(72) Said certificates shall be exempt from state, county, district and municipal taxes.

(73) When all assessments are paid, the treasurer shall issue a release of such lien which may be recorded in the office of the clerk of the county court [commission].

(74) But in case of grading, paving, or repaving, or otherwise permanently improving any street or alley, before the council shall direct the undertaking of such work, it shall enter an ordinance reciting the necessity thereof and the opinion and judgment of the council favoring such work, and shall cause

survey, profiles and estimates of the cost thereof to be made and filed with the council, and give notice to all parties affected thereby, by publication of notice for two successive weeks in some newspaper of general circulation in the city, describing in a general way the work to be undertaken and appointing a day after the completion of the publication of the said notice, for hearing before the council upon the advisability of undertaking said work, at which time all parties interested therein may appear, either in person or by agent or attorney and shall have access to the said surveys, plans, specifications, etc., and upon such hearing the council may undertake the said work; provided, the same is favored by three-fifths vote of the members of said council, or may decline to undertake the said work.

(75) In case the council shall determine to undertake said work, it shall be carried on, completed and paid for as hereinbefore provided for; and in which case the certificates or liens acquired on failure of any property owner to pay his assessment and apportionment, such certificates may be issued and sold, or negotiated to the contractor doing the work, or to any other person if the council deems it expedient to do so; provided, the city, in issuing such certificates, shall not be held as guarantor or in any way liable for the payment thereof, except upon a direct action of the council expressed by resolution, of record, before such sale; provided, the city shall pay for street intersections and also engineering, supervision and inspection out of the city treasury.

(76) The council shall have the authority to pass all ordinances not repugnant to the Constitution [and] laws of the United States, and of this state, which shall be necessary or proper to carry into full effect and power, authority and capacity, the jurisdiction which is or shall be granted to or vested in the said city, or in the council, or in any officer or body of officers of said city, and to enforce any or all their ordinances by reasonable fines and penalties, and by imprisoning the offender or offenders, and upon failure to pay any fine or penalty imposed may compel the offender to labor without compensation at and upon any of the public works or improvements undertaken or to be undertaken by said city, or to labor at any work which the said council may lawfully employ [any such offender] upon at such a reasonable rate per diem as the council may fix, until any fine or fines and costs imposed upon any such offender by said city have been fully paid and discharged, after deducting reasonable charges of support while in the custody of the officers of the city; provided, however, that no fine shall be imposed exceeding one hundred dollars and costs, and that no person shall be imprisoned or compelled to labor as aforesaid for more than one hundred days for any one offense. And in all cases where a fine is imposed for an amount exceeding ten dollars and costs, or a person be imprisoned or compelled to labor as aforesaid for a term greater than ten days, an appeal may be taken from such decision upon the same terms and conditions that appeals are taken from the judgment of a justice of this state.

For constitutional provision abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Such fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced by and under the judgment of the mayor of said city; or, in case of his absence or inability to act, by the clerk of said city, or if he be unable to act, then by any member of the council to be appointed by the council for that purpose; and for his services in trying cases, whether civil, criminal or infractions of the ordinances of the city, the mayor shall be entitled to receive such fees as are paid to justices of the peace for similar services, but in cases of infractions of the ordinances of the city the mayor shall not be paid such fees unless they are collected from the defendant, and in all cases the chief of police shall be entitled to receive such fees as are paid to constables for similar services, except that for cases for the infraction of the ordinances of the city he shall not receive such fees unless collected from the defendant; and, provided, further, that the fees for making any arrest shall be one dollar, to be paid to the officer making the arrest, whether such offender be the chief of police or other officer, if collected from the defendant, but not otherwise.

For 1974 Amendment to state Constitution providing, in pertinent part, that no "judge of a municipal police or mayor's court or any officer thereof" be compensated for his services on a fee basis, but only by salary, see W. Va. Const., art. 8, § 11.

An alternative method of making certain improvements.

(77) In addition to the foregoing powers, the council shall have the full right and power to provide by ordinance for establishing an alternative method for grading, paving, repaving and surfacing streets and alleys, within the city of Elkins, and also for laying sewers and sewer mains within and also without the city limits where necessary to afford adequate drainage facilities to promote the health of the city, whereby the full amount of the costs thereof shall be assessed and charged to adjacent and abutting property, either in case of lots or parts of lots, or to property not laid off in lots, within the city as well as lands and property not within the city limits, in cases where it is or may become necessary to afford such adequate drainage, ratably, according to the extent of continuity of such property.

For state law, see W. Va. Code, § 8-18-1 et seq.

(78) But this alternative method shall be adopted and enforced in cases only where a majority of the owners of such adjacent and abutting property petition therefor in writing.

(79) And then in such cases the council shall prepare plans, profiles, specifications and estimates of costs and appoint a time for hearing thereon, not less than twenty days after giving written notice to all parties affected thereby, but where owners of such property are not known or do not reside in the county of Randolph, such notice may be published in a newspaper of general circulation in the county, for two successive weeks before the hearing, at which hearing all persons affected by such proposed improvement may appear in person or by agent or attorney and be heard in favor of, or in opposition thereto.

(80) If the council shall determine to undertake such work they shall advertise for bids therefor according to said plans and specifications for four successive weeks in two newspapers of general circulation, and award the contract, if satisfactory, to the lowest and best bidder. Such contract shall provide for an alternative method of payment, that is to say, those who elect to do so may pay their proper share of the total cost when the work is finished and the final estimates and assessments are made, or give negotiable notes acceptable to the contractor; and as to the shares of those who do not settle as above provided, the council shall charge them to the property and make out proper assessment certificates showing in detail the property, the work, the name of the owner, amount of the payments, divided into ten equal annual payments, and when duly certified such certificates shall be recorded in the deed of trust records of Randolph county and when so recorded shall be and constitute a lien on such property from that date until paid for such share or assessment, together with the interest thereon from the date of the assessment. And the cash so paid shall go to contractor, and the notes and certificates shall be assigned and transferred to him by the mayor when authorized by order of council and such notes and certificates may be enforced by said contractor or his assignees in any court having jurisdiction thereof. And when payment in full or in part is made, proper releases shall be executed and recorded in the record of the release of liens.

(81) The council shall provide at public expense all engineering, plans, specifications and inspection, and reserve the right of supervision and inspection of all work and material, in progress, as well as final approval of all such work, and the council shall likewise pay the full cost of paving all street and alley intersections.

(82) No part of the proceeds or funds arising from any such improvement shall be applied to any other purpose, but all such proceeds and funds shall be used and applied to the identical job and improvement from which the same arose.

(83) All assessment certificates of deferred payments that may be issued hereunder shall be exempt from taxation.

(84) In contracting such improvements, the council may agree with the contractor to accept the method of payment provided for herein, that is to say, that such contractor, upon completion of the work, shall receive the cash payments, negotiable notes, if any, and the certificates and liens, to be assigned and delivered to him, in full payment and discharge of his claims against the city for such improvement. And upon acceptance and receipt thereof, the city shall not be liable as assignor or otherwise for any part of such contract or work.

For state law, see W. Va. Code, § 8-18-1 et seq.

(85) All acts and parts of acts inconsistent herewith are hereby repealed. (1901, ch. 151, § 28; 1905, ch. 6; 1911, ch. 81; 1915, (Munl. Chtr.), ch. 16; 1917, ch. 115; 1921, (Munl. Chtr.), ch. 8; 1927, (Munl. Chtr.), ch. 3.)

Sec. 28-(a). Authority to erect community building.

The council of the City of Elkins shall have power to erect a community and municipal building or buildings for such purposes as shall be designated by the council. The council shall have power to borrow a sum or sums not exceeding in the aggregate one hundred thousand dollars from the reconstruction finance corporation or other source to be used to pay the cost of construction and of the land upon which the building shall be erected, and may execute a lien or liens upon such land and building to secure payment of such loan or loans and may do any and all other things required by the reconstruction finance corporation or necessary and proper to obtain such loan or loans, to secure payment thereof and to build and maintain the building. The council shall make provision for the payment of such loan or loans from the income of the building but in no event shall it incur any indebtedness or issue any evidence of obligation imposing any liability upon the city or its taxpayers with respect thereto or impose any tax or assessment to provide for the payment of such loan or loans. (1933, 1st Ex. Sess., ch. 67.)

Sec. 29. Mayor's docket and what shall be contained therein; record of cases.

A well bound book, indexed, to be denominated the "Mayor's Docket," shall be kept in the office of the mayor in which shall be noted each case brought before or tried by him together with the proceedings therein, including a statement of the complaint, the warrant or summons, the return, the fact of appearance or nonappearance, the defence, the hearing, the judgment, the costs, and, in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the mayor and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office. (1901, ch. 151, § 29.)

Sec. 30. Annual estimate of expenses and levy of taxes; statement of receipts and expenditures to be published annually.

The council shall cause to be made up annually and spread upon its minute book an accurate estimate of all sums which are or may become chargeable against the city and which ought to be paid within one year; and it shall order a levy at a meeting held by it in either the month of June or July of each year, of so much as will in its judgment be necessary to pay the same, such levy shall be upon all real and personal property therein subject to a state tax, and shall designate the same as the "general tax," and may include a poll tax of not exceeding two dollars each year upon each able-bodied man therein who is above the age of twenty-one years and not over fifty years of age; which poll tax shall be used exclusively upon the opening, improving and maintaining the roads, streets and alleys of the city, and shall designate the same as the "street tax"; provided, that such levy for the general tax shall not exceed one dollar on every one hundred dollars of assessed value of the property upon which the same is levied; and the said council may also impose such license tax upon dogs and

other animals as they may deem proper and collect the same from the owners of such animals as other taxes are collected and prescribe such rules, regulations and penalties governing the payment of such tax on animals as they may deem reasonable. At least once in each year the council shall cause to be made up and published in one or more of the newspapers published in the city an accurate statement of the revenue received from all sources and of all the expenditures upon all the different accounts for the preceding year. (1901, ch. 151, § 30.)

Editor's note. --W. Va. Const., art. 10, § 2, which authorized a capitation (poll) tax has been repealed; and art. 10, § 1 has been amended so as to limit the aggregate of taxes for any one year on personal property used for agricultural purposes and upon money and securities 50¢ per \$100 of valuation; on realty occupied by its owner for a residence to \$1 per \$100 of valuation; and to \$2 per \$100 of valuation on all other realty within a municipality. In addition to these constitutional provisions, the general laws of the state have been amended since enactment of this section in 1901 so as to render it almost wholly obsolete.

For general law as to annual financial estimate and tax levies by municipalities, see W. Va. Code, §§ 11-8-9, 11-9-14. As to dog taxes, see W. Va. Code, § 19-20-2.

Sec. 31. City assessor--Powers and duties generally.

Editor's note. --The text of this section is omitted as obsolete. The city no longer has an assessor, as his functions have been taken over completely by the county assessor; see W. Va. Code, ch. 11, arts. 2 through 6. As to payment by county sheriff to municipal treasury of municipal taxes collected by him, see W. Va. Code, § 11A-1-15.

Sec. 32. Same--Assessment books.

Editor's note. --The text of this section is omitted for the reasons stated in the note under § 31 of this Charter.

Sec. 33. Lien for taxes, fines, etc., and enforcement thereof.

There shall be a lien on real estate within said city for city taxes assessed thereon, and for all fines and penalties assessed to or imposed upon the owners thereof, by the authorities of such city, including expenses for making side-

walks and streets and paving the same, and constructing sewers, and for furnishing water, electric lights or other public utility when furnished by said city, from the time the same are so assessed or imposed, which shall have priority over all other liens except taxes or dues due the United States and the lien for taxes due the state, county or district; and such lien may be enforced by the council in the same manner provided by law for the enforcement of a lien for county taxes, and any time after six months after such lien attaches the city may in its own corporate name proceed to the enforcement of said lien against the real estate chargeable therewith by a suit in equity. If any real estate within said city be returned delinquent for the non-payment of city taxes due thereon, a copy of such delinquent list shall be certified by the council to the auditor of this state and the same may be sold for city taxes, interest and commissions thereon in the same manner, at the same time, and by the same officers as real estate is sold for state taxes; and a return of such sales made to and a deed executed therefor, if not redeemed, in the same manner and with like effect, as the return of sales of real estate sold for state taxes are made and deeds therefor executed to purchasers. (1901, ch. 151, § 33; 1911, ch. 81.)

Editor's note. --The last sentence of this section is now obsolete; see W. Va. Code, § 11A-3-1 et seq.

Sec. 34. Duties, bond, etc., of city collector and treasurer.

It shall be the duty of the city collector and treasurer, when the extended copies of the assessor's books are completed, to receive a copy thereof, receipting to the council for the same, and it shall be his duty to collect from the parties the entire amount of the taxes with which they are severally charged therein, and may proceed to collect the same at any time after the first day of August, and may enforce payment thereof by levy upon the personal property and sale thereof, of the person so charged with taxes at any time after the first of October next after said taxes are assessed; said taxes shall be a lien upon the property upon which they are assessed from and after the time the assessor's books are completed, verified and returned to the city council, and shall write the word "paid" opposite the name of each person who pays the taxes assessed against him and shall also give to the person paying such taxes a receipt therefor; provided, however, that said assessor [collector] and treasurer may distrain at any time for any taxes assessed against a person who is about to remove or who has removed from said city after such taxes are assessed, and the books returned as aforesaid. He shall also receive such other moneys of the city as he is authorized by this act [Charter] to receive, and also all moneys ordered by the council to be paid to him, giving receipt therefor to the parties paying the same, and shall keep an accurate, itemized account of all moneys received by him; and his books shall at all times be open for the inspection of the mayor, council, city clerk, and to any taxpayer of the city. He shall pay out the money in his hands only upon the order of the council upon orders signed by the mayor and city clerk and keep an itemized statement of the money so paid out by him. He shall on or before the last meeting of the council in each year just before the expiration of the term of office of the mayor, and at such other times as the

council may require, present to the council a full and complete statement of all the moneys with which he is chargeable or that have been received by him and not previously accounted for, and shall at the same time, in like manner, furnish a complete statement, by separate items of all disbursements made by him during such period, with his vouchers evidencing the same. He shall receive all taxes upon licenses and receipt to the party paying the same by endorsement upon the permit granted by order of the council, or mayor as the case may be.

Editor's note. --The provisions of this subsection as to assessment of property for taxes and the collection of taxes are now obsolete, inasmuch as the county assessor and the sheriff perform the duties herein imposed upon the city collector and treasurer; see W. Va. Code, § 8-13-1, ch. 11, art. 1, and ch. 11A.

He shall receive upon all moneys coming into his hands and paid out by him as his compensation for receiving and disbursing the same such sum as may be fixed by the council, not to exceed five per cent thereof. He shall upon the expiration of his term of office turn over to the council all books and other property in his possession belonging to the city, except the money in his hands, which he shall turn over to his successor upon the order of the council as hereinbefore provided; and shall, before entering upon the duties of his office, execute a bond with good security payable to said city, in a penalty of not less than double the estimated amount of money that is liable to come into his hands each year during his term of office, conditioned that he will faithfully discharge the duties of his office and account for and pay over as required by law and the orders, ordinances, rules and regulations of the council of said city, all money which shall come into his hands, which bond shall be subject to the approval of the council. He shall be chargeable with all the city taxes, levies and assessments and money of the city which shall come into his hands and shall account therefor. (1901, ch. 151, § 34.)

Editor's note. --The city collector and treasurer no longer receives any percentage of city money collected by him.

Sec. 35. License ordinances and payment of tax thereon.

The council shall prescribe by ordinance the time and manner in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon to the city collector and treasurer before the delivery thereof to the person applying therefor. (1901, ch. 151, § 35.)

Sec. 36. Provisions of law applicable to licenses and expiration date of certain licenses.

The provisions of the section 29 of chapter 32 of the Code of West Virginia shall be deemed applicable to licenses of a similar character to those therein

mentioned when granted by or under authority of the council of said city; licenses for the keeping of dogs, or other animals, shall also expire on the thirteenth day of April next after they are granted. (1901, ch. 151, § 36.)

Editor's note. --Chapter 32 of the state Code as of 1901 related to state licenses, and the subject matter thereof, as in effect at the time of adoption of the Official Code of West Virginia, 1931, was carried over into that Code as article 12 of Chapter 11, which article has since been repealed, and replaced by a new article 12 which related to state business franchise registration certificates. See, however, W. Va. Code, § 11-12-4 as to authority of municipalities to impose license taxes pursuant to W. Va. Code, § 8-13-4, up to the amount of state license tax in effect on January 1, 1970, "with like effect as if this article (art. 12, ch. 11) had not been enacted."

The provisions of this section as to dog taxes are completely obsolete, see W. Va. Code, § 15-20-2.

Sec. 37. Condemnation of real estate for public use.

The council shall have a right to institute and prosecute proceedings in the name of the city for condemnation of real estate for streets, alleys, roads, drains, sewers, market grounds, city prison, water works, electric light plant or other works, or purpose of public utility. Such proceedings shall conform to the provisions of chapter 42, [eminent domain] of the Code of West Virginia, and the expenses thereof shall be borne by the city, except in cases where it is proper under said chapter to charge such expenses or any part thereof against the defendant. (1901, ch. 151, § 37.)

For general law as to eminent domain, see W. Va. Code, ch. 54.

Sec. 38. Charter of South Elkins abolished.

The Charter of the Town of South Elkins is hereby abolished. (1901, ch. 151, § 38.)

Sec. 39. Ordinances, etc., not inconsistent and bonds, etc., remain in effect.

All the ordinances, by-laws, resolutions and rules of the city of Elkins in force on the day preceding the passage of this act [Charter], which are not inconsistent therewith, shall be and remain in full force over the whole of the territory embraced in the boundary of said city as established by this act, and the officers in office in the city of Elkins at the time this act takes effect shall

remain in office until their successors are elected, or appointed, and qualified under the provisions of this act; and after this act takes effect, shall have jurisdiction over the whole of the territory embraced in the boundary specified in this act; but nothing in this act shall be construed or held to in any way affect or impair any of the bonds or obligations of said city of Elkins issued or contracted prior to the passage of this act; on the contrary, all such bonds and obligations shall be and remain in full force and effect just as though this act had not been passed, except that the whole of the taxable property of persons residing within the corporate limits of said city as created by this act shall be subject to taxation to pay and discharge such bonds and obligations. (1901, ch. 151, § 39.)

Sec. 40. City to take over corporate assets and assume obligations of town of South Elkins.

The corporate authorities of the town of South Elkins shall, before July first, 1901, turn over to the corporate authorities of the city of Elkins all corporate assets, including money, taxes, license fees payable, and all other corporate property, to the council of the city of Elkins to be disposed of by it as corporate property now owned by said city of Elkins is disposed of; and if said town of South Elkins at the time this act [Charter] takes effect has any outstanding contracts or obligations proper for it to contract, including licenses granted, the said city of Elkins shall assume the same and carry the same into execution in manner, form and effect as contracted by said town of South Elkins. (1901, ch. 151, § 40.)

Sec. 41. Duties of council as to first election, etc.

The council in being in the city of Elkins at the time this act [Charter] shall take effect shall provide places for voting in the several wards in said city and appoint commissioners residing in each ward to hold and conduct the first election hereinbefore provided to be held, and shall pass all proper ordinances and orders to give this act full force and effect. (1901, ch. 151, § 41.)

Sec. 42. Former rights, powers, etc., of city undisturbed.

The said city shall succeed to all the rights, powers and responsibilities of the City of Elkins as they exist the day preceding the day on which this act [Charter] takes effect, and shall enjoy such rights, exercise such power and discharge such responsibilities in the same manner as the same should have been enjoyed, exercised or discharged if this act had not been passed. (1901, ch. 151, § 42.)

For a case holding that this section preserves to the city all of the rights, powers and responsibilities which it had prior to enactment of this Charter, (such rights, etc., being contained in the then W. Va. Code, ch. 47); and that by virtue of the lan-

guage of § 28 of that ch. 47 (now set out in W. Va. Code 1931, as amended, § 8-12-5, subsec. (15)), the city council is empowered to "make regulations guarding against danger or damage by fire," see Harvey v. City of Elkins, 65 W. Va. 305, 64 SE 247 (submitted 1907, decided 1909).

Sec. 43. Inconsistent ordinances and acts repealed.

All ordinances of the City of Elkins as they exist at the time of the passage of this act [Charter] which are inconsistent therewith are hereby abrogated, and all acts and parts of acts inconsistent with any of the provisions of this act are hereby repealed. (1901, ch. 151, § 43.)

Editor's note. --The Elkins Charter act was approved by the governor February 18, 1901, in effect ninety days from passage.

(f) The city shall make such reports, in such form and containing such information, as the state agency may, from time to time, require, and shall comply with such provisions as the state agency or as the federal agency, mentioned in subdivision (5) of subsection (a) of section 5-7-5 of the Code of West Virginia, may, from time to time, find necessary to ensure the correctness and veracity of such reports.

(g) The city agrees to pay into the contribution fund, as defined by section 5-7-6 of the Code of West Virginia, such amounts as are required to be paid by subsections (c) and (d) of section 5-7-5 of the Code of West Virginia.

(h) The "state agency" is authorized to terminate this plan in its entirety, if it finds that there has been a failure to comply substantially with any provisions contained in this plan or any provisions of article I, chapter 5 of the Code of West Virginia, and necessary federal laws and regulations, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and consistent with applicable federal law. (11-29-50; 4-16-53.)

Sec. 2-6. City to be participating public employer; state employees' retirement system adopted.

The common council, having elected on July 1, 1961, by vote of three fifths of its members, to have the city become a participating public employer and thereby include its eligible officers and employees in the membership of the state employees' retirement system, hereby declares that the city shall continue to be a participating public employer and shall conform to all applicable provisions of sections 5-10-1 through 5-10-51 of the Code of West Virginia.

For state law as to municipalities becoming participating public employers within state public employees retirement system, see W. Va. Code, §§ 5-10-16, 8-22-1.

As to firemen's pension and relief fund, see §§ 8-22 to 8-25 of this Code. As to police pension and relief fund, see §§ 14-5 to 14-11.

Article II. The Common Council.

For charter provisions as to municipal authorities, their salaries, and composition of the common council, see Char., § 4. As to the qualifications of mayor and councilmen, see Char., § 6. As to election and term of mayor, see Char., § 8. As to election and term of councilmen, and filling vacancy in office of councilman, see Char., § 9. As to disqualification of councilmen, see Char., § 9. As to removal of elective and appointive officers

for malfeasance, etc., see Char., § 15. As to oath of officers, see Char., §§ 17, 23. As to when term of office begins, see Char., § 18. As to result of failure to qualify for office, see Char., § 19. As to duty of mayor to make recommendations to the council, see Char., § 20. As to exercise by the council of city's corporate powers, see Char., § 5. As to powers and duties of common council generally, see Char., §§ 15, 28, 35 and 37.

For state law as to composition of municipal governing bodies and the qualifications and election of mayor, councilmen and recorder, see W. Va. Code, § 8-5-7. As to oath of office, see W. Va. Code, § 8-5-8. As to terms of office, see W. Va. Code, § 8-5-9. As to filling vacancies in office, see W. Va. Code, § 8-5-10. As to compensation of officers, see W. Va. Code, § 8-5-12. As to powers and duties of council with respect to ordinances, see W. Va. Code, § 8-11-1 et seq. As to general and specific duties, etc., of common council, see W. Va. Code, § 8-12-1 et seq.

Sec. 2-7. Clerk of the council; records generally.

The city clerk shall be ex officio clerk of the common council and shall keep all records of the council, as required by the city Charter and general laws of the state, as well as by this Code and other ordinances, resolutions and orders of the common council; and he shall, in general, perform for the council such duties as are normally performed by recording and corresponding secretaries. (Code 19.2, ch. 6, § 3.)

For charter provisions that record of proceedings, ordinances, resolutions, etc., be properly kept and indexed, and open to inspection by persons interested, see Char., § 23. As to duty of city clerk to keep records of the common council, see Char., §§ 23, 27. As to requirement that, at each meeting of the council, the minutes of the last meeting be read, corrected and authenticated, see Char., § 24.

For state law as to records required to be kept by municipal governing bodies; and requirement for reading, correcting and authenticating minutes of meetings, see W. Va. Code, § 8-9-3. As to duty of municipal recorders (clerks) to keep the records of governing bodies, see W. Va. Code, § 8-10-3.

special meetings; and authority of members present to compel the attendance of absent members under reasonable penalties, see Char., § 26. As to the quorum, see Char., § 22. As to city clerk being acting mayor during absence or disability of mayor or when office of mayor is vacant, see Char., § 21.

For state law as to who presides at meetings of municipal governing bodies and what constitutes a quorum, see W. Va. Code, § 8-9-1. As to requirements for open meetings of governing bodies, with exceptions, see W. Va. Code, ch. 6, art. 9A.

Sec. 2-9. Rules.

(a) The common council may, by resolution, adopt such rules as may be deemed desirable for the conduct of its meetings, the transaction of its business and the official conduct of its members, and may include therein reasonable penalties for the violation thereof; but no such rule shall be inconsistent with the state law, the Charter or this Code. Such rules may include, among other subjects, the following:

(1) The appointment, jurisdiction and duties of standing and special committees of the council.

(2) Attendance at meetings of the council by members and by others.

For charter provisions as to authority of common council to compel attendance of its members at meetings, see Char., §§ 26, 28, subsec. (65).

(3) Investigations and hearings, the compulsory attendance thereof of witnesses and the production of books and papers thereof as evidence.

For state law as to authority of common council to investigate and inquire into all matters of concern to the city and its inhabitants, see W. Va. Code, § 8-12-5, subsec. (48). As to power of common council to compel attendance of witnesses and production of books and papers, see W. Va. Code, § 8-12-3, subsec. (c).

(4) Parliamentary procedure.

(5) The preservation of order at meetings.

(d) Order of recognition. If two or more persons desire to address the common council at the same time, the presiding officer shall recognize the person who first addressed the chair, and the other person shall at once be seated. (Code 1942, ch. 4, § 1, rules 25, 33 through 35.)

Sec. 2-12. Voting.

(a) Method. All votes taken in the common council, except for the election of city officers, shall be by yeas and nays; but, upon the demand of the mayor, any member made before such vote is taken, the roll shall be called and a record made by the city clerk of the vote of every member voting.

(b) Roll calls. All roll calls made for a vote in the common council shall be made alphabetically, and every member shall vote when his name is called, unless personally interested in the matter being voted upon or excused from voting by the council.

(c) Councilmen to elect city officers by ballot. The city officers who are appointed by the common council shall be elected by ballot, and no person shall be declared elected unless he receives a majority of the votes cast. (Code 1942, ch. 4, § 1, rules 14, 15, 32.)

For charter provision as to mayor voting in council only to break a tie, see Char., § 25. As to requirement for majority vote unless otherwise provided, see Char., § 26. As to recording of yeas and noes upon call of any member, see Char., § 24.

For state law prohibiting member of municipal governing body from voting on any subject on which he may be interested other than as a citizen, see W. Va. Code, § 8-9-1. As to requirement that yeas and nays be recorded upon call of any member, see W. Va. Code, § 8-9-3.

Sec. 2-13. Ordinance procedures--Generally.

(a) It shall not be necessary, except where otherwise provided by state law or by this Code, for the common council to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof; and any and all ordinances shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of state law or this Code; in which event, such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not fewer than two meetings of the common council, with at least one week intervening

public health, safety or morals, and by affirmative vote of two thirds of the members elected to the common council.

(2) When otherwise provided by state law.

The nature of any such emergency enactment shall be set out in full in the ordinance. (Code 1942, ch. 4, § 1, rules (22), (23).

For state law as to ordinances and ordinance procedures, see W. Va. Code, § 8-11-1 et seq. For state law basis of this section, see W. Va. Code, § 8-11-4.

As to effect of repeal or expiration of ordinance, see § 1-6 of this Code.

Sec. 2-14. Same--Attestation; record of ordinances.

Each ordinance, upon its final passage, shall be signed by the presiding officer of the common council and attested to by the city clerk, who shall then number it consecutively in relation to other ordinances, and record it in the record of ordinances.

Sec. 2-15. Same--Ordinances to repeal, amend or add to provisions of this Code, and records thereof.

(a) Each bill which proposes an ordinance to repeal, amend or add to any portion of this Code, and each bill which proposes an ordinance of a general and permanent nature, suitable for inclusion in this Code though constituting new subject matter not therein contained, shall be so drafted as to specify the specific section numbers, subsections, etc., of this Code which are to be repealed or amended and, with respect to additions and to new subject matter, as to provide appropriate chapter, article, section, etc., numbers therefor; and each amendment of and addition to this Code shall be set out in full, and appropriate chapter and article headings and section catchlines shall be included.

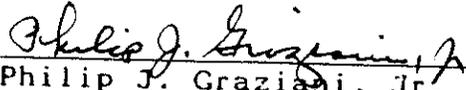
(b) Upon the adoption of an ordinance to repeal, amend or add to any portion of this Code or to include new subject matter in this Code, the city clerk shall separate the several chapters, articles, sections, etc., of such ordinance and enter them in their proper places in each file copy of this Code, and shall remove therefrom any portion so repealed or amended and, in the margin of each insertion in the file copies of this Code, he shall note and initial the date of passage, effective date and number of the amending or repealing ordinance.

(c) Items removed from the file copies of this Code, pursuant to subsection (b) of this section, shall be maintained by the city clerk in a separate, loose-leaf volume, arranged properly according to their respective chapters, articles, sections, etc., and each item so removed from the file copies of this

OATH OF OFFICE

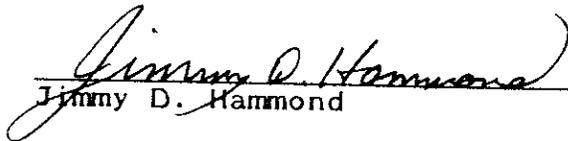
State of West Virginia)
County of Randolph) ss:
City of Elkins)

It is hereby certified that you were elected on the 7th day of March, 1995 to the office of mayor the City of Elkins for a term of two years beginning April 1, 1995.


Philip J. Graziani, Jr.
City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, Jimmy D. Hammond, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of MAYOR of the City of Elkins so long as I may continue therein. So help me God.


Jimmy D. Hammond

Subscribed and sworn to before me this 31st day of March, 1995.


Philip J. Graziani, Jr.,
City Clerk

CITY OF ELKINS

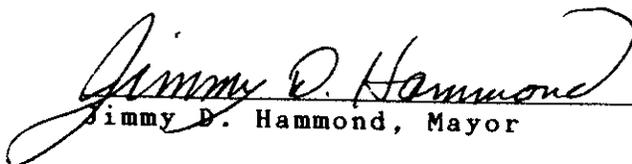
Jimmy D. Hammond
Mayor

401 Davis Street
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

It is hereby certified that you were appointed on the 17th day of November, 1994 to the office of City Clerk for a term of two years beginning January 1, 1995.


Jimmy D. Hammond, Mayor

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, Philip J. Graziani, Jr., do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of CITY CLERK of the City of Elkins so long as I may continue therein. So help me God.


Philip J. Graziani, Jr.

CITY OF ELKINS

Stephen Shepler
Mayor

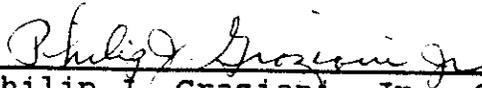
401 Davis Avenue
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

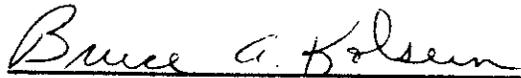
To: BRUCE A. KOLSUN

It is hereby certified that you were elected on the 2nd day of March, 1993 to the Office of Councilman for the First Ward of the City of Elkins for a term of four years beginning April 1, 1993, as provided by law.


Philip J. Graziani, Jr., City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, BRUCE A. KOLSUN, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILMAN of the City of Elkins so long as I may continue therein. So help me God.


Bruce A. Kolsun

Subscribed and sworn to before me this 31st day of March, 1993.

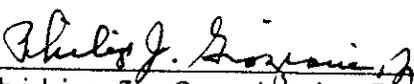

Philip J. Graziani, Jr., Clerk

Telephone (304) 636-1414
TDD: 636-2000

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

It is hereby certified that you were elected on the 7th day of March, 1995 to the office of Councilman of the Second Ward of the City of Elkins for a term of four years beginning April 1, 1995.



Philip J. Graziani, Jr.
City Clerk

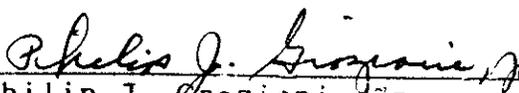
State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, Harold R. Elbon, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILPERSON of the City of Elkins so long as I may continue therein. So help me God.



Harold R. Elbon

Subscribed and sworn to before me this 31st day of March, 1995.



Philip J. Graziani, Jr.,
City Clerk

CITY OF ELKINS

Stephen Shepler
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

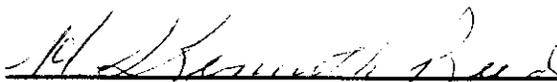
To: H. KENNETH REED

It is hereby certified that you were elected on the 2nd day of March, 1993 to the Office of Councilman for the Third Ward of the City of Elkins for a term of four years beginning April 1, 1993, as provided by law.


Philip J. Graziani, Jr., City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, H. KENNETH REED, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILMAN of the City of Elkins so long as I may continue therein. So help me God.


H. Kenneth Reed

Subscribed and sworn to before me this 31st day of March, 1993.


Philip J. Graziani, Jr., Clerk

Telephone (304) 636-1414
TDD: 636-2000

CITY OF ELKINS

Stephen Shepler
Mayor

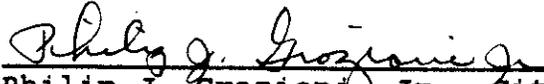
401 Davis Avenue
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

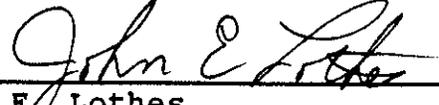
To: JOHN E. LOTHES

It is hereby certified that you were elected on the 2nd day of March, 1993 to the Office of Councilman for the Fourth Ward of the City of Elkins for a term of four years beginning April 1, 1993, as provided by law.


Philip J. Graziani, Jr., City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, JOHN E. LOTHES, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILMAN of the City of Elkins so long as I may continue therein. So help me God.


John E. Lothes

Subscribed and sworn to before me this 31st day of March, 1993.


Philip J. Graziani, Jr., Clerk

Telephone (304) 636-1414
TDD: 636-2000

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

It is hereby certified that you were elected on the 7th day of March, 1995 to the office of Councilwoman of the Fifth Ward of the City of Elkins for a term of four years beginning April 1, 1995.

Philip J. Graziani, Jr.
Philip J. Graziani, Jr.
City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, Roseann Marshall, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILWOMAN of the City of Elkins so long as I may continue therein. So help me God.

Roseann Marshall
Roseann Marshall

Subscribed and sworn to before me this 31st day of March, 1995.

Philip J. Graziani, Jr.
Philip J. Graziani, Jr.,
City Clerk

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

It is hereby certified that you were elected on the 7th day of March, 1995 to the office of Councilman of the First Ward of the City of Elkins for a term of four years beginning April 1, 1995.

Philip J. Graziani, Jr.
Philip J. Graziani, Jr.
City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, Thomas F. Waller, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILPERSON of the City of Elkins so long as I may continue therein. So help me God.

Thomas F. Waller
Thomas F. Waller

Subscribed and sworn to before me this 31st day of March, 1995.

Philip J. Graziani, Jr.
Philip J. Graziani, Jr.,
City Clerk

CITY OF ELKINS

Stephen Shepler
Mayor

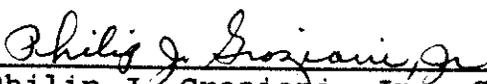
401 Davis Avenue
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

To: DORIS GEORGE

It is hereby certified that you were elected on the 2nd day of March, 1993 to the Office of Councilwoman for the Second Ward of the City of Elkins for a term of four years beginning April 1, 1993, as provided by law.

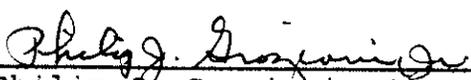

Philip J. Graziani, Jr., City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, DORIS GEORGE, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILWOMAN of the City of Elkins so long as I may continue therein. So help me God.


Doris George

Subscribed and sworn to before me this 31st day of March, 1993.

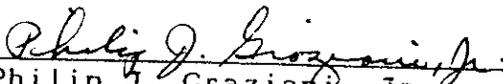

Philip J. Graziani, Jr., Clerk

Telephone (304) 636-1414
TDD: 636-2000

OATH OF OFFICE

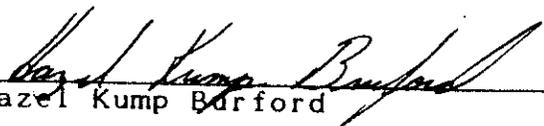
State of West Virginia)
County of Randolph) ss:
City of Elkins)

It is hereby certified that you were elected on the 7th day of March, 1995 to the office of Councilwoman of the Third Ward of the City of Elkins for a term of four years beginning April 1, 1995.

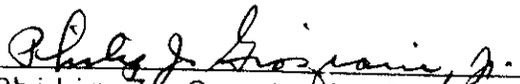

Philip J. Graziani, Jr.
City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, Hazel Kump Burford, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILWOMAN of the City of Elkins so long as I may continue therein. So help me God.


Hazel Kump Burford

Subscribed and sworn to before me this 31st day of March, 1995.


Philip J. Graziani, Jr.,
City Clerk

CITY OF ELKINS

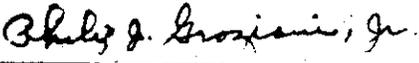
Jimmy D. Hammond
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph)
City of Elkins) ss:

It is hereby certified that you were elected on the 7th day of March, 1995 to the office of Councilman of the Fourth Ward of the City of Elkins for a term of four years beginning April 1, 1995.



Philip J. Graziani, Jr.
City Clerk

State of West Virginia)
County of Randolph)
City of Elkins) ss:

I, Hollis C. Vance, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILPERSON of the City of Elkins so long as I may continue therein. So help me God.



Hollis C. Vance

Subscribed and sworn to before me this 28th day of March, 1995.



Philip J. Graziani, Jr.,
City Clerk

Telephone (304) 636-1414
TDD: 636-2000

CITY OF ELKINS

Stephen Shepler
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

OATH OF OFFICE

State of West Virginia)
County of Randolph) ss:
City of Elkins)

To: KAREN SUE VANCE

It is hereby certified that you were elected on the 2nd day of March, 1993 to the Office of Councilwoman for the Fifth Ward of the City of Elkins for a term of four years beginning April 1, 1993, as provided by law.


Philip J. Graziano, Jr., City Clerk

State of West Virginia)
County of Randolph) ss:
City of Elkins)

I, KAREN SUE VANCE, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of COUNCILWOMAN of the City of Elkins so long as I may continue therein. So help me God.


Karen Sue Vance

Subscribed and sworn to before me this 31st day of March, 1993.


Philip J. Graziano, Jr., Clerk

Telephone (304) 636-1414
TDD: 636-2000

Article II. Sanitary Board.

*For state law relating to municipal sanitary boards,
see W. Va. Code, ch. 16, art. 13, especially §§
16-13-18 and 16-13-18a.*

Sec. 16-11. Established; composition; qualifications, appointment and term of members; vacancies.

There is hereby created a sanitary board of the city, which shall be composed of the mayor and two persons appointed by the common council, one of whom, during any construction period, must be a registered professional engineer, and the engineer member of the board need not be a resident of the city. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. The appointed members of the board shall serve their terms subject to the will and pleasure of the common council. The appointees shall originally be appointed for terms of two and three years respectively and, upon the expiration of each term and each succeeding term, appointment of a successor shall be made in similar manner for a term of three years. Vacancies shall be filled for an unexpired term and such substitutions shall be made in the same manner as was the original appointment. (7-18-57, § 1.)

Sec. 16-12. Eligibility of city personnel.

No officer or employee of the city holding a paid or unpaid office or position shall be eligible to appointment on the sanitary board until at least one year from the expiration of the term of his public office or employment. (7-18-57, § 2.)

Sec. 16-13. Officers and bylaws.

The mayor shall be chairman of the sanitary board, which shall elect a vice-chairman from its members and shall designate a secretary and treasurer, though the secretary and treasurer may be one and the same person, who need not be members of the sanitary board. The vice-chairman, secretary and treasurer shall hold office, as such, at the will of the sanitary board. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (7-18-57, § 3.)

Sec. 16-14. Compensation of members and allowances for expenses; bond of treasurer.

Each member of the sanitary board shall receive such compensation for his services as the common council may, from time to time, prescribe, and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties. The secretary and treasurer shall be paid such reasonable compensation for their services as the council may, from time to time, prescribe, and the treasurer shall give bond in such amount as the council may, at any time, require.

All compensation, as well as expenses incurred by the sanitary board, its officers and employees, shall be paid solely from funds provided under the authority of chapter 16, article 13 of the Code of West Virginia. (7-18-57, § 4.)

Sec. 16-15. Authority as to supervision and control of sewerage system.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment and disposal of sewage within or without the corporate limits of the city, the collection of revenues therefrom for the services rendered thereby and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other personnel, as, in the judgment of the sanitary board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the sanitary board. (7-18-57, § 5.)

Sec. 16-16. Statutory authority of board.

The sanitary board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by chapter 16, article 13 of the Code of West Virginia. (7-18-57, § 6.)

Article III. Private Systems.

For charter provisions as to authority of common council to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, see Char., § 28, subsec. (24).

For state law as to authority of city to prevent injury or annoyance to the public or to individuals from anything dangerous, offensive or unwholesome, see W. Va. Code, § 8-12-5, subsec. (13). As to authority of city to provide for the elimination of hazards to the public health and safety and to abate public nuisances, see W. Va. Code, § 8-12-5, subsec. (23).

Sec. 16-17. Transportation of contents of cesspool, etc.

No person shall at any time remove the contents of any cesspool or privy vault through, along or over any of the streets or public or private ways of the city, except between the hours of 10:00 P.M. and 4:00 A.M., nor shall such contents be removed at any time unless the vehicle to be used for such purpose is so constructed as to be watertight and securely covered, so that the odors therefrom cannot escape. (Code 1942, ch. 17, § 11.)

THE CITY OF ELKINS

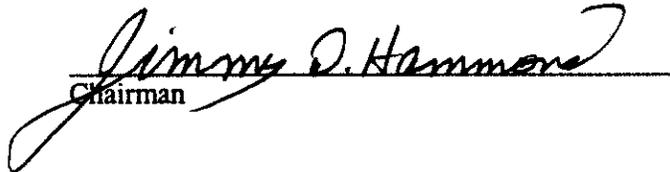
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

PETITION OF SANITARY BOARD

The Sanitary Board of The City of Elkins (the "City") hereby petitions the Council of the City to enact an ordinance directing that sewer revenue bonds of the City be issued pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed \$300,000 for the purpose of financing the costs of acquisition and construction of additions, betterments and improvements to the existing public sewerage system of the City, together with all necessary appurtenances, and the costs of issuance and related costs.

Directed this 2nd day of July, 1996.

SANITARY BOARD OF THE CITY OF
ELKINS


Chairman

06/17/96
ELKSJM.L2
255620/95001

P. S. C. W. Va. No. 6

Cancels P. S. C. W. Va. No. 5

CITY OF ELKINS SEWER FUND

OF

ELKINS, WEST VIRGINIA

Rates, Rules and Regulations for Furnishing

SEWERAGE AND SEWAGE DISPOSAL SERVICE

AT

ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA

**Filed with THE PUBLIC SERVICE COMMISSION
OF
WEST VIRGINIA**

Issued July 7, 1994

Effective October 1, 1994

Issued by authority of an Ordinance of the Common Council of the City of Elkins as finally adopted on July 7, 1994.

Issued by CITY OF ELKINS
(Name of Utility)

By *Jimmy D. Hammond*
Jimmy D. Hammond

MAYOR

RULES AND REGULATIONS

- I. Rules and Regulations for the Government of Sewerage Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkins:

1. That Schedules No. 1, 2, 3 and 4 of the Schedule of Rates of the City of Elkins For Furnishing Sewerage and Sewage Disposal Service be amended and re-enacted to read as follows:

SCHEDULE NO. 1

APPLICABILITY

Applicable inside and outside the designated boundaries of the Municipal Corporation.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, and industrial sanitary sewer service, but excluding sewer service to customers of Leadville Public Service District and Midland Public Service District.

(A) METERED RATES

(Based upon the metered amount of water supplied)
 First 750,000 gallons used per quarter - \$2.19 per 1,000 gallons.
 Over 750,000 gallons used per quarter - \$1.00 per 1,000 gallons.

(A) MINIMUM CHARGE

No bill shall be rendered for less than Thirty-Nine Dollars and Forty-Two Cents (\$39.42) for the first 18,000 gallons of water used per quarter.

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

MONTHLY OR BI-MONTHLY PAYMENT BILLINGS

The above rates and charges may be adjusted to a monthly or bi-monthly basis, providing no lower charges.

(C) METERED AND UN-METERED MULTIPLE OCCUPANCY

On apartment buildings or other multiple occupancy buildings, each family or business unit shall be required to pay not less than the flat rate herein imposed.

No new un-metered service will be permitted.

(A) Indicates advance

(C) Indicates change

TRAILER COURTS

House trailer courts shall be provided with a water meter (or master meters). No bill shall be rendered for less than the following:

Thirty-One Dollars and Fifty Cents (\$31.50) for the first 18,000 gallons of water used per quarter, multiplied by the number of units on the court site at the time the meter is read; Any water usage over 18,000 gallons per unit shall be billed at a rate of \$1.75 per 1,000 gallons of water used.

House trailer (as used hereinabove) shall include both mobile or immobile units. House trailers, either mobile or immobile, located on the sites other than a park or court shall be billed in the same manner as any other family or business unit.

(A) CONNECTION FEE

A connection fee of Four Hundred Dollars (\$400.00) will be charged for each new connection.

SCHEDULE NO. 2

APPLICABILITY

Applicable inside and outside the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available for domestic service, including un-metered housing projects.

(A) FLAT RATE

Per Quarter -----\$43.45

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

(A) CONNECTION FEE

A connection fee of Four Hundred Dollars (\$400.00) will be charged for each new connection.

SCHEDULE NO. 3

APPLICABILITY

Applicable outside the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to Midland Water and Sewer Public Service District.

- (A) Indicates advance
- (C) Indicates change

METERED RATES (based on metered effluent flow)

Computed periodically and revised as provided in Article III, paragraph 5 of the Sewage Treatment Agreement between the City of Elkins and Midland Public Service District.

SCHEDULE NO. 3A
Industrial Waste

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Applicable where sewer customer obtains water wholly or partly from a source other than the Municipal Water Works of the City of Elkins.

Sewer user shall make application in writing, showing type of waste to be delivered to the sanitary sewer system of the City of Elkins, and shall not deliver said waste until written permission has been given by the Sanitary Board of the City of Elkins.

Sewer user shall provide, at the end of each calendar quarter, to the Sanitary Board of the City of Elkins, an officially signed notification showing the approximate quantity in gallons of waste delivered to the sanitary sewer system of the City of Elkins. Upon receipt of such notification, billing shall be made, applying the rates in Schedule No. 1.

SCHEDULE NO. 4

APPLICABILITY

Applicable outside the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to Leadsville Public Service.

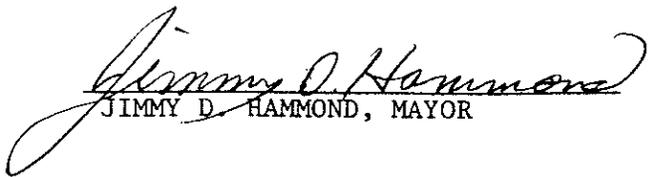
METERED RATES (based on metered effluent flow)

\$0.65 per thousand gallons of effluent flow per month subject to the limits provided in an agreement dated February 21, 1983.

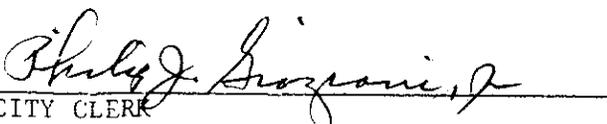
This ordinance shall become effective 45 days from and after the date of its final adoption.

Passed First Reading June 16, 1994.

Passed Second Reading July 7, 1994.


JIMMY D. HAMMOND, MAYOR

ATTEST:


CITY CLERK

State of West Virginia, County of Randolph, ss.

ORDINANCE TO AMEND AND REENACT THE RATES, RULES AND REGULATIONS FOR FURNISHING SEWAGE, SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGES THEREFOR IN SCHEDULE NO. 1 AND SCHEDULE NO. 2 OF THE SCHEDULE OF RATES

WHEREAS, Chapter 24, Article 2, Section 4(b) of the West Virginia Code, effective July 1, 1981, as amended, gives to municipally operated public utilities the approval authority to set their own rates and charges, and;

WHEREAS, in order to provide revenues sufficient to pay expenses and capitalize money for capital improvements, the Common Council of the City of Elkins deems it necessary to increase the rates and charges of the City of Elkins for the furnishing of sewerage and sewage disposal and treatment service;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkins:

1. That Schedule No. 1, 2, 3 and 4 of the Schedule of Rates of the City of Elkins for Furnishing Sewerage and Sewage Disposal Service be amended and re-enacted to read as follows:

SCHEDULE NO. 1

APPLICABILITY

Applicable inside and outside the designated boundaries of the Municipal Corporation.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, and industrial service, but excluding sewer service to customers and Leadville Public Service District and Midland Public Service District.

METERED RATES

Based upon the metered amount of water supplied: First 750,000 gallons used per quarter — \$2.19 per 1,000 gallons. Over 750,000 gallons used per quarter — \$1.00 per 1,000 gallons.

MINIMUM CHARGE

No bill shall be rendered for less than Thirty-Nine Dollars and Forty-Two Cents (\$39.42) for the first 18,000 gallons of water used per quarter.

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

MONTHLY OR BI-MONTHLY PAYMENT BILLINGS

The above rates and charges may be adjusted to a monthly or bi-monthly basis, providing no lower charges.

UN-METERED MULTIPLE OCCUPANCY

On apartment buildings or other multiple occupancy buildings, each family or business unit shall be required to pay not less than the flat rate herein imposed.

No new un-metered service will be permitted.

TRAILER COURTS

House trailer courts shall be provided with a master meter (or master meters). No bill shall be rendered for less than the following:

Thirty-One Dollars and Fifty Cents (\$31.50) for the first 18,000 gallons of water used per quarter, multiplied by the number of units on the court site at the time the meter is read; Any water usage over 18,000 gallons per unit shall be billed at a rate of \$1.75 per 1,000 gallons of water used.

House trailer (as used hereinabove) shall include both mobile and immobile units. House trailers, either mobile or immobile, located on the sites other than a part or court shall be billed in the same manner as any other family or business unit.

CONNECTION FEE

A connection fee of Four Hundred Dollars (\$400.00) will be charged for each new connection.

SCHEDULE NO. 2

APPLICABILITY

Applicable inside and outside the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available for domestic service, including un-metered housing projects.

FLAT RATE

Per Quarter — \$43.45

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

CONNECTION FEE

A connection fee of Four Hundred Dollars (\$400.00) will be charged for each new connection.

AVAILABILITY OF SERVICE

Available to Leadville Public Service. METERED RATES (Based on metered effluent flow) \$0.65 per thousand gallons of effluent per month subject to the limits provided in an agreement dated February 21, 1983.

STATUTORY NOTICE AND PUBLIC HEARING

The foregoing ordinance has been introduced to and considered by the Common Council of the City of Elkins. Any person interested may appear before the Council on the 4th day of August, 1994, at 8:00 p.m., which date is not less than 10 days subsequent to the date of the first publication of the ordinance.

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

July 23 July 30

19 94 as required by law.

Given under my hand this 30 day of July 19 94

James Hoffman
Publisher

Printer's Fee: \$ 123.36

FILE

me this 30 day of July 19 94

Shirley A. Menear
Notary Public

2 day of April 10 2002

The Elkins City Council met in regular session in the Council Chamber of City Hall at 8:00 p.m. on Thursday, June 16, 1994. Those present were: Mayor Jimmy D. Hammond, Councilpersons: H. K. Burford, J. M. Cost, H. R. Elbon, D. G. George, B. A. Kolsun, J. E. Lothes, H. K. Reed, H. C. Vance, K. S. Vance and T. F. Waller, City Clerk P. J. Graziani, Jr., City Treasurer P. K. Riddle and Assistant City Attorney B. R. Wilson, Chief of Police Dale Kelley and City Attorney C. S. Gustke were absent.

The meeting was opened with an invocation and the Pledge of Allegiance.

PUBLIC COMMENT

- K.LEGGETT SEWAGE PROBLEMS: Mr. Keith J. Leggett, 312 Main Street, announced his intention to file a complaint with the Public Service Commission concerning the repeated flooding of his basement. Mr. Leggett's basement has had up to a foot of combined rain water runoff and raw sewage six times over the past two years.
- MR. TIANO COMPLAINTS ON SIDEWALKS ETC. Mr. Frank Tiano, a vision impaired resident of S. Henry Avenue, again complained of the unsafe condition of various sidewalks and alleys in the city, and asked if action had been taken since the last council meeting. Mayor Hammond responded that a letter had been sent to one property owner.
- W. SMITH SPEAKS ON WEESE STREET PROBLEMS: Mr. Warren Smith, of Weese Street, complained that Mayor Hammond had refused to participate in an effort to clean up the Weese Street area of town. Mr. Smith stated that dead animal carcasses and animal excrement had been found floating down a stream during recent flooding. Mayor Hammond responded that the city could not legally go onto private property to engage in clean-up activities without the permission of the property owners.
- Mr. Smith also voiced his opposition to the proposed sewer rate increase, implying that the city had not used existing funds prudently.
- D. COLLINS COOPERATES W/CITY ON LOITERING: Mr. Dennis Collins, representing the City Restaurant, expressed a willingness to cooperate with city officials and all concerned parties to address repeated complaints about loitering around the establishment. Mayor Hammond scheduled a public meeting on the matter for Tuesday, June 28 at 6:30 p.m.
- R. MARSHALL SPEAKS ON SEWER RATE INCREASE: Ms. Roseann Marshall, of Fifth Ward, comment on a meeting held to address flooding related issues in the Crystal Springs area. Ms. Marshall also voiced opposition to the proposed sewer rate increase, claiming that several people are of the opinion that the proposed increase is too high. Ms. Marshall inferred that if the sewer rate increase is passed as proposed the Public Service Commission may be petitioned to intercede in the process. Finally, Ms. Marshall endorsed the proposed bicycle helmet law for those under eighteen years of age, however, she opposed the inclusion of adults in the ordinance on the grounds that a financial hardship might be caused.
- An unidentified citizen characterized the proposed bicycle helmet ordinance as socialistic in nature, and expressed wonderment that council would even consider the measure.
- R. WHITEMAN REGARDING ZONING CSX PROPERTY: Mr. Robert Whiteman noted that the CSX Railroad is in the process of disposing of certain of its right-of-way property within the corporate limits. The land thus becoming available is not currently zoned. Mr. Whiteman urges that that portion of the property along 12th Street be zoned residential in character.

CONSENT CALENDAR

C'w George, seconded by C'm Kolsun, MOVED TO ACCEPT THE MINUTES OF THE REGULAR MEETING OF JUNE 2, 1994 AS PRESENTED. The motion carried.

BID OPENING

Three Bids for a 1994, 4 x 4, pickup truck were opened:

Elkins Fordland	\$20,270
Mountaineer Motors	19,063
State of West Virginia	17,653

The bids were referred to the Street Committee for consideration.

UNFINISHED BUSINESS

Mayor Hammond spoke to the necessity of a sewer rate increase. The Mayor's position is that however undesirable a rate increase might be it is dictated by prudence and sound management policy. The fund has operated at an operational deficit for a number of years, there is no money for a preventative maintenance program or for a comprehensive planned program of replacement outmoded and inadequate lines or other necessary or mandated capital acquisitions and improvements.

C'w George, after assurance that a smaller rate increase would impede necessary operational requirements, concurred with the Mayor.

C'm Vance was told that the last sewer rate increase became effective in January, 1991.

C'm Lothes confirmed that a second reading of the proposed ordinance would be necessary, and invited public comment, prior to final passage, for alternatives to the proposed increase.

✓ C'w Burford, seconded by C'm Elbon, MOVED TO BRING FORTH, READ BY TITLE ONLY AND PASS ON THE FIRST READING THE PROPOSED ORDINANCE TO AMEND AND REENACT RATES, RULES AND REGULATIONS FOR FURNISHING SEWERAGE AND SEWAGE DISPOSAL AT ELKINS AND VICINITY BY INCREASING APPLICABLE RATES BY 34.9%, MORE OR LESS, AND MAKING OTHER MODIFICATIONS AS NECESSARY. The motion carried.

C'w George and C'm Lothes suggested that reconsideration be given to the advisability of the proposed ordinance to require helmets when riding a bicycle. C'm Elbon spoke in favor of reconsideration. C'm Vance and C'm Cost spoke against reconsideration and in favor of consideration of an ordinance as it would apply to minors. C'w Burford spoke in favor of an ordinance.

C'w George, seconded by C'm Lothes, MOVED TO RESCIND THE MOTION TO DRAFT AN ORDINANCE TO REQUIRE THE WEARING OF A HELMET WHILE RIDING A BICYCLE. A roll call vote being requested, the clerk read the roll:

Burford	NO	Lothes	YES
Cost	NO	Reed	YES
Elbon	YES	Vance, H.	NO
George	YES	Vance, K.	NO
Kolsun	NO	Waller	YES

The roll call vote being five yeas and five nays, the Mayor was called upon to break the tie vote. Mayor Hammond voted no; therefore, The motion did not carry.

NEW BUSINESS

C'm Elbon, seconded by C'm Waller, MOVED TO CONFIRM THE APPOINTMENT OF MR. TAI LETAN TO THE POSITION OF SANITATION LOADER, PAY SCALE LEVEL 8, TO BECOME EFFECTIVE JUNE 21, 1994. The motion carried.

C'm Waller, seconded by C'm Vance, MOVED TO CONFIRM THE APPOINTMENT OF MR. ROBERT GAIL SIMMONS TO THE POSITION OF STREET WORKER, PAY GRADE LEVEL 8, TO BECOME EFFECTIVE JUNE 21, 1994. The motion carried.

C'w George, seconded by C'm Elbon, MOVED TO ADOPT A RESOLUTION OF COUNCIL AUTHORIZING THE MAYOR TO SUBMIT AN APPLICATION FOR SMALL CITIES BLOCK GRANT FUNDS FOR THE KERENS AVENUE AND DIAMOND/BELL STREETS DRAINAGE PROJECT. The motion carried.

C'm Elbon, seconded by C'm Waller, MOVED TO ADOPT A RESOLUTION OF COUNCIL AUTHORIZING THE MAYOR TO SUBMIT AN APPLICATION FOR COMMUNITY PARTNERSHIP GRANT FUNDS FOR A WATER/SEWER EXTENSION TO WILSON LUMBER'S NEW FACILITY. The motion carried.

C'm Elbon, seconded by C'w George, MOVED TO GRANT AN EASEMENT TO DAVIS AND ELKINS COLLEGE FOR THE GRACELAND PARK ROAD PROJECT. The motion carried.

C'm Vance, seconded by C'm Cost, MOVED TO AUTHORIZE THE USE OF HEMLOCK AVENUE, BEHIND SCOTTIE'S, AS THE SITE FOR THE FARMER'S MARKET TO BE HELD ON EACH WEDNESDAY AND SATURDAY FROM July 1 to SEPTEMBER 30, 1994. The motion carried.

C'm Elbon, seconded by C'm Cost, MOVED TO CHANGE THE ZONING CLASSIFICATION OF ALL RAILROAD PROPERTY WITHIN THE CORPORATE LIMITS TO COMMERCIAL. The motion carried.

NEW BUSINESS (Continued)

C'm Elbon, seconded by C'm Waller, MOVED TO ADOPT A RESOLUTION OF COUNCIL AUTHORIZING PREPARATION OF ORDINANCES AND/OR OTHER RESOLUTIONS NECESSARY TO FINALIZE FINANCING OF THE ELKINS-RANDOLPH COUNTY LANDFILL LINER INSTALLATION AND CAPITAL IMPROVEMENT PROJECT. The motion carried.

C'm Elbon, seconded by C'm Kolsun, MOVED TO ADOPT A RESOLUTION OF COUNCIL STATING THE REASONABLE EXPECTATION OF THE CITY OF ELKINS TO REIMBURSE THE CITY FOR \$250,000 IN CAPITAL EXPENDITURES IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN SOLID WASTE DISPOSAL FACILITIES MADE PRIOR TO THE ISSUANCE OF A MAXIMUM OF \$1,500,000 TAX-EXEMPT REVENUE BONDS. The motion carried.

C'm Waller, seconded by C'm Kolsun, MOVED TO PERMIT THE "STREET MACHINE" CAR SHOW TO DISPLAY THEIR VEHICLES FROM 1:00 P.M. to 6:00 P.M. ON FRIDAY, JULY 1 ON THIRD STREET FROM DAVIS TO KERENS AVENUES, AND TO ALLOW FREE PARKING. The motion carried.

C'm Cost, seconded by C'w Vance, MOVED TO PERMIT T & S LOANS TO RENT A PARKING SPACE ON SECOND STREET AT DAVIS AVENUE FOR \$15 PER MONTH. The motion carried.

COMMITTEE REPORTS

Building:

C'm Lothes, seconded by C'm Kolsun, MOVED TO APPROVE BUILDING PERMITS #1188 THRU #1206, EXCEPT #1190 WHICH REQUIRES APPROVAL OF THE FIRE CHIEF AND #1203 WHICH IS HELD PENDING PAYMENT OF B & O TAXES. The motion carried.

Council recessed at 9:55 p.m.

Council reconvened at 10:00 p.m.

Finance:

C'm Reed, seconded by C'm Lothes, MOVED TO AUTHORIZE THE CITY CLERK, SUBJECT TO THE APPROVAL OF THE STATE TAX COMMISSIONER, TO SUBMIT BUDGET REVISION NUMBER TWO REVISION THE BUDGETS OF THE GENERAL AND COAL SEVERANCE FUNDS FOR THE FISCAL YEAR ENDING JUNE 30, 1994 AND INCORPORATE ANY REVISIONS SUGGESTED BY THE STATE AUDITOR, PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS. AS SUGGESTED BY GUIDELINES OF THE DEPARTMENT OF TAX AND REVENUE, CHIEF INSPECTOR DIVISION, I REQUEST A ROLL CALL VOTE. The clerk read the roll:

Burford	YES	Lothes	YES
Cost	YES	Reed	YES
Elbon	YES	Vance, H.	YES
George	YES	Vance, K.	YES
Kolsun	YES	Waller	YES

The motion carried.

C'm Reed again announced that the police will be checking for valid business licenses beginning July 1, 1994.

Public Safety:

C'w Vance announced that Magistrate Rick George conducted a training session for all municipal judges, and requested a letter of thanks be sent to Mr. George.

The owner of a house on First Street has been given 30 days to remedy complaints of the Enforcement Committee. A resolution to the situation is expected.

Sanitation &

Landfill:

C'm Elbon announced that an ordinance to increase sanitation rates, originally passed in 1992, will be implemented effective July 1, 1994.

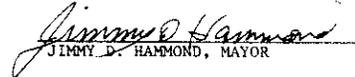
A landfill liner project preconstruction meeting will be held on Wednesday, June 22 at 9:00 A.M.

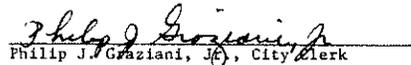
Streets:

C'm Waller, seconded by C'm Vance, MOVED TO ACCEPT THE \$17,653 LOW BID OF STATE OF WEST VIRGINIA FOR A 1994, 4X4, GMC PICKUP TRUCK. The motion carried.

The motion to adjourn was made at 10:15 P.M.

ATTEST:


JIMMY D. HAMMOND, MAYOR


Philip J. Graziani, Jr., City Clerk

The Elkins City Council met in regular session in the Council Chamber of City Hall at 8:00 pm on Thursday, July 7, 1994. Those present were: Mayor Jimmy D. Hammond, Councilpersons: H. K. Burford, J. M. Cost, H. R. Elbon, D. G. George, J. E. Lothes, H. C. Vance, K. S. Vance and T. F. Waller, City Clerk P. J. Graziani, Jr., City Treasurer P. K. Riddle, Assistant City Attorney B. R. Wilson and Chief of Police Dale Kelley. Councilmen B. A. Kolsun and H. K. Reed and City Attorney C. S. Gustke were absent.

The meeting was opened with an invocation and the Pledge of Allegiance.

PUBLIC COMMENT

Mr. Bob Whiteman, S. Henry Avenue, presented a petition of citizens affected by the rezoning of 12th Street to commercial status. Redesignation to residential status is requested. Mayor Hammond referred the matter to the city attorney and Zoning Board of Appeal.

Ms. Roseann Marshall, Fifth Ward, suggested, in reference to the proposed sewer rate increase, that the across-the-board increase be set aside in favor of the alternative proposal which combines the lowering of the minimum gallon amount from 18,000 to 10,000 gallons of consumption coupled with an increase in the rate levied on each additional 1,000 gallons of consumption. Mayor Hammond and C'm Lothes assured Ms. Marshall that the alternative had been considered.

Mr. James McFarland, Worth Avenue, stated that city police had improperly directed persons to leave his property for loitering.

CONSENT CALENDAR

C'm Elbon, seconded by C'w George, MOVED TO ACCEPT THE MINUTES OF THE REGULAR MEETING OF JUNE 16, 1994 AS PRESENTED. The motion carried.

UNFINISHED BUSINESS

Mayor Hammond introduced into discussion the proposed sewer rate increase.

✓ SECOND READING
SEWER RATE
ORDINANCE:

C'm Elbon, seconded by C'm Waller, MOVED TO BRING FORTH, READ BY TITLE ONLY AND PASS ON THE SECOND READING THE PROPOSED ORDINANCE TO AMEND AND REENACT RATES, RULES AND REGULATIONS FOR FURNISHED SEWERAGE AND SEWAGE DISPOSAL AT ELKINS AND VICINITY BY INCREASING APPLICABLE RATES BY 34.9%, MORE OR LESS, AND MAKING OTHER MODIFICATIONS AS NECESSARY. The motion carried.

FIRST READING
ORDINANCE ON
SOLID WASTE
REVENUE BONDS

C'm Elbon, seconded by C'm Cost, MOVED TO BRING FORTH, READ BY TITLE ONLY AND PASS ON FIRST READING THE PROPOSED ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN IMPROVEMENTS TO THE EXISTING SOLID WASTE DISPOSAL FACILITIES OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SOLID WASTE REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO. The motion carried.

FIRST READING
ORDINANCE TO
EXTEND CITY
LIMITS:

C'm Elbon, seconded by C'm Waller, MOVED TO BRING FORTH, READ BY TITLE ONLY AND PASS ON FIRST READING THE ORDINANCE AUTHORIZING THE PROPOSED EXTENSION AND INCREASE OF THE CORPORATE LIMITS OF THE CITY OF ELKINS, RANDOLPH COUNTY, WEST VIRGINIA, PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE SECTION 8-6-5 BY ANNEXING THERETO BY MINOR BOUNDARY ADJUSTMENT A CERTAIN TRACT OF LAND CONTIGUOUS TO AND NOT EMBRACED WITHIN THE PRESENT LIMITS OF THE CITY OF ELKINS. The motion carried.

C'w George commend the police department for doing their job.

C'm Lothes noted that West Virginia Code Section 7-1-3t authorizes county commissions to make grants from general revenue funds and other funds to municipalities for water and sewer system improvements, and

C'm Lothes, seconded by C'w Vance, MOVED TO INSTRUCT THE CITY ATTORNEY TO LOOK AT THE FEASIBILITY OF THE RANDOLPH COUNTY COMMISSION'S MAKING SUCH A COMMITMENT TO THE CITY OF ELKINS, SINCE THE CITY OF ELKINS PROVIDES WATER AND SEWERAGE TO AN AWFUL LARGE PORTION OF THE COUNTY, AND IF AND WHEN WHATEVER THAT AMOUNT IS, I THINK THAT AMOUNT SHOULD BE FIGURED IN THE SEWER RATE INCREASE AND POSSIBLY DEDUCTED BY THAT AMOUNT, IF POSSIBLE. The motion carried.

UNFINISHED BUSINESS

C'm Cost, seconded by C'w Vance, MOVED TO AMEND THE PROPOSED ORDINANCE TO REQUIRE THE WEARING OF A HELMET WHILE RIDING A BICYCLE TO THOSE WHO HAVE NOT YET ATTAINED THEIR SIXTEENTH BIRTHDAY. The motion carried.

C'm Waller, seconded by C'm Vance, MOVED TO CHANGE THE NAME OF S. WORTH AVENUE TO INDUSTRIAL PARK ROAD. The result of the voice vote being unclear, the clerk read the roll:

Burford	NO	Lothes	NO
Cost	NO	Reed	ABSENT
Elbon	NO	Vance, H.	YES
George	NO	Vance, K.	NO
Kolsun	ABSENT	Waller	YES

The motion did not carry.

NEW BUSINESS

C'w Vance, seconded by C'm Cost, MOVED TO AUTHORIZE THE BILLING OF UTILITY CUSTOMERS ON A MONTHLY BASIS AS OPPOSED TO THE CURRENT QUARTERLY BASIS, HOWEVER,

C'm Lothes, seconded by C'w George, MOVED TO TABLE CONSIDERATION OF THE PROPOSED UTILITY BILLING PROCEDURE CHANGE. The motion carried.

COMMITTEE REPORTS

Building:

C'm Lothes, seconded by C'm Cost, MOVED TO APPROVE BUILDING PERMITS #1207 THRU #1227, EXCEPT FOR #1208 DUE TO LACK OF NECESSARY DRAWINGS, #1217 WHICH WAS VOID AND #1221 DUE TO LACK OF NECESSARY FORMS RELATED TO ASBESTOS ABATEMENT. The motion carried.

Municipal Properties:

C'w George requested remedy to the overgrown and unsightly appearance of the CSX Railroad property.

Public Safety:

C'w Vance commented positively on the performance of the foot-patrol recently instituted in the downtown area in response to the repeated complaints about loitering of teenagers and others.

Streets:

C'm Waller commented on the street paving project, and said efforts had been made to contact Mr. Warren Smith, Weese Street.

C'm Lothes commended all concerned for efforts expended to alleviate the Diamond Street drainage problems.

Mayor Hammond said that the application for Small Cities Block Grant funds has been submitted, and he expressed appreciation to Ms. Linda Cosner, who was instrumental in the completion of the necessary surveys for application submittal.

Water:

C'w Burford announced a waterline extension of approximately 2,900 feet of 6" pipe on Georgetown Road from the IOOF Home to the other side of the river, at no cost to the city.

Other Business:

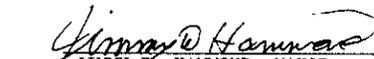
C'w George, seconded by C'w Vance, MOVED TO AUTHORIZE THE ATTENDANCE OF BARBARA LUCAS AT A PEIA INSURANCE TRAINING SEMINAR IN CHARLESTON AT A COST OF \$147.00. The motion carried.

City Clerk Graziani reminded Council of the upcoming 1995 election. It will be necessary to secure approvals for previously used polling places or arrange alternate sites, and begin preparation of lists of available election workers.

The motion to adjourn was made at 9:35 p.m.

ATTEST:


Philip S. Graziani, Jr., City Clerk


JIMMY D. HAMMOND, MAYOR

The Elkins City Council met as a body in two public hearings and in regular session in the Council Chamber of City Hall starting at 7:30 p.m. on Thursday, August 4, 1994. Those present were: Mayor Jimmy D. Hammond, Councilpersons: H. K. Burford, J. M. Cost, H. R. Elbon, J. E. Lothes, H. K. Reed, K. S. Vance and T. F. Waller, City Clerk P. J. Graziani, Jr., City Attorney C. S. Gustke and Chief of Police Dale Kelley. Councilpersons: D. G. George, B. A. Kolsun and H. C. Vance and City Treasurer P. K. Riddle were absent.

The proceedings were commenced with an invocation and the Pledge of Allegiance.

PUBLIC HEARINGS - SOLID WASTE REVENUE BONDS, SERIES 1994

Mayor Hammond called the meeting to order at 7:30 p.m. Council and the public were reminded that at its regular meeting of July 21, 1994 council adopted an ordinance authorizing the issuance of Solid Waste Revenue Bonds, Series 1994, of the City in an amount not to exceed \$1,500,000, the proceeds of such Bonds, together with other funds of the City are contemplated to be used to finance the costs of acquisition, construction and equipping of certain improvements at the Elkins-Randolph County Landfill. Pursuant to West Virginia State Code, A Class II legal advertisement, published on July 22 and July 29, informed the public of the contents of the ordinance and offered any and all interested parties an opportunity to comment or protest at this public hearing.

No public protest or comment being forthcoming, C'm Elbon, seconded by C'm Cost, MOVED TO CLOSE THE PUBLIC HEARING AND STAND RECESSED UNTIL 8:00 P.M. The motion carried.

PUBLIC HEARING - SEWER RATE INCREASE

Mayor Hammond called the meeting to order at 8:00 p.m. Council and the public were reminded that at its regular meeting of July 21, 1994 council adopted an ordinance amending and reenacting the Rates, Rules and Regulations For Furnishing Sewage and Sewage Disposal Service at Elkins and vicinity, Randolph County, West Virginia by increasing the rates charged therefor in Schedule No. 1 and Schedule No. 2 of the Schedule of Rates. Pursuant to West Virginia State Code, a Class II legal advertisement, published on July 23 and July 30, informed the public of the contents of the ordinance and offered any and all interested parties an opportunity to comment or protest at this public hearing.

Ms. Roseann Marshall was recognized. Ms. Marshall recommended that the across-the-board increase of approximately 35% mandated by the amended ordinance be set aside in favor of an alternative proposal originally considered by council but not acted upon. The alternative proposal called for a combination of lowering the minimum water consumption amount, on which sewer service billing is calculated, from the current 18,000 gallons to 10,000 gallons and increasing rates. While both options have the effect of increasing existing sewer rates by approximately 35%, Ms. Marshall contends that the unaccepted alternative proposal is a fairer and more equitable increase in that some measure of relief is given to those users who consume less than 18,000 gallons of water but are billed for 18,000 gallons of sewer service, the minimum bill under the existing rate schedule.

There being no further public comment or protest, C'w Burford, seconded by C'm Elbon, MOVED TO ADOPT A RESOLUTION OF COUNCIL. The motion carried.

A copy of the resolution is attached to and made a part of these minutes.

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA

August 4, 1994

A SUPPLEMENTAL RESOLUTION OF COMMON COUNCIL

Adopting amended sewer rates.

WHEREAS, It is necessary to increase the revenues of the Sewer fund by an amount sufficient to pay expenses, provide for capital improvements and maintain a sufficient reserve to satisfy debt service coverage test requirements of the bond indenture; and

WHEREAS, the Common Council of the City of Elkins, in compliance with West Virginia State Code Section 8-13-13 et. al., has at two regularly scheduled council meetings, with at least

(Resolution adopted amended sewer rates continued:)

one week intervening between them brought forth, considered and passed an amended ordinance to so provide the necessary revenues; and

WHEREAS, the provisions of the amended rates, rules and regulations for furnishing sewage and sewage disposal service were published as a Class II legal advertisement accompanied by notice of a public hearing to be held on August 4, 1994 at which interested parties could appear and be heard with respect to the amended ordinance; and

WHEREAS, the public meeting was held, time for interested parties made available but no facts being brought forth to change the intent of council; now, therefore, be it

RESOLVED, that the Common Council of the City of Elkins does hereby confirm and ordain that the ORDINANCE TO AMEND AND REENACT THE RATES, RULES AND REGULATIONS FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGED THEREFORE IN SCHEDULE NO. 1 AND SCHEDULE NO. 2 OF THE SCHEDULE OF RATES is adopted and shall become effective forty-five (45) days from adoption.

s/s Jimmy D. Hammond, Mayor
Philip J. Graziani, Jr., Clerk

The public meeting was closed, and the regularly scheduled council meeting commenced.

PUBLIC COMMENT

Ms. Carmine T. Arbogast, of 112 Gilmore Street, again appeared concerning an alleged violation of zoning law.

ALERT OF
RAILROAD
YARD CLEANUP

Mr. Roger Bolyard, Elkins Fire Department, made council aware that contractors hired by CSX to begin an environmental cleanup of the former railroad yard have begun to marshal materials, supplies and equipment in anticipation of commencing work. The tentative completion date of the work is currently projected to be late November, 1994. Mr. Bolyard suggested an added police presence in the area of the railroad property during the period of the cleanup, due to the potentially dangerous nature of the process being used, burning of the soil to a depth of many feet in a self-contained, high-temperature, propane gas oven.

CONSENT CALENDAR

C'm Reed, seconded by C'w Vance, MOVED TO ACCEPT THE MINUTES OF THE REGULAR MEETING OF JULY 21, 1994 AS PRESENTED. The motion carried.

UNFINISHED BUSINESS

1ST READING
BIKE HELMET
ORDINANCE:

C'm Cost, seconded by C'w Vance, MOVED TO BRING FORTH, READ BY TITLE ONLY AND PASS ON FIRST READING THE PROPOSED ORDINANCE AMENDING CHAPTER 19, ARTICLE IV OF THE ELKINS CITY CODE TO INCLUDE A SUBSECTION (D), BICYCLE HELMETS. The motion carried.

1ST READING
LIVESTOCK/
FOWL IN CITY
ORDINANCE:

C'w Vance, seconded by C'w Burford, MOVED TO BRING FORTH, READ BY TITLE ONLY AND PASS ON FIRST READING THE PROPOSED ORDINANCE AMENDING AND REENACTING CHAPTER 4, ARTICLE I, SECTION 4-1 OF THE ELKINS CITY CODE, PROHIBITING THE KEEPING OF BARNYARD LIVESTOCK AND FOWL WITHIN THE CITY LIMITS EXCEPT FOR THOSE KEPT AT COMMERCIAL STOCK-YARDS TO BE SOLD AT AUCTION. The motion carried.

NEW BUSINESS

R. GAY APT.
LIBRARY
BOARD:

C'w Burford, seconded by C'm Elbon, MOVED TO APPOINT MR. ROBERT S. GAY TO THE ELKINS-RANDOLPH COUNTY PUBLIC LIBRARY BOARD OF TRUSTEES, REPLACING MRS. CAROLYN SHEPLER, FOR A 5-YEAR TERM ENDING JUNE 30, 1999. The motion carried.

BUDGET
REVISION IS
APPROVED:

C'm Reed, seconded by C'm Lothes, MOVED TO INSTRUCT AND AUTHORIZE THE CLERK TO PREPARE AND SUBMIT "REQUEST FOR REVISION TO APPROVED BUDGET" NO. 1 FOR THE FISCAL YEAR ENDING JUNE 30, 1995 AND THAT, SUBJECT TO APPROVAL OF THE STATE TAX COMMISSIONER, THE COUNCIL APPROPRIATE AND APPROVE FOR EXPENDITURE A SUPPLEMENTAL APPROPRIATION OF \$5,750 FOR THE ELKINS-RANDOLPH COUNTY AIRPORT AUTHORITY, THESE FUNDS BEING NECESSARY TO MEET A 5% MATCHING REQUIREMENT TO OBTAIN A FEDERAL AVIATION ADMINISTRATION DRAINAGE IMPROVEMENT GRANT OF \$265,000. AS REQUIRED BY STATE TAX COMMISSION REGULATION, THE CLERK IS ASKED TO CALL THE ROLL:

Burford -	YES	Lothes -	YES
Cost	YES	Reed	YES
Elbon	YES	Vance, H.	Absent
George	Absent	Vance, K.	YES
Kolsun	Absent	Waller	YES

The motion carried.

NEW BUSINESS - (Continued)

ELBON APT.
TO AIRPORT
AUTHORITY
BOARD:

C'w Burford, seconded by C'm Waller, MOVED TO APPOINT MR. HAROLD R. ELBON TO THE AIRPORT AUTHORITY BOARD OF THE ELKINS-RANDOLPH COUNTY AIRPORT AS A NON-VOTING MEMBER. The motion carried.

C'm Lothes, seconded by C'm Reed, MOVED TO ADOPT A RESOLUTION OF COUNCIL CONCERNING MRS. JUDY GUYE AND A COMMUNITY FORESTRY GRANT FOR THE CITY. The motion carried.

A copy of the resolution is attached to and made a part of these minutes.

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA

August 4, 1994

A RESOLUTION OF COMMON COUNCIL

J. GUYE IS
APPROVED AT CITY
REP FOR FORESTRY
GRANT:

Authorizing application for a Community Forestry Grant for the City of Elkins and vesting Mrs. Judy Guye with authority to act as city representative to be contacted on matters involving the application.

WHEREAS, The Common Council of the City of Elkins desires to continue and encourage civic beautification projects; and

WHEREAS, The United States Department of Agriculture is making available \$100,000 for Community Forestry Grants in rural communities in the Northeastern area; and

WHEREAS, Mrs. Judy Guye, Emma Scott Garden Club, is willing to act as the representative of the city and make application for a grant, on behalf of and in the name of the City of Elkins, for \$10,000 of the available grant funds; now, therefore, be it

RESOLVED, that the Common Council of the City of Elkins does hereby authorize Mrs. Judy Guye to act as a representative for the city to make application for and act as contact person for a \$10,000 Community Forestry Grant.

s/s Jimmy D. Hammond, Mayor
Philip J. Graziani, Jr., Clerk

WATERLINE TO
BE ADVERTISED
FOR BIDS:

C'w Burford, seconded by C'm Waller, MOVED TO INSTRUCT THE CITY CLERK TO ADVERTISE AND OTHERWISE SOLICIT COMPETITIVE SEALED BIDS FOR THE PROPOSED WATERLINE EXTENSION TO MOUNTAINAIRE ESTATES, THE FULL COST OF WHICH IS TO BE BORN BY THE DEVELOPER, MR. LARRY SPENCER. The motion carried.

C'm Lothes informed the public that free dumping days are offered one day per month at the Elkins-Randolph County Landfill. Dumping is limited to three bags of refuse or four pieces of furniture per person.

Mayor Hammond expressed appreciation for and extended thanks to Mr. David Antolini, Supervisor, and his Summer Youth Program workers for the splendid job they did over the past six weeks.

COMMITTEE REPORTS

Building:

C'm Lothes, seconded by C'm Reed, MOVED TO APPROVE BUILDING PERMITS #1252 THRU #1271, HOWEVER, #1269, WHILE APPROVED, WILL BE HELD PENDING RENEWAL OF THE CONTRACTOR'S CITY REGISTRATION, AND EXCEPT FOR #1268 WHICH IS DISAPPROVED FOR FAILURE TO COMPLY WITH ZONING REGULATIONS. The motion carried.

Municipal Properties:

Mayor Hammond announced that the Soil Conservation Corps will be dredging a portion of the flood control system from the intake inlets to trash booms. The project was originally requested by Delegate Joe Martin during his tenure as Mayor, and will be done at no cost to the city.

Public Safety:

C'w Vance, seconded by C'm Elbon, MOVED TO GRANT PERMISSION TO MR. DANIEL KWASNIEWSKI TO TEMPORARILY BLOCK THE ALLEY BESIDE HIS BUSINESS, BEANDER'S PUB, FROM 5:00 P.M. FRIDAY, AUGUST 5 UNTIL 2:00 A.M. SATURDAY, AUGUST 6, 1994. The motion carried.

COMMITTEE REPORTS - (Continued)

Public Safety:

C'w Vance, seconded by C'w Burford, MOVED TO AUTHORIZE THE ATTENDANCE OF 5 FIREMEN AT THE WEST VIRGINIA STATE CONVENTION IN SOUTH CHARLESTON AT A COST OF \$786, SUBJECT TO THE APPROVAL OF THE FINANCE COMMITTEE. The motion carried.

Streets:

C'm Waller, seconded by C'm Elbon, MOVED TO AUTHORIZE THE INSTALLATION OF STREET LIGHTS ON PLEASANT AVENUE, POLE #A-3-133 AND AT 220 DIAMOND STREET, POLE #A-2-352. The motion carried.

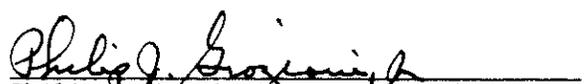
C'm Waller, seconded by C'm Lothes, MOVED TO INSTRUCT THE CITY CLERK TO ADVERTISE AND OTHERWISE SOLICIT COMPETITIVE SEALED BIDS FOR THE PURCHASE OF A PRESSURE WASHER, THE COST OF WHICH IS TO BE SHARED BY THE SANITATION, STREET AND WATER DEPARTMENTS. The motion carried.

C'm Waller announced that, because the owner of an overgrown lot on Weese Street cannot be identified, the city will cut the vegetation.

The motion to adjourn was made at 8:50 p.m.


JIMMY D. HAMMOND, MAYOR

ATTEST:


Philip J. Graziani Jr., City Clerk

State of West Virginia, County of Randolph, ss.

NOTICE OF PUBLIC HEARING ON THE CITY OF ELKINS SEWER REVENUE BOND ORDINANCE

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of The City of Elkins to be held on August 1, 1996, at 7:00 p.m. in the Council chambers at the Elkins City Hall, 401 Davis Avenue, Elkins, West Virginia, and at such hearing any person interested may appear before the Council and present protests, and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$300,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM), PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-entitled Ordinance was adopted by the Council of The City of Elkins on July 18, 1996.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City of Elkins contemplates the issuance of the Bonds described in said Ordinance. The proceeds of the Bonds will be used to provide permanent financing of a portion of the cost of acquisition and construction of additions, betterments and improvements to the existing public sewerage facilities of The City of Elkins. The Bonds are payable solely from revenues to be derived from the ownership and operation of the sewerage system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file with the Council at the office of the City Clerk of The City of Elkins for review by interested parties during regular office hours.

Following said public hearing, the Council intends to enact said Ordinance upon final reading.

Dated: July 22, 1996:

Phillip Graziani
City Clerk

7-22, 29

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

July 22 July 29

19 96 as required by law.

Given under my hand this 29 day of July 19, 96

James Hoffman
Publisher

Printer's Fee: \$ 85.66

me this 29 day of July 19, 96

Shirley A. Nenead
Notary Public

5 day of April 19 2002

The Elkins City Council met in regular session in the Council Chamber of City Hall at 6:00 p.m. on Tuesday, July 2, 1996. Those present were Mayor Jimmy D. Hammond, Councilpersons: H. K. Burford, H. R. Elbon, D. G. George, B. A. Kolsun, J. E. Lothes, R. Marshall, H. K. Reed, H. C. Vance, K. S. Vance and T. F. Waller, City Clerk P. J. Graziani, Jr., City Treasurer T. R. Valentine, Police Chief D. J. Jones and City Attorney R. K. Miller.

The proceedings commenced with an invocation and the Pledge of Allegiance.

AGENDA ADJUSTMENTS

There were none.

PUBLIC COMMENT

There was none.

CONSENT CALENDAR

C'm Lothes, seconded by C'm Elbon, MOVED TO ADD SPECIFIC LANGUAGE TO THE MEETING MINUTES OF JUNE 18 RELATING TO A VOTE TAKEN CONCERNING THE TRANSFER OF ADMINISTRATIVE DUTIES OF THE ELKINS FIREMEN'S PENSION AND RELIEF FUND TO CITIZENS NATIONAL BANK. The motion carried. [The exact wording of the addition appears in minute book 28, page 158, Unfinished Business, paragraph 4.]

C'w George, seconded by C'm Kolsun, MOVED TO ACCEPT THE MINUTES OF THE REGULAR MEETING OF JUNE 18 AS AMENDED. The motion carried.

UNFINISHED BUSINESS

There was none.

NEW BUSINESS

C'w Marshall, seconded by C'w Vance, MOVED TO GRANT PERMISSION FOR DANIEL KWASNIEWSKI TO TEMPORARILY CLOSE THE ALLEY BESIDE HIS BUSINESS, BEANDER'S PUB FROM 5:00 P.M. WEDNESDAY, JULY 3 UNTIL MIDNIGHT JULY 6 TO ALLOW FOR FOURTH OF JULY RELATED OUTDOOR DINING AND DANCING. The motion carried.

C'm Lothes, seconded by C'w Marshall, MOVED TO AUTHORIZE OUT-OF-TOWN TRAVEL FOR SIX FIREMEN TO ATTEND A TRAINING SEMINAR. The motion carried.

C'm Reed stated that the city received a petition from the Elkins Sanitary Board requesting that council enact an ordinance directing sewer revenue bonds of the city be issued in an amount not to exceed \$300,000 for the purpose of financing the costs of acquisition and construction of a lime silo storage facility at the wastewater treatment plant.

Since the purpose of the requested ordinance is to raise revenue, two additional readings of the proposed ordinance will be necessary before final adoption. The second reading will be on July 18 and the third and final reading on August 1. The final reading of August 1 will be a public hearing at which any interested citizens will have an opportunity to speak before council takes final action.

C'm Reed, seconded by C'w George, MOVED THAT THE PROPOSED ORDINANCE TO AUTHORIZE SEWER REVENUE THE ISSUANCE OF SEWER REVENUE BONDS, SERIES 1996A (WEST VIRGINIA STATE REVOLVING FUND BONDS PROGRAM), IN A FACE AMOUNT NOT TO EXCEED \$300,000 BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON FIRST READING. The motion carried.
ORDINANCE
1ST READING:

COMMITTEE REPORTS

BUILDING:

C'w Vance, seconded by C'm Elbon, MOVED TO APPROVE BUILDING PERMITS #1896 THRU #1908 AS PRESENTED EXCEPT FOR #1901 WHICH IS DISAPPROVED FOR VIOLATION OF ZONING RESTRICTIONS. The motion carried.

PUBLIC SAFETY:

C'm Lothes stated that Fire Chief Chabut informed him that the volunteer association intends to increase its manpower level by five men, a total of thirty-five men. Council previously granted approval for a forty man volunteer association, according to the fire chief.

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~~COUNCIL MEETING MINUTES July 18, 1996~~

The Elkins City Council met in regular session in the Council Chamber of City Hall at 6:00 p.m. on Thursday, July 18, 1996. Those present were Mayor Jimmy D. Hammond, Councilpersons: H. R. Elson, B. A. Kolsun, J. E. Lothes, R. Marshall, K. K. Reed, H. C. Vance, K. S. Vance and T. Y. Weller, City Clerk F. J. Graziani, Jr., City Treasurer T. B. Valentine, Police Chief D. J. Jones and City Attorney R. K. Miller. Councilpersons H. K. Burford and D. G. George were absent.

The proceedings commenced with an invocation and the Pledge of Allegiance.

AGENDA ADJUSTMENTS

1. Out-of-town travel for police officer to attend training seminar in Sutton.
2. Bids for new police cruiser.
3. Designation of portion of Golf Street as no parking area.

PUBLIC COMMENT

Ms. Janet Adams spoke on behalf of several residents of the Allegheny Apartments located at 914 S. Davis Avenue in expressing concern about heavy traffic and parking congestion on the West side of S. Davis Avenue near the bridge. Council was asked not to authorize any additional parking spaces South of the bridge where parking is now prohibited.

CONSENT CALENDAR

C'm Kolsun, seconded by C'w Vance, MOVED TO ACCEPT THE MINUTES OF REGULAR MEETING OF JULY 2 AS PRESENTED. The motion carried.

UNFINISHED BUSINESS

✓ **SECOND READING** C'm Reed, seconded by C'm Vance, MOVED THAT THE PROPOSED ORDINANCE (NO. 096-08) TO
ORDINANCE AUTHORIZE THE ISSUANCE OF SEWER REVENUE BONDS, SERIES 1996A (WEST VIRGINIA STATE REVOLVING
 #096-08 -Series FUND PROGRAM), IN A FACE AMOUNT NOT TO EXCEED \$300,000 BE BROUGHT FORTH. READ BY TITLE
 1996A SEWER ONLY AND PASSED ON THE SECOND READING. The motion carried.
REV. BONDS:

NEW BUSINESS

ORDINANCE #096-09 C'm Weller, seconded by C'm Elson, MOVED THAT THE PROPOSED ORDINANCE (NO. 096-09)
1st Reading: ORDAINING A 4-WAY STOP AT THE INTERSECTION OF PLEASANT AND ORCHARD AVENUES BE BROUGHT
 FORTH. READ BY TITLE ONLY AND PASSED ON FIRST READING. The motion carried.

RESOLUTION #96-04 C'w Vance, seconded by C'w Marshall, MOVED THAT THE PROPOSED RESOLUTION (NO. R96-04)
ADOPTED: AUTHORIZING A CONTRACT BETWEEN THE CITY AND THE OFFICE OF ECONOMIC OPPORTUNITY FOR FISCAL
 YEAR 1997 EMERGENCY SHELTER GRANTS PROGRAM FUNDING BE ADOPTED. The motion carried.

RESOLUTION C'm Kolsun, seconded by C'w Marshall, MOVED THAT THE PROPOSED RESOLUTION (NO. R96-05)
R96-05 ADOPTED: CONTRACTING WITH AND MAKING THE RANDOLPH COUNTY HOMELESS SHELTER A SUBRECIPIENT OF FISCAL
 YEAR 1997 EMERGENCY SHELTER GRANTS PROGRAM FUNDING BE ADOPTED. The motion carried.

RESOLUTION C'm Lothes, seconded by C'm Reed, MOVED THAT THE PROPOSED RESOLUTION (NO. R96-06)
R96-06 ADOPTED: CONTRACTING WITH AND MAKING WOMEN'S AID IN CRISIS A SUBRECIPIENT OF FISCAL YEAR 1997
 EMERGENCY SHELTER GRANTS PROGRAM FUNDING BE ADOPTED. The motion carried.

RESOLUTION C'm Kolsun, seconded by C'm Elson, MOVED THAT THE PROPOSED RESOLUTION (NO. R96-07)
R96-07 ADOPTED: AUTHORIZING CONSTRUCTION OF AN ENGINE GENERATOR BUILDING AT THE ELKINS-RANDOLPH COUNTY
 AIRPORT BE ADOPTED. The motion carried.

C'm Lothes, seconded by C'w Marshall, MOVED TO AUTHORIZE OUT-OF-TOWN TRAVEL FOR OFFICER
 ROWE TO ATTEND A 1-DAY TRAINING SEMINAR IN SUTTON. The motion carried.

FEMA FUNDS
FOR WOOLWINE
RUN PROJECT:

The Federal Emergency Management Agency (FEMA) has approved Disaster Survey Report
 (DSR) No. 2324 in the amount of \$2,610. The funds are to be used to straighten a portion
 of Woolwine Run from Diamond Street to Randolph Avenue and to clear the Tygart Valley River
 of accumulated deposits where Woolwine Run empties into the river.

C'm Elson, seconded by C'm Vance, MOVED TO RETAIN THE SERVICES OF CARL VANDUVENDER
 FOR \$2,500 TO ACCOMPLISH THE FEMA FUNDED WOOLWINE RUN REMEDIATION WORK AS SET FORTH ABOVE.
The motion carried.

COMMITTEE REPORTS

BUILDING:

C'w Vance, seconded by C'm Elson, MOVED TO APPROVE BUILDING PERMITS #1909 THRU #1942
 AS PRESENTED EXCEPT FOR #1911 AND #1913 WHICH ARE CONDITIONALLY APPROVED SUBJECT TO ISSUANCE
 OF LICENSES AND PAYMENT OF NECESSARY FEES AND TAXES. The motion carried.

PUBLIC HEARING AND COUNCIL MEETING MINUTES - August 1, 1996

The Elkins City Council met for a public hearing and sat in regular session in the Council Chamber of City Hall starting at 7:00 p.m. on Thursday, August 1, 1996. Those present were Mayor Jimmy D. Hammond, Councilpersons: H. K. Burford, H. R. Elbon, D. G. George, B. A. Kolsun, J. E. Lothes, R. Marshall, H. K. Reed, H. C. Vance, K. S. Vance and T. F. Waller, City Clerk P. J. Graziani, Jr., City Treasurer T. R. Valentine, Police Chief D. J. Jones and Assistant City Attorney B. R. Wilson. City Attorney R. K. Miller was absent.

The proceedings commenced with an invocation and the Pledge of Allegiance.

PUBLIC HEARING

✓ The mayor convened a public hearing on the City of Elkins Sewer Revenue Bond Ordinance.

Mayor Hammond said, "The city is in the process of enacting an ordinance directing that sewer revenue bonds of the city be issued in an amount not to exceed \$300,000 for the purpose of financing the costs of acquisition and construction of a lime silo storage facility at the wastewater treatment plant."

"Since the purpose of the ordinance is to raise revenue, three readings and a public hearing are necessary before final adoption and enactment. The first and second readings of the ordinance took place on July 2nd and 18th, respectively."

"Council will now hear the protests, suggestions or comments of any interested person. Please stand, speak into the microphone and identify yourself by name and place of residence."

"Since no person present wishes to address council on the proposed ordinance, I declare the purpose of this public hearing accomplished, and we stand adjourned at 7:05 p.m."

PUBLIC COMMENT

Mrs. Carmine Arbogast, 112 Gilmore St., stated that no one warned her about the potential for flooding in her neighborhood.

AGENDA ADJUSTMENTS

1. Appointment to Elkins Historic Landmarks Commission.
2. Executive session - pending litigation.

RECOGNITION

C'm Kolsun noted that two members of Boy Scout Troop 88, Alex Curtis and Curtis Harris, were present to observe council, as a part of their citizenship project.

COUNCIL MEETING MINUTES - August 1, 1996 (continued)

Page 2 of 4

CONSENT CALENDAR

C'm Kolsun, seconded by C'w Burford, MOVED TO ACCEPT THE MINUTES OF REGULAR MEETING OF JULY 18 AS PRESENTED. The motion carried.

UNFINISHED BUSINESS

✓ C'm Reed, seconded by C'm Vance, MOVED THAT THE PROPOSED ORDINANCE (NO. 096-08) TO AUTHORIZE THE ISSUANCE OF SEWER REVENUE BONDS, SERIES 1996A (WEST VIRGINIA STATE REVOLVING FUND PROGRAM), IN A FACE AMOUNT NOT TO EXCEED \$300,000 BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON THIRD AND FINAL READING. The motion carried.

C'm Elbon, seconded by C'm Waller, MOVED THAT THE PROPOSED ORDINANCE (NO. 096-09) ORDAINING A 4-WAY STOP AT THE INTERSECTION OF PLEASANT AND ORCHARD AVENUES BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON SECOND AND FINAL READING. The motion carried.

NEW BUSINESS

C'm Lothes, seconded by C'm Reed, MOVED THAT THE PROPOSED RESOLUTION (NO. R96-08) REQUESTED BY BOND COUNSEL FOR THE SEWER REVENUE BONDS, SERIES 1996A BE ADOPTED BY COUNCIL. The motion carried.

C'm Vance, seconded by C'm Waller, MOVED TO APPOINT MR. DAVID L. ICE TO A 3-YEAR TERM ON THE ELKINS SANITARY BOARD, SUCH TERM TO EXPIRE DECEMBER 31, 1998. The motion carried.

C'm Kolsun, seconded by C'm Elbon, MOVED TO APPOINT MR. LYNN HICKS, REGISTERED PROFESSIONAL ENGINEER, TO A 2-YEAR TERM ON THE ELKINS SANITARY BOARD, SUCH TERM TO EXPIRE DECEMBER 31, 1997. The motion carried.

C'w Burford, seconded by C'm Waller, MOVED TO APPOINT MR. LEWIS WARR TO A 5-YEAR TERM ON THE ELKINS-RANDOLPH COUNTY PUBLIC LIBRARY, SUCH TERM TO EXPIRE JUNE 30, 2001. The motion carried.

C'w George, seconded by C'w Vance, MOVED TO APPROVE THE PARADE PERMIT REQUEST FOR THE MARCH OF DIMES "WALK AMERICA" FUND RAISING EVENT. The motion carried.

C'm Elbon, seconded by C'w George, MOVED TO WAIVE COMPETITIVE BID REQUIREMENTS, PURSUANT TO CITY CODE SECTION 2-3(A)(3), TO ALLOW THE LANDFILL FUND TO PURCHASE A 1979 TRUCK FROM THE STATE OF WEST VIRGINIA FOR \$4,500. The motion carried.

The mayor noted for the record that he appointed Ms. Christena Shreve-Elza to fill the unexpired portion of a 3-year term vacated by Mrs. Elizabeth Hulett.

STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

BANK ONE CENTER

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

August 22, 1996

The City of Elkins

Sewer Revenue Bonds, Series 1996 A

(West Virginia SRF Program)

SEVENTH FLOOR, BANK ONE CENTER

P. O. BOX 1588

CHARLESTON, W. VA. 25326-1588

(304) 353-8000

FACSIMILE (304) 353-8180

1000 HAMPTON CENTER

P. O. BOX 1616

MORGANTOWN, W. VA. 26507-1616

(304) 598-8000

FACSIMILE (304) 598-8116

126 EAST BURKE STREET

P. O. BOX 2629

MARTINSBURG, W. VA. 26401-5429

(304) 263-6991

FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET

P. O. BOX 100

CHARLES TOWN, W. VA. 25414-0100

(304) 725-1414

FACSIMILE (304) 725-1913

THE BRYAN CENTRE

P. O. BOX 570

82 WEST WASHINGTON STREET, FOURTH FLOOR

HAGERSTOWN, MARYLAND 21740-0570

(301) 739-8600

FACSIMILE (301) 739-8742

FOURTH FLOOR - RILEY BUILDING

P. O. BOX - 50

14TH AND CHARLIE STREETS

WHEELING, W. VA. 26003-0020

(304) 233-0000

FACSIMILE (304) 233-0014

THE PMC BUILDING, SUITE 101

P. O. BOX 828

417 GRAND PARK DRIVE

PARKERSBURG, W. VA. 26102-0828

(304) 422-6463

FACSIMILE (304) 422-6462

WRITER'S DIRECT DIAL NUMBER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service
Internal Revenue Service Center
Philadelphia, Pennsylvania 19255

Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,

Francesca Tan

Francesca Tan

FT/jmm

Enclosures

Copy of letter with enclosure to:

Mr. Philip J. Graziani, Jr.

Samme L. Gee, Esquire

8038.LTR

255620/95001

Part I Reporting Authority

If Amended Return, check here

1 Issuer's name The City of Elkins		2 Issuer's employer identification number 55 6000170	
3 Number and street (or P.O. box if mail is not delivered to street address) 401 Davis Avenue		Room/suite	4 Report number G19 96 - 1
5 City, town, or post office, state, and ZIP code Elkins, West Virginia 26241		6 Date of issue August 22, 1996	
7 Name of issue The City of Elkins Sewer Revenue Bonds, Series 1996 A (WV SRF Program)		8 CUSIP number N/A	

Part II Type of Issue (check applicable box(es) and enter the issue price)

9 <input type="checkbox"/> Education (attach schedule—see instructions)	9 \$
10 <input type="checkbox"/> Health and hospital (attach schedule—see instructions)	10
11 <input type="checkbox"/> Transportation	11
12 <input type="checkbox"/> Public safety	12
13 <input checked="" type="checkbox"/> Environment (including sewage bonds)	13 \$300,000
14 <input type="checkbox"/> Housing	14
15 <input type="checkbox"/> Utilities	15
16 <input type="checkbox"/> Other. Describe (see instructions) ▶	16
17 If obligations are tax or other revenue anticipation bonds, check box <input type="checkbox"/>	
18 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

Part III Description of Obligations

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity.	6/1/2017	2.000%	\$4,536	\$4,536			
20 Entire issue			\$300,000	\$300,000	10.788 years	3.011%	2.000%

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

21 Proceeds used for accrued interest	21	-0-
22 Issue price of entire issue (enter amount from line 20, column (c))	22	\$300,000
23 Proceeds used for bond issuance costs (including underwriters' discount)	23	\$9,500
24 Proceeds used for credit enhancement	24	-0-
25 Proceeds allocated to reasonably required reserve or replacement fund	25	-0-
26 Proceeds used to currently refund prior issues	26	-0-
27 Proceeds used to advance refund prior issues	27	-0-
28 Total (add lines 23 through 27)	28	\$9,500
29 Nonrefunding proceeds of the issue (subtract line 28 from line 22 and enter amount here)	29	\$290,500

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

30 Enter the remaining weighted average maturity of the bonds to be currently refunded	▶	_____ years
31 Enter the remaining weighted average maturity of the bonds to be advance refunded	▶	_____ years
32 Enter the last date on which the refunded bonds will be called	▶	_____
33 Enter the date(s) the refunded bonds were issued	▶	_____

Part VI Miscellaneous

34 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	34	-0-
35 Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(II) (small issuer exception)	35	-0-
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	-0-
b Enter the final maturity date of the guaranteed investment contract	▶	_____
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	-0-
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer	▶	_____ and the date of the issue ▶ _____
38 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	▶	<input type="checkbox"/>
? If the issuer has identified a hedge, check box <input type="checkbox"/>	▶	<input type="checkbox"/>

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here

Jimmy D. Hammond
Signature of issuer's authorized representative

8/22/96
Date

Jimmy D. Hammond, Mayor
Type or print name and title



WV MUNICIPAL BOND COMMISSION

812 Quarrier Street
Suite 300
Charleston, WV 25301
(304)558-3971

NEW ISSUE REPORT FORM

Date of Report: August 22, 1996

(See Reverse for Instructions)

ISSUE: The City of Elkins Sewer Revenue Bonds, Series 1996 A (WV SRF Program)

ADDRESS: 401 Davis Avenue, Elkins, WV 26241 COUNTY: Randolph

PURPOSE: New Money Refunding OF ISSUE: Refunding Refunds issue(s) dated: _____

ISSUE DATE: August 22, 1996 CLOSING DATE: August 22, 1996

ISSUE AMOUNT: \$ 300,000 RATE: 2% Administrative Fee: 1%

1st DEBT SERVICE DUE: 9/1/97 1st PRINCIPAL DUE: 9/1/97, \$3,059

1st DEBT SERVICE AMOUNT: \$4,559 PAYING AGENT: Municipal Bond Commission

ISSUERS UNDERWRITERS

BOND COUNSEL: Steptoe & Johnson BOND COUNSEL: Jackson & Kelly

Contact Person: Vincent A. Collins, Esq. Contact Person: Samme L. Gee, Esquire

Phone: 624-8161 Phone: 340-1318

CLOSING BANK: Davis Trust Co. ESCROW TRUSTEE:

Contact Person: Greg Morgan Contact Person:

Phone: 636-0991 Phone:

KNOWLEDGEABLE ISSUER CONTACT OTHER:

Contact Person: Philip J. Graziani, Jr. Contact Person:

Position: City Clerk Function:

Phone: 636-1414 FAX: Phone:

DEPOSITS TO MBC AT CLOSE: Accrued Interest: \$ _____

By Wire Capitalized Interest: \$ _____

Check Reserve Account: \$ _____

Other: \$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE:

By Wire To Escrow Trustee: \$ _____

Check To Issuer: \$ _____

IGT To Cons. Invest. Fund: \$ _____

To Other: \$ _____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS

REQUIRED: _____

TRANSFERS

REQUIRED: _____

THE CITY OF ELKINS

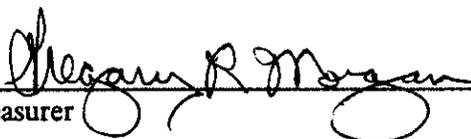
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

DAVIS TRUST CO., Elkins, West Virginia, a state banking corporation, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of The City of Elkins (the "Issuer") enacted by the Council of the Issuer on August 1, 1996, and a Supplemental Resolution of the Issuer adopted by the Council of the Issuer on August 1, 1996 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, in the aggregate principal amount of \$300,000 (the "Bonds"), and agrees to perform all duties of Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 22nd day of August, 1996.

DAVIS TRUST CO.


Treasurer

08/06/96
ELKSJM.M4
255620/95001

THE CITY OF ELKINS

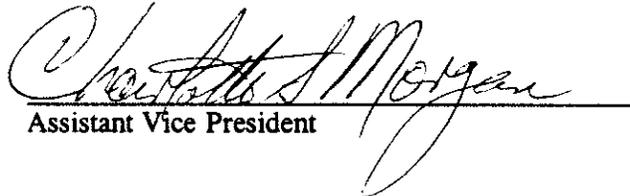
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

ACCEPTANCE OF DUTIES AS REGISTRAR

ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association with its principal office in Charleston, West Virginia, hereby accepts appointment as Registrar in connection with The City of Elkins Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, in the aggregate principal amount of \$300,000 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 22nd day of August, 1996.

ONE VALLEY BANK, NATIONAL
ASSOCIATION


Assistant Vice President

07/18/96
ELKSJM.N3
255620/95001

THE CITY OF ELKINS

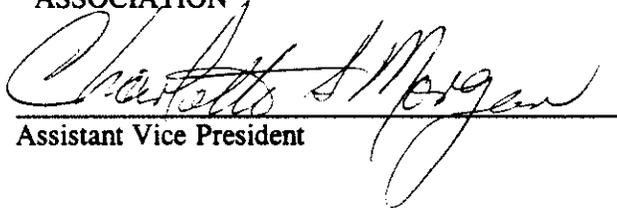
Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

CERTIFICATE OF REGISTRATION OF BONDS

ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association with its principal office in Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of The City of Elkins (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bond, Series 1996 A (West Virginia SRF Program), of the Issuer, dated August 22, 1996, in the principal amount of \$300,000, numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of One Valley Bank, National Association, as Registrar.

WITNESS my signature on this 22nd day of August, 1996.

ONE VALLEY BANK, NATIONAL
ASSOCIATION


Assistant Vice President

07/18/96
ELKSJM.03
255620/95001

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 22nd day of August, 1996, by and between THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$300,000 principal amount of Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted August 1, 1996, and a Supplemental Resolution of the Issuer duly adopted August 1, 1996 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

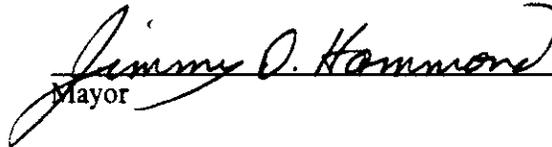
ISSUER: The City of Elkins
 401 Davis Avenue
 Elkins, West Virginia 26241
 Attention: Mayor

REGISTRAR: One Valley Bank, National Association
 Post Office Box 1793
 One Valley Square
 Charleston, West Virginia 25326
 Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

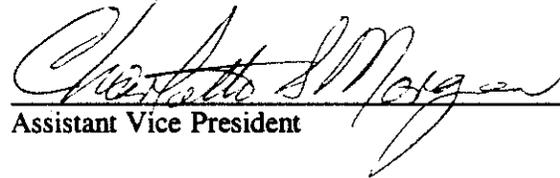
IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

THE CITY OF ELKINS



Mayor

ONE VALLEY BANK, NATIONAL
ASSOCIATION



Assistant Vice President

07/18/96
ELKSJM.P3
255620/95001

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

Invoice

ONE VALLEY
BANK

┌
MR. PHILIP J. GRAZIANI, CITY CLERK
CITY OF ELKINS
CITY HALL
401 DAVIS AVENUE
└ ELKINS, WV 26241

DATE AUGUST 22, 1996

UNITS	ITEM DESCRIPTION	TOTAL
	THE CITY OF ELKINS, WEST VIRGINIA SEWER REVENUE BONDS, SERIES 1996 A (WV SRF PROGRAM)	
	ONE TIME FEE FOR SERVICES AS REGISTRAR AND AUTHENTICATING AGENT.....	\$500.00

SEND REMITTANCE TO: One Valley Bank
One Financial Place - 6th Floor
One Valley Square
P.O. Box 1793
Charleston, WV 25326
ATTN: CHARLOTTE S MORGAN

NOTE AND BOND ORDINANCE

CITY OF ELKINS, WEST VIRGINIA

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NOTE AND BOND ORDINANCE

Introduced in Council

February 6, 1986

Introduced by

Margaret Hutton

Passed by Council

February 20, 1986

An Ordinance authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage facilities of the City of Elkins; authorizing the issuance of not more than \$1,200,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1986, and not more than \$600,000 in aggregate principal amount of Supplemental Subordinate Sewer Revenue Bonds, Series 1986, of said City of Elkins to be used, along with other funds and moneys of, or available to, the City of Elkins which may be lawfully expended for such purposes, to finance the cost of such acquisition and construction, and if determined by supplemental resolution to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than \$5,000,000 in aggregate principal amount of City of Elkins Sewerage System Grant Anticipation Notes, Series 1986; authorizing an irrevocable line of credit in an amount not to exceed \$1,000,000 to provide funds for such acquisition and construction to the extent grant proceeds or other funds are not available therefor, and authorizing an agreement with respect to said line of credit; providing for the rights and remedies of and security for the owners of such bonds; and adopting other provisions related thereto.

Be It Ordained by the City Council of the City of Elkins, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared as follows:

A. The City of Elkins, West Virginia (the "City"), now owns a public sewage treatment system (the "System"), consisting of a sewage treatment plant or plants and some or all of collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes.

B. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that there be constructed certain extensions, additions, betterments and improvements to the System (the "Project") at an estimated cost of \$6,340,423, in accordance with the plans and specifications prepared and revised by Kelley, Gidley, Blair and Wolfe, Consulting Engineers, Charleston, West Virginia (the "Consulting Engineers"), which plans and specifications are on file with the City, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of forty (40) years.

C. The Sanitary Board of the City has presented a petition to the City for enactment of this Note and Bond Ordinance.

D. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of said System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Original Bonds and all sinking fund and other payments provided for in this Ordinance.

E. It is deemed necessary for the City to issue its Original Bonds to finance the costs of acquisition and construction of the extensions, additions, betterments and improvements to the System herein described and contemporaneously therewith, or as soon as practicable thereafter, to issue its Sewerage System Grant Anticipation Notes, Series 1986 or enter into the agreement with respect to the Line of Credit, both as hereinafter defined, whichever is determined by supplemental resolution to best serve the City's interest. Said costs shall be deemed to include the cost of the acquisition of any real property involved; the cost of the construction of said extensions, additions, betterments and improvements to the System and any other expenses necessary, incidental, desirable or appurtenant to the acquisition and construction of such extensions, additions, betterments and improvements to the System; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; expenses for fiscal or other

agents in connection with the issuance of the Original Bonds; interest on the Primary Bonds prior to, during and for 6 months after completion of construction of the Project; and such other expenses as may be necessary or desirable to said acquisition and construction of the extensions, additions, betterments and improvements to the System authorized by this Ordinance and the financing authorized by this Ordinance.

F. It is in the best interests of the City that its Original Bonds be sold to the Authority pursuant to the terms and provisions of the WDA Loan Agreements to be entered into between the City and the Authority, in form satisfactory to the City and the Authority.

G. There are not outstanding any obligations of the City which will rank prior to or on a parity with the Original Bonds and the Notes as to lien and source of and security for payment.

H. The City has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Original Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Original Bonds and such other bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Bondholders, and the covenants and agreements herein set forth to be performed by said City shall be for the equal benefit, protection and security of the legal owners of any and all of such Primary Bonds and of such Supplemental Bonds, as the case maybe, all of which Primary Bonds and Supplemental Bonds, respectively, shall be of equal rank and without preference, priority or distinction between any one Primary Bond and any other Primary Bonds or between any one Supplemental Bond and any other Supplemental Bond, as the case may be, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise:

A. "Act" shall mean Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

B. "Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

C. "Authorized Officer" means the Mayor of the City or any acting Mayor duly appointed by the Council.

D. "Bond Construction Trust Fund" shall mean the fund created by Section 5.02 hereof.

E. "Bondholder" or "Owner of the Bonds" or "Owner" or any similar term shall mean any person who shall be the registered owner of any outstanding Bond or Supplemental Bond, as the case may be.

F. "Bonds" shall mean collectively, the Primary Bonds and the Supplemental Bonds, both as hereinafter defined.

G. "City" shall mean the City of Elkins, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any department, board, organizing or instituting thereof in control of the management and operation of the System, as hereinafter defined.

H. "Clerk" or "City Clerk" means the Clerk of the City.

I. "Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

J. "Consulting Engineers" shall mean Kelley, Gidley, Blair & Wolfe, Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the City as Consulting Engineers for the System as hereinafter defined.

K. "Cost of Project" shall mean those costs described in Section 1.02(E) hereof to be a part of the cost of the acquisition and construction of the Project, as hereinafter defined.

L. "Council" means the Council of the City or any other governing body of the City that succeeds to the functions of the Council as presently constituted.

M. "Credit Line Note" means the note authorized by Section 7.02 hereof to evidence any draw under the Line of Credit, as hereinafter defined.

N. "Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, as hereinafter defined, and its successors and assigns.

O. "Eligible Costs" means Costs of the Project which are reimbursable in full on a dollar-for-dollar basis from EPA Grant Receipts, the total of which are equal in amount to the EPA Grant.

P. "EPA" means the United States Environmental Protection Agency or any successor to the functions of the EPA.

Q. "EPA Grant" or "Grant" means the grant from the EPA pursuant to the commitment therefor.

R. "Event of Default" means any occurrence or event specified in Section 10.01.

S. "FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

T. "Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

U. "Government Obligations" shall mean (i) direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

V. "Grant Agreement" means a written commitment for the payment of the EPA Grant specifying the amount of such grant, the terms and conditions upon which such grant is made and the date or dates or event or events upon which grant is to be paid to the City.

W. "Grant Receipts" means all moneys received by the City on account of the Grant after the date of issuance of the Notes.

X. "Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt

payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined, and for the furnishing by the City of miscellaneous service.

Y. "Indenture" or "Trust Indenture" means the Trust Indenture between the City and the Trustee relating to the Notes, as hereinafter defined, if issued, and all supplements or amendments thereto.

Z. "Independent Accountants" shall mean any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

AA. "Line of Credit" means the irrevocable line of credit in an amount not to exceed \$1,000,000 to be approved by the Supplemental Resolution.

BB. "Line of Credit Agreement" means the agreement establishing the Line of Credit, said agreement to be an exhibit to the Supplemental Resolution.

CC. "Loan Agreement" shall mean the Loan Agreement between the Authority and the City, in substantially the form attached as Exhibit B hereto and incorporated herein by reference, providing for the purchase of the Primary Bonds from the City by the Authority.

DD. "Mayor" shall mean the Mayor of the City.

EE. "Net Revenues" shall mean the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereafter defined.

FF. "Noteholder", "Holder of the Notes", or "Holder of the GANs" or any similar term means any person who shall be the registered owner of any outstanding Note or Notes as hereinafter defined.

GG. "Notes" or "GAN" means the not more than \$5,000,000 in aggregate principal amount of Sewerage System Grant Anticipation Notes, Series 1986, originally authorized hereby, and unless the context clearly indicates otherwise, the terms "Notes" or "GAN" includes any refunding Notes or GAN of the City.

HH. "Notes Capitalized Interest Account" means the account established in the Indenture.

II. "Notes Construction Trust Fund" means the Notes Construction Trust Fund established in the Indenture.

JJ. "Notes Cost of Issuance Account" means the Notes Cost of Issuance Account within the Notes Construction Trust Fund established in the Indenture.

KK. "Notes Debt Service Fund" means the Notes Debt Service Fund established in the Indenture.

LL. "Note Registrar" means the bank to be designated as such in the Supplemental Resolution and its successors and assigns.

MM. "Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Registrar and Paying Agent (both as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Primary Bonds or the principal of the Supplemental Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

NN. "Operation and Maintenance Fund" means the Operation and Maintenance Fund established by Section 4.01 hereof.

OO. "Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean, collectively, the Primary Bonds and the Supplemental Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

PP. "Original Notes Purchaser" means the person, partnership or corporation named in a resolution supplemental hereto.

QQ. "Outstanding," when used with reference to the Original Bonds, whether Primary or Supplemental Bonds, and as of any particular date, describes all such Bonds theretofore

and thereupon being delivered being authenticated and delivered except (i) any such Bond cancelled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bonds, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 8.05 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

RR. "Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 8.08 hereof, payable from Net Revenues on a parity with the Primary Bonds.

SS. "Parity Supplemental Bonds" shall mean additional Bonds issued under the provisions and whether the limitations prescribed by Section 8.08 hereof, payable from Net Revenues on a parity with the Supplemental Bonds.

TT. "Paying Agent" shall mean the bank or banks designated as such in a resolution supplemental hereto.

UU. "Primary Bonds" shall mean the not more than \$1,200,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1986, originally authorized by this Ordinance and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained herein.

VV. "Program" shall mean the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

WW. "Project" shall mean the extensions, additions, betterments and improvements described in Exhibit A attached hereto to the existing public sewage treatment system of the City.

XX. "PSC" means the Public Service Commission of West Virginia or any other agency of the State that succeeds to the functions of the PSC.

YY. "Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or

certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations.

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; the Government National Mortgage Association; the Tennessee Valley Authority or the Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligation issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC") or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (d), above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(g) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended, provided that investments by such fund (or portion thereof) on behalf of the City may only be in Qualified Investments other than the those described in this paragraph (g); and

(h) Tax-exempt securities.

ZZ. "Rebate Deposit" shall mean the excess of - (A) the aggregate amount earned for the period from the date of issue of the Bonds to the computation date on all obligations in which any moneys in the funds and accounts described in these instructions are invested (the "Nonpurpose Obligations"), over - (B) the amount that would have been earned for such period if the yield on the Nonpurpose Obligations had been equal to the yield of the Primary Bonds.

Aa. "Rebate Fund" means the trust fund created pursuant to Section 4.01(5) hereof.

Bb. "Rebate Income Account" means the trust account established within the Rebate Fund pursuant to Section 4.01(5)(b) hereof.

Cc. "Rebate Principal Account" means the trust account established within the Rebate Fund pursuant to Section 4.01(5)(a) hereof.

Dd. "Registrar" shall mean the bank designated as such in a resolution supplemental hereto.

Ee. "Renewal and Replacement Fund" shall mean the depreciation fund created by Section 4.01 hereof.

Ff. "Reserve Account" shall mean the account in the Sinking Fund, as hereinafter defined, created by Section 4.02 hereof.

Gg. "Reserve Account Requirement" shall mean the maximum amount of principal and interest which will mature and come due on the Primary Bonds in any succeeding Fiscal Year.

Hh. "Revenue Fund" shall mean the revenue fund created by Section 4.01(A) hereof.

Ii. "Sanitary Board" means the Sanitary Board of the City established by ordinance duly enacted by this City and successors to the function thereof.

Jj. "Sinking Fund" shall mean the fund created by Section 4.02 hereof.

Kk. "State" shall mean the State of West Virginia.

Ll. "Supplemental Bonds" shall mean the not more than \$600,000 in aggregate principal amount of Supplemental Subordinate Sewer Revenue Bonds, Series 1986, originally authorized by this Ordinance and any pari passu additional Bonds hereinafter issued within the terms, resolutions and conditions contained herein.

Mm. "Supplemental Loan Agreement" shall mean the Supplemental Loan Agreement between the Authority and the City, in substantially the form attached as Exhibit C hereto and incorporated herein by reference, providing for the purchase of the Supplemental Bonds from the City by the Authority.

Nn. "Supplemental Bonds Reserve Account" means the account established in the Supplemental Sinking Fund pursuant to Section 4.02 hereof.

Oo. "Supplemental Reserve Requirement" shall mean as of any date of calculation, the maximum amount of principal which will become due on the Supplemental Bonds in any succeeding Fiscal Year.

Pp. "Supplemental Resolution" shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article "the", refers specifically to the supplemental resolutions authorizing the sale of the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Original Bonds and not so included may be included in another Supplemental Resolution.

Qq. "Supplemental Sinking Fund" means the Supplemental fund established by Section 4.02 hereof.

Rr. "System" shall mean the complete existing public sewerage system now owned by the City, consisting of a sewage treatment system, and shall include any extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said sewer system from any sources whatsoever, both within and without said City.

Ss. "Tap Fees" shall mean the fees, if any, paid by prospective customers of the System in order to connect thereto.

Tt. "WDA Loan Agreements" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement.

Uu. Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

Vv. Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

Ww. The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of the enactment of this Ordinance.

Xx. Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Original Bonds. For the purpose of financing a portion of the costs of the acquisition and construction of the Project not otherwise provided for, there shall be issued the Original Bonds of the City. The Original Bonds shall be issued in two issues, to be designated, respectively, "Sewer Revenue Bonds, Series 1986" in an aggregate principal amount of not more than \$1,200,000, and "Supplemental Subordinate Sewer Revenue Bonds, Series 1986," in the aggregate principal amount of not more than \$600,000. The Original Bonds shall be dated as of the date of delivery thereof, shall mature on October 1 in such years, not exceeding forty (40) years after the date of issuance; and in such amounts as shall be set out in Schedule X to the WDA Loan Agreements, respectively. The Primary Bonds shall bear interest at the rate of 9.75 percent per annum, payable semiannually, on April 1 and October 1 of each year, beginning on the first interest payment date following issuance and delivery of the Original Bonds. The Supplemental Bonds bear no interest. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the WDA Loan Agreements and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Original Bonds.

The Bonds shall be payable as to principal at the principal office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Registrar, provided, that so long as the Authority is the owner thereof, interest on the Primary Bonds may be paid by wire transfer or other methods satisfactory to the City, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each issue, fully registered to the Authority, with a payment record attached, representing the aggregate principal amount of each issue, and shall mature in principal installments, all as provided in the WDA Loan Agreements and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Owner for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in a said Supplemental Resolution and shall bear interest from such date.

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the City by the Mayor, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and

until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.08 shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered, if applicable, and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15

days preceding an interest payment date on the Bonds, or in the case of any proposed redemption of Bonds or, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bonds shall become mutilated or be destroyed, stolen or lost, the City may in its discretion issue and deliver a new Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds, upon surrender and cancellation of such mutilated Bonds, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Owner's furnishing the City proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Primary Bonds or Supplemental Bonds, as the case may be, issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Primary Bonds Secured by Pledge of Net Revenues; Supplemental Bonds to be Junior and Subordinate to Primary Bonds. The payment of the debt service of all the Primary Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. The payment of the debt service of all the Supplemental Bonds shall also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, but junior and subordinate to the lien on such Net Revenue in favor of the Owners of the Primary Bonds. Such

Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Primary Bonds and Supplemental Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

[FORM OF THE PRIMARY BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF RANDOLPH
CITY OF ELKINS
SEWER REVENUE BOND,
SERIES 1986

No. R- _____ \$ _____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF ELKINS, a municipal corporation of the State of West Virginia in Randolph County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ (\$ _____), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the date of this Bond until payment of such installment, and such interest shall be payable on the 1st day of April, and the 1st day of October in each year beginning _____ 1, 198___. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the principal corporate trust office of _____, _____, West Virginia, as register and paying agent

(the "Registrar"). The interest on this Bond is payable by check or draft mailed to the Payee at the address as it appears on the books of the Register on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part at any time, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement, dated as _____, between the City and the Authority.

This Bond is issued (i) to pay costs of acquisition and construction of certain improvements, additions, extensions and betterments to the existing public sewerage system of the City (the "Project"), (ii) [to fund a reserve account therefor; and (iii)] to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the _____ day of _____, 1986, and a Supplemental Resolution adopted by the City on the _____ day of _____, 1986 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

This Bond is issued contemporaneously with the Supplemental Subordinate Sewer Revenue Bonds, Series 1986 of the City (the "Supplemental Bonds"), issued in the aggregate principal amount of \$_____, which Supplemental Bonds are junior and subordinate with respect to liens and sources of and security for payment of the Bonds of this issue.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve

Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity or prior to the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Ordinance or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of and interest on this Bond.

All provisions of the Ordinance, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF ELKINS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Clerk, and has caused this Bond to be dated _____, 1986.

[SEAL]

Mayor

ATTEST:

Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____

_____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

[FORM OF THE SUPPLEMENTAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF RANDOLPH
CITY OF ELKINS
SUPPLEMENTAL SUBORDINATE
SEWER REVENUE BOND,
SERIES 1986

No. SR-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF ELKINS, a municipal corporation of the State of West Virginia in Randolph County of said State, (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority"), or respected assigns, the sum of _____ (\$_____), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the principal corporate trust office of _____, _____, West Virginia, as register and paying agent (the "Registrar"). This Bond bears no interest.

This Bond may be redeemed prior to its stated date of maturity in whole or in part at any time, but only with the express written consent of the Authority.

This Bond is issued (i) to pay costs of acquisition and construction of certain improvements, additions, extensions and betterments to the existing public sewerage system of the City (the "Project"), and (ii) [to fund a reserve account therefor; and (iii)] to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the _____ day of _____, 1986, and a Supplemental Resolution adopted by the City on the _____ day of _____, 1986 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

This Bond is issued contemporaneously with the Sewer Revenue Bonds, Series 1986, of the City (the "Primary Bonds") issued in the aggregate principal amount of \$_____, which Primary Bonds rank prior with respect to liens and sources of and security for payment to the Bonds of this issue.

This Bond is payable only from and secured by a pledge of a second lien on the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the

services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity or prior to the Bonds, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, and in the reserve account for the Primary Bonds an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Ordinance or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond; provided that such lien on moneys deposited in the Bond Construction Trust Fund created by the Ordinance shall be subordinate to that of the Primary Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal this Bond.

All provisions of the Ordinance, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF ELKINS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Clerk, and has caused this Bond to be dated _____, 1986.

[SEAL]

Mayor

ATTEST:

Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Supplemental Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

as Registrar

By _____
Its Authorized Officer

Date: _____

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 3.09. Sale of Original Bonds; Execution of WDA Loan Agreements. The Original Bonds shall be sold to the Authority, pursuant to the respective terms and conditions of the WDA Loan Agreements. As a ratification of the resolution of Council authorizing execution of the WDA Loan Agreements, the Mayor is specifically authorized and directed to execute the WDA Loan Agreements and the Clerk is directed to affix the seal of the City, attest the same and deliver the WDA Loan Agreements to the Authority. The WDA Loan Agreements are specifically incorporated into this Ordinance.

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by, the Depository Bank:

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Bond Construction Trust Fund; and
- (5) Rebate Fund;

(a) Within the Rebate Fund, the Rebate Principal Account, and

(b) Within the Rebate Fund, the Rebate Income Account.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

- (1) Sinking Fund;

(a) Within the Sinking Fund, the Reserve Account.

- (2) Supplemental Sinking Fund;

(a) Within the Supplemental Sinking Fund the Supplemental Bonds Reserve Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner therein provided.

(1) The City shall, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) Thereafter, from the money remaining in the Revenue Fund, the City shall next, on the first day of each month, commencing seven months prior to the first date of payment of interest on the Primary Bonds from Net Revenues, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Primary Bonds on the next ensuing semiannual interest payment date, with a credit to the deposit preceding the interest payment for any amounts already on deposit therein.

(3) The City shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Primary Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Primary Bonds on the next ensuing principal payment date, with a credit to the deposit preceding the principal payment for any amounts already on deposit therein and not credited pursuant to paragraph (2) above.

(4) The City shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Reserve Account, an amount equal to 1/120th of the Reserve Requirement; provided, that no further payments shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement. If the City deposits the Reserve Requirement in the Reserve Account when the Primary Bonds are issued and delivered, then no monthly deposits are required unless the Reserve Account is drawn upon and contains less than the Reserve Requirement.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Primary Bonds as the same shall become due. Moneys in the Reserve

Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Primary Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. All investment earnings on moneys in the Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Sinking Fund.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Fund for payment of debt service on the Primary Bonds have been made in full.

(5) The City shall not be required to make any further payments into the Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Sinking Fund and said Reserve Account is at least equal to the aggregate principal amount of and interest on the Primary Bonds issued pursuant to this Ordinance then Outstanding.

(6) From the moneys remaining in the Revenue Fund, the City shall next, on the first day of each month, commencing the month succeeding the first full calendar month after completion of the Project, transfer to the Renewal and Replacement Fund a sum equal to 2-1/2% of the Gross Revenues each month, exclusive of payments for account of the Reserve Account in the Sinking Fund. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in accordance with Article IX hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in the Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 4.03(A)(5)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(7) The City shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Supplemental Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Supplemental Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Supplemental Bonds on the next ensuing principal payment date, with a credit to the deposit preceding the principal payment for any amounts already on deposit therein.

(8) The City shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Supplemental Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Supplemental Reserve Account, an amount equal to 1/120th of the Supplemental Reserve Requirement; provided, that no further payments shall be made into the Supplemental Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Supplemental Reserve Requirement. If the City deposits the Supplemental Reserve Requirement in the Supplemental Reserve Account when the Supplemental Bonds are issued and delivered, then no monthly deposits are required unless the Supplemental Reserve Account is drawn upon and contains less than the Supplemental Reserve Requirement.

Moneys in the Supplemental Sinking Fund shall be used only for the purposes of paying principal of the Supplemental Bonds as the same shall become due. Moneys in the Supplemental Reserve Account in the Supplemental Sinking Fund shall be used only for the purpose of paying principal of the Supplemental Bonds, as the same shall come due, when other moneys in the Supplemental Sinking Fund are insufficient therefor, and for no other purpose. All investment earnings on moneys in the Supplemental Reserve Account shall be transferred, no less than once each year, to the Bond Construction Trust Fund prior to completion of the Project, and thereafter to the Supplemental Sinking Fund.

Any withdrawals from the Supplemental Reserve Account which result in a reduction in the balance of the Supplemental Reserve Account to below the Supplemental Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full.

B. As and when additional Bonds ranking on a parity with the Primary Bonds or the Supplemental Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay any interest on such additional Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Account in an amount equal to the respective Reserve Requirement.

The Commission is hereby designated as the fiscal agent for the administration of the respective Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission from the Revenue Fund by the City at the times provided herein.

The payments into the respective Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

Moneys in the respective Reserve Accounts shall be invested and reinvested by the Commission in accordance with Article Nine hereof.

The respective Sinking Funds, including the respective Reserve Accounts therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the respective Bonds and any additional Bonds ranking on a parity with either thereof that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the respective Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the City.

D. The City shall remit from the Revenue Fund to Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges and the Paying Agent fees then due.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

G. All remittances made by the City to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

H. The Gross Revenues of the System shall only be used for purposes of the Systems.

Section 4.04. Excess Bond Proceeds. The City shall place any excess proceeds from Bonds not required by the Project in the Reserve Account.

Section 4.05. Rebate Fund. The City shall make or cause to be made the calculation(s) required by the Tax Reform Act and shall support such calculations with a letter from Independent Accountants verifying the accuracy of such calculations. The City shall direct the Depository Bank to make deposits and disbursements from the Rebate Fund in accordance with the Tax Reform Act and to invest the Rebate Fund pursuant to said Tax Reform Act and direction from the City and direct the Depository Bank to deposit income from such investments immediately upon receipt thereof in the Rebate Income Account. The immediately preceding sentence of this Ordinance and Sections 4.06 and 4.07 hereof may be superseded or amended by a resolution supplemental hereto adopted by the City and accompanied by an opinion of nationally recognized bond counsel addressed to the City to the effect that said supplemental resolution will not cause the interest on the Bonds to become taxable to the recipient thereof.

Section 4.06. Rebate Deposits. The City shall annually make or cause to be made the computation of the Rebate Deposit. If a deposit to the Rebate Principal Account is required as a result of such computation, the City shall notify the Depository Bank within fifteen (15) days of the end of the bond year that a payment is required and make such deposit. If a withdrawal from the Rebate Principal Account is permitted as a result of such computation, the City shall direct the Depository Bank to deposit the amount withdrawn in the Rebate Principal Account in the Revenue Fund for the benefit of the City. Records of the determinations required by this Section must be retained by the City until six (6) years after the Bonds are no longer outstanding.

Section 4.07. Rebate Disbursements. Not later than thirty (30) days after the end of the fifth Bond Year (five (5) years and thirty (30) days after the date of issuance) and every five (5) years thereafter, the City shall pay to the United States ninety percent (90%) of the amount required to be on deposit in the Rebate Principal Account as of such payment date and ninety percent (90%) of the amount on deposit in the Rebate Income Account as of such payment date. Not later than thirty (30) days after the final retirement of the Bonds, the

City shall direct the Depositing Bank to pay to the United States one hundred percent (100%) of the balance remaining in the Rebate Principal Account and the Rebate Income Account. Each payment required to be paid to the United States pursuant to this Section shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The City shall provide with such direction a copy of the form originally filed with respect to the Bonds and a statement summarizing the determination of the amount to be paid to the United States.

ARTICLE V

APPLICATION OF ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 5.01. Application of Original Bond Proceeds. The moneys received from the sale of any or all of the Original Bonds shall be deposited by the City in the Bond Construction Trust Fund or as set forth in the Supplemental Resolution.

Section 5.02. Bond Construction Trust Fund; Capitalized Interest Account. There is hereby created and established with the Depository Bank a special fund to be known as the "City of Elkins Bond Construction Trust Fund," which fund shall be kept separate and apart from all other funds of the City and used and applied by the City solely for the payment of the Costs of the Projects, and for no other purposes whatsoever. Unless alternative provisions are made in the Supplemental Resolution, the moneys in said fund shall be secured at all times by the deposit in such bank, as security, of direct obligations of the United States of America having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. Any moneys not needed immediately for said purposes may, with the consent of the Consulting Engineers, be invested in Qualified Investments having maturities of not more than one year. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to, such purposes, then such unapplied proceeds shall be deposited by the City in the Sinking Funds established pursuant to this Ordinance and shall be used only as provided herein for said fund or as provided by supplemental resolution. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the owners of the Original Bonds with the lien on behalf of the Supplemental Bond being subordinate to that of the Primary Bond.

Expenditures or disbursements from said Bond Construction Trust Fund, except for legal, fiscal and engineering expenses and expenses in connection with the issuance and sale of the Original Bonds, shall be made only

after such expenditures or disbursements shall have been approved in writing by the Sanitary Board and the Consulting Engineers.

ARTICLE VI

NOTES

Section 6.01. Authorization and General Terms. To the extent practicable and in order to pay certain Costs of the Project pending receipt of the Grant Receipts, the City shall issue and sell its Notes in the aggregate principal amount of not to exceed \$5,000,000. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture and the Supplemental Resolution.

Section 6.02. Terms of and Security for Notes; Trust Indenture. The Notes shall be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, with such terms and secured in the manner set forth in the Indenture to be approved by a Supplemental Resolution.

Section 6.03. Notes are Special Obligations. The Notes shall be special obligations of the City payable as to principal and interest solely from the respective sources described in the Granting Clauses and Article III of the Indenture. The Notes do not and shall not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations. The general funds of the City are not liable, and neither the full faith and credit nor the taxing power of the City is pledged for the payment of the Notes. The Noteholders shall never have the right to compel the forfeiture of any property of the City. The Notes shall not be a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or upon any of its income, receipts or revenues except as set forth in the Indenture.

Section 6.04. Letters of Credit. As additional security for the Notes, the City may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or sums set forth therein but not to exceed \$1,000,000 in the aggregate. In the event of a draw under any such letter of credit, the City shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE VII

LINE OF CREDIT

Section 7.01. Authorization of Line of Credit. As an alternative method of providing funds for the acquisition and construction of the Project to the extent grant proceeds and other funds are not available therefor, the Mayor of the City is hereby authorized and directed to arrange for a Line of Credit in an amount not to exceed \$1,000,000. The amount and terms of the Line of Credit shall be approved by a resolution supplemental hereto.

Section 7.02. Authorization of Credit Line Note. For the purpose of evidencing any draw upon the Line of Credit and thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Credit Line Note of the City in an amount and upon such terms as set forth in a resolution supplemental hereto. The Credit Line Note shall be issued in single, fully registered form and shall be dated as of the date of delivery thereof. There shall be attached to the Credit Line Note a Record of Advances and Payments, upon which the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of the Credit Line Note and the amount of the Credit Line Note outstanding after either of said transactions shall be recorded. Anything to the contrary herein, in the Line of Credit Agreement or therein notwithstanding, the Credit Line Note shall evidence only the outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount if each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest, payable monthly, at a rate set forth in a supplemental resolution but not to exceed 12 percent per annum. Interest shall cease to accrue on the amount of the Credit Line Note outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Credit Line Note shall mature thirty (30) months from the date thereof. The Credit Line Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement. Notwithstanding the foregoing, the terms of the Credit Line Note, other than the principal amount thereof, may be modified by resolution supplemental and amendatory hereto, subject to the limits of the Act.

The Credit Line Note shall be payable as to principal upon surrender at the principal office of a registrar, designated in a resolution supplemental hereto, in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the

laws of the United States of America; provided, that any partial payment or principal prior to the final maturity of the Credit Line Note shall be recorded on the Record of Advances and Payments attached to the Credit Line Note, and the Credit Line Note shall be returned to the Owner. Interest on the Credit Line Note shall be paid by check or draft mailed to the Owner thereof at the address as it appears on the books of said registrar; provided, that, at the option of the Owner, such payment may be made by wire transfer or such other method as shall be agreeable to the Owner, the City, the Commission and said registrar.

Section 7.03. Execution of Credit Line Note. The Credit Line Note shall be executed in the name of the City by the signature of its Mayor, and the seal of the City shall be affixed thereto and attested by the signature of the City Clerk. Any Credit Line Note may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Credit Line Note shall hold the proper office of the City, although at the date of such Credit Line Note such person may not have held such office or may not have been so authorized.

Section 7.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Credit Line Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Credit Line Note, shall be conclusively deemed to have agreed that said Credit Line Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Credit Line Note or any portion thereof remains Outstanding, the registrar shall keep and maintain books for the registration and transfer of the Credit Line Note. The Credit Line Note shall be transferable only upon the books of the City which shall be kept for that purpose at the office of the registrar (in such capacity and in the capacities of authenticating agent and paying agent as hereinafter provided, the "Registrar") by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Credit Line Note, there shall be issued at the option of the Owner or the transferee another Credit Line Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Credit Line Note not paid as reflected on the Record of Advances and Payments attached thereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Credit Line Note is exercised, Credit Line Notes shall only be issued in accordance with the provisions of this Ordinance and the Supplemental Resolution. All Credit Line Notes surrendered in any such transfers shall forthwith be cancelled by the Registrar. For every such transfer of Credit Line Notes, the Registrar may make a charge sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Credit Line Note upon each transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer. The Registrar shall not be obliged to make any such transfer of Credit Line Notes during the ten (10) days preceding an interest payment date on the Credit Line Notes or after notice of any prepayment of the Credit Line Notes has been given.

Section 7.05. Form of Credit Line Note. The text of the Credit Line Note shall be in substantially the form attached as Exhibit II to the Line of Credit Agreement, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any supplemental resolution or ordinance adopted or enacted prior to the issuance thereof. The Credit Line Note shall not become valid until authenticated by the Registrar.

ARTICLE VIII

ADDITIONAL COVENANTS OF THE CITY

Section 8.01. General Covenants of the City. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article VIII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, or the interest thereon, is outstanding and unpaid.

Section 8.02. Bonds Not To Be Indebtedness of the City. The Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues of the System, or from the respective Reserve Account, as herein provided. No owner or owners of any Bonds

issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay said Bonds or the interest thereon.

Section 8.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all of the Primary Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on the Net Revenues derived from the operation of the System, and payment of the debt service of the Supplemental Bonds issued hereunder shall be secured forthwith equally and relatively by a lien on said Net Revenues, but such lien shall be junior and subordinate to the lien on said Net Revenues in favor of the owners of the Primary Bonds, to the extent necessary to make the payments required under Section 4.03 of this Ordinance. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the respective Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and any interest on the Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 8.04. Rates. Prior to issuance of the Original Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times to be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The City shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Primary Bonds and the Supplemental Bonds; provided that, in the event that an

amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and an amount at least equal to the Supplemental Reserve Requirement is on deposit in the Supplemental Reserve Account, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds.

Section 8.05. Completion, Operation and Maintenance. The City will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in this Ordinance.

Section 8.06. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds, and the City shall direct the Commission to apply such proceeds to the payment of principal and any interest at maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the City by the Commission unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

The foregoing provision notwithstanding, the City shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of ten thousand dollars (\$10,000), the City shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Council may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$10,000 but not in excess of \$50,000, the Council shall first, in writing, determine with the written approval of the

Consulting Engineer that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the City Council may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be remitted by the City to the Commission for deposit in the appropriate Sinking Funds and shall be applied only to the redemption of Bonds of the last maturities then outstanding or to the purchase of Bonds of the last maturities then outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the City if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars (\$50,000) and insufficient to pay or redeem prior to maturity all the Bonds then outstanding without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds then outstanding. The City shall prepare the form of such approval and consent for execution by the then owners of the Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 8.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The City shall not issue any other obligations whatsoever, except *pari passu* additional Bonds provided for in Section 8.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Supplemental Bonds or, if no Supplemental Bonds are outstanding, with the Primary Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 8.08 hereafter. All obligations hereafter issued by the City payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds to the extent such are outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the City shall not create, or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said pari passu additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 8.08. Parity Bonds. No Parity Bonds payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No Parity Bonds shall be issued so long as any Supplemental Bonds are outstanding. No Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions, additions, betterments or improvements to the System or refunding the entirety of one or more issues or series of Bonds or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineer, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt source in any succeeding year on the following:

- (1) The Original Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by

the City, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineer, which shall be filed in the office of the City Clerk prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineer and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineer and the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the City shall have entered into written contracts for the immediate acquisition or construction of such extensions, additions, betterments or improvements to the System which are to be financed by such Parity Bonds.

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Primary Bonds and the owners of any Parity Bonds and the owners of the Supplemental Bonds and the Parity Supplemental Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Primary Bonds, regardless of the time or times of their issuance, and all the Supplemental Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Primary Bond over any other or any Supplemental Bond over any other. The City shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the outstanding Primary Bonds and Supplemental Bonds on such revenues.

Parity Bonds shall be not issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then

outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the Parity Bonds.

Notwithstanding the foregoing, the City may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Authority and anything to the contrary in this Section 8.08 notwithstanding, Parity Bonds may be authorized and issued by the City pursuant to a Supplemental Resolution solely to complete the Project as described in the City's Program application to the Authority accordance with the plans and specifications, in the event that the Original Bonds should be insufficient, together with other funds lawfully available therefor, to pay all costs of acquisition and construction of the Project; provided, however, that, prior to the issuance of such Parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the City Clerk a certificate to the effect that additional funds are necessary for such purpose. All such Parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such Parity Bonds shall be in years and amounts suggested by the Authority.

As long as any Supplemental Bonds are outstanding, the City may issue Parity Supplemental Bonds upon satisfaction of the tests set forth above and taking into consideration all debt service requirements on all bonds superior to the Supplemental Bonds, the Supplemental Bonds and including the proposed Parity Supplemental Bonds.

Section 8.09. Insurance. The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement

Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Authority.

Section 8.10. Consulting Engineers. The City may retain recognized, qualified independent Consulting Engineers on an annual basis to supervise generally the operation, maintenance and repair of the System and to report annually to the City in writing their recommendations and comments as to the System.

Section 8.11. Services Rendered to the City. The City will not render or cause to be rendered any free services of any nature by its System; and, in the event the City or any department, agency, instrumentality, officer or employee of the City shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the City shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 8.12. Enforcement of Collections. The City will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The City further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or sewerage

system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 8.13. No Competing Franchise. To the extent allowable by law, the City will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 8.14. Books and Records. The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any owner of a Bond or Bonds issued pursuant to this Ordinance shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the PSC and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Consulting Engineer and the Authority, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

A. A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance, and the status of all said funds.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent

Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report the Authority. The report of said audit shall include a statement that the City is in compliance with the terms and provisions of the WDA Loan Agreements and this Ordinance.

Section 8.15. Initial Schedule of Rates. The rates, fees and other charges for the use of the services and facilities of the System established under an ordinance of the City enacted on or before the date of the adoption or enactment of a resolution or ordinance adopted or enacted in connection with the sale of the Bonds as provided herein shall constitute the initial schedule of rates for said System for purposes of this Ordinance.

Section 8.16. Operating Budget. The Board shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the City Council shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The City shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any Bondholder who requests in writing that copies of all such budgets and resolutions be furnished him or her, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Bondholder or anyone acting for and in behalf of such Bondholder.

Section 8.17. Connection. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, prospective users of the System shall be required to connect thereto.

Section 8.18. Covenant to Amend Ordinance. The City shall amend this Ordinance by a resolution supplemental hereto to comply with the Tax Reform Act, as enacted by the Congress of the United States and signed by the President, if terms of the law as enacted conflict with the terms hereof. The Council

of the City hereby retains the specific authority to amend this Ordinance or supplement it by resolution prior to the sale of the Bonds to comply with related federal legislation. In its determination to amend or supplement this Ordinance, the City may rely on the opinion of nationally recognized bond counsel.

Section 8.19. Essential Governmental Function Bonds. The City shall use the Bond proceeds solely for the Project and such Project will be solely operated as governmental function. The City shall not allow ten percent (10%) or more of the gross proceeds of the Bonds to be used either directly or indirectly in any trade or business carried on by any person other than a governmental unit and shall not take any other action which would make the Bonds nonessential function bonds within the meaning of the Tax Reform Act. This covenant may be amended by a resolution supplemental hereto if the Tax Reform Act is not enacted by the Congress of the United States or if the Council receives an opinion of nationally recognized bond counsel to the effect that such covenant is not required to maintain the tax-exempt status of the Bonds.

Section 8.20. Expenditure of Bond Proceeds. The City shall expend five percent (5%) of the proceeds of the Bonds within thirty (30) days from the date of issuance of the Bonds and shall expend all remaining proceeds (other than reasonable bond reserves) within the earlier of the substantial completion of the Project or three (3) years of the date of issuance of the Bonds.

Section 8.21. Bond Reporting Requirements. The City shall make and file such reports as required by the Tax Reform Act or such other federal legislation as is enacted by the Congress of the United States.

ARTICLE IX

INVESTMENT OF FUNDS

Section 9.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 9.01 and in Sections 9.03 and 9.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. Such other bank or national banking association may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 9.02. Restrictions as to Arbitrage Bonds. The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 103(c)(2) of the Internal Revenue Code of 1954, as amended, and as set forth in the Tax Reform Act or the rules and regulations promulgated pursuant thereto, and the Mayor of the City shall deliver his certificate, based upon this covenant, with regard thereto to the purchaser of the Original Bonds.

Section 9.03. Restriction of Yield on Bond Proceeds. The City shall restrict the investment yield on all Bond proceeds designated for acquisition of tangible property as set forth in the Certificate as to Non-Arbitrage, including land, buildings, equipment and furnishings, to the Bond yield beginning thirty (30) days from the date the Bonds are issued. The City shall restrict the investment yield on all Bond proceeds designated for construction of the Project as set forth in the Certificate as to Non-Arbitrage to the earliest of (a) substantial completion of the Project; (b) expenditure of funds from any source equal to the Bond proceeds; (c) three (3) years after date of issuance of the bonds; or (d) three (3) years after commencement of construction. For the purposes of this Section, yield does not include cost of issuance expenses or any discount. After the temporary periods set forth above all proceeds must be yield restricted. The yield on funds placed in the Renewal and Replacement Fund must be restricted if the fund exceeds fifteen percent (15%) of the bond issue or if the fund contains nonpurpose obligations with a yield in excess of one hundred fifty percent (150%) of the principal and

interest due during the bond year. This Section may be amended by a resolution supplemental hereto if the Tax Reform Act is not enacted by the Congress of the United States or if the Council receives an opinion of nationally recognized bond counsel to the effect that such covenant is not required to maintain the tax-exempt status of the Bonds.

Section 9.04. Investment Restrictions. The City shall not invest the proceeds of the Bonds in any account, certificate or fund which is either directly or indirectly guaranteed by the United States of America and which deposit would violate the provisions of the Tax Reform Act. The City may invest the funds in the Sinking Fund and the Renewal and Replacement Fund in federally insured deposits or accounts. This covenant may be amended by a resolution supplemental hereto if the Tax Reform Act is not enacted by the Congress of the United States or if the Council receives an opinion of nationally recognized bond counsel to the effect that such covenant is not required to maintain the tax-exempt status of the Bonds.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Primary Bonds or the Supplemental Bonds as the case maybe:

(A) If default occurs in the due and punctual payment of the principal of or interest on any such Bonds; or

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or a owner of such Bonds; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 10.02. Remedies. Upon the happening and continuance of any Event of Default with respect to any Primary Bonds or Supplemental Bonds, as the case may be, any Registered Owner of such Bond may exercise any available remedy and bring

any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such registered Owners including the right to require the City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon such Bonds, (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the registered owners of such Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to such Bonds, or the rights of such registered Owners.

Section 10.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the City under this Ordinance and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Primary Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in this Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the City of such default, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the City exercise all the rights and powers of the City with respect to said facilities as the City itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a

charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any owner of Bonds issued pursuant to this Ordinance shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the City and for the joint protection and benefit of the City and owners of Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System. The provisions of this section shall be subject to the senior rights of the Primary Bonds over the Supplemental Bonds.

ARTICLE XI

DEFEASANCE

Section 11.01. Defeasance of Primary Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the owners of all Primary Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then with respect to the Primary Bonds only, the pledge of Net Revenues and any other moneys and

securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Bondholders of the Primary Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Primary Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay, as and when due, the principal of and interest on the Primary Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. All Primary Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the affect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Primary Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Primary Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the City, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

Section 11.02. Defeasance of Supplemental Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Owners of all Supplemental Bonds, the principal thereof, at the times and in the manner stipulated therein and in this Ordinance, then with respect to the Supplemental Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the registered Owners of the Supplemental Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Supplemental Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of such Supplemental Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Supplemental Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of said Supplemental Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of said Supplemental Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of said Supplemental Bonds on and prior to the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the City as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds then outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and

interest out of the revenues of the System without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 12.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 12.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are to the extent of such conflict repealed.

Section 12.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of City Council were at all times when any actions in connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 12.05. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

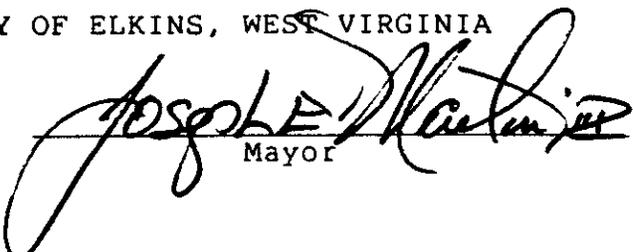
First Reading: February 6, 1986

Second Reading
and Passage: February 20, 1986

Public Hearing: March 13, 1986

CITY OF ELKINS, WEST VIRGINIA

By:


Mayor

[SEAL]


Clerk

EXHIBIT A

Project Description

The Project consists of the construction of a 2.3 MGD oxidation ditch; construction of a new pump station at the existing treatment plant site to pump wastewater to the new facility; renovation of the Glendale station that currently pumps wastewater flow to the existing plant to increase reliability; renovation of 14 regulator/diversion manholes to reduce the inflow into the System; and upgrading the pump stations in the System as well as related construction activity.

Supplemental Resolution

Introduced in Council:

April 17, 1986

Adopted by Council:

April 17, 1986

Introduced by:

Councilwoman Margaret Hutton

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1986, AND SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, OF THE CITY OF ELKINS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Common Council of the City of Elkins, West Virginia (the "City") has duly and officially enacted an Ordinance on February 20, 1986, effective March 13, 1986 (the "Ordinance"), entitled:

An Ordinance authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage facilities of the City of Elkins; authorizing the issuance of not more than \$1,200,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1986, and not more than \$600,000 in aggregate principal amount of Supplemental Subordinate Sewer Revenue Bonds, Series 1986, of said City of Elkins to be used, along with other funds and moneys of, or available to, the City of Elkins which may be lawfully expended for such purposes, to finance the cost of such acquisition and construction and if determined by supplemental resolution, to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than \$5,000,000 in aggregate principal amount of City of Elkins

Sewerage System Grant Anticipation Notes, Series 1986; authorizing an irrevocable line of credit in an amount not to exceed \$1,000,000 to provide funds for such acquisition and construction to the extent grant proceeds or other funds are not available therefor, and authorizing an agreement with respect to said line of credit; providing for the rights and remedies of and security for the owners of such bonds; and adopting other provisions related thereto.

WHEREAS, the Ordinance provides for the issuance of Sewer Revenue Bonds, Series 1986 (the "Primary Bonds"), and the Supplemental Subordinate Sewer Revenue Bonds, Series 1986 (the "Supplemental Bonds") (collectively herein the "Bonds") of the City of Elkins (the "City") in aggregate principal amounts not to exceed \$1,200,000 and \$600,000 respectively, all in accordance with Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended, (the "Act"), and the terms of the Loan Agreement and Supplemental Loan Agreement (the "Loan Agreement") entered into between the City and the West Virginia Water Development Authority (the "Authority"), and in the Ordinance it is provided that the dates, interest rates, maturities, sale prices and other terms of the Bonds should be established by a supplemental resolution and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Council of the City of Elkins (the "Council") deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices,

the maturity dates, the redemption provisions, the interest rates, and the interest and principal dates of the Bonds be fixed hereby in the manner stated herein; and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKINS:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 1986, in the aggregate principal amount of \$1,037,970 (the "Primary Bonds"), and the Supplemental Subordinate Sewer Revenue Bonds, Series 1986 (the "Supplemental Bonds") in the aggregate principal amount of \$517,001, all in the form set forth below and in the Ordinance:

(A) The Primary Bonds of the City shall be originally issued in the form of a single Bond, numbered R-1, in the principal amount of \$1,037,970. The Primary Bonds shall be dated the date of delivery thereof, shall bear interest at the rate of 9.75% per annum, payable semiannually on April 1 and October 1 of each year, first interest payable October 1, 1986, shall be subject to redemption upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and subject to the other requirements provided in the Loan Agreement, as long as the Authority shall be the registered owner of the Primary Bonds, and shall be payable in installments of principal on October 1

of each of the years from 1986 through 2025, inclusive, and in the amounts as set forth in "Schedule X," attached to the Loan Agreement and incorporated therein by reference.

(B) The Supplemental Bonds of the City shall be originally issued in the form of a single Bond, numbered SR-1, in the principal amount of \$517,001. The Supplemental Bonds shall be dated the date of delivery thereof, shall be interest free, shall be subject to redemption upon the written consent of the Authority as long as the Authority shall be the registered owner of the Supplemental Bonds, and shall be payable in installments of principal on October 1 of each of the years from 1986 through 2025, inclusive, and in the amounts as set forth in "Schedule X," attached to the Loan Agreement and incorporated therein by reference.

Section 2. All other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the City. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The City does hereby ratify, approve and accept the Loan Agreement and the Supplemental Loan Agreement, including the "Schedule X" attached to each, copies of which are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement and the Supplemental Loan Agreement, and the performance of the

obligations contained therein, on behalf of the City have been and are hereby authorized, approved and directed. The price of the Bonds shall be 100% of par value.

Section 4. The City hereby appoints and designates Citizens National Bank of Elkins, Elkins, West Virginia, as the Depository Bank, as provided in the Ordinance.

Section 5. The City hereby appoints and designates Kanawha Valley Bank, N.A., Charleston, West Virginia, as Registrar and Paying Agent for the Bonds and reserves the right to appoint such other bank or other entity or entities as the City may approve by supplemental resolution with the approval of the Authority and notice to said Kanawha Valley Bank, N.A.

Section 6. The City hereby authorizes and directs the Mayor and Clerk to enter into a line of credit agreement not to exceed \$1,000,000 with a banking corporation or association and to take any and all action necessary to insure that funds are available to make payments pending the EPA grant revenues.

Section 7. The City hereby directs that no proceeds of the Bonds be placed in the Reserve Accounts created under the Ordinance and directs that the Reserve Accounts be funded from net revenues as provided in the Ordinance.

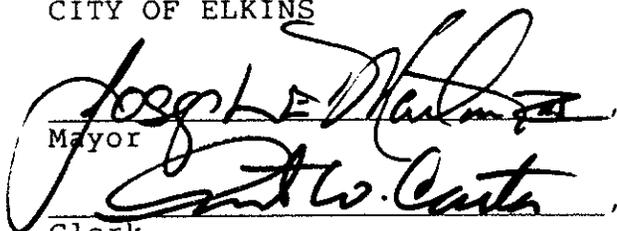
Section 8. The Mayor and Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Bonds hereby and by the Ordinance approved and provided for, to the end that the Bonds

may be delivered on or about April 28, 1986, to the Authority pursuant to the Loan Agreement and the Supplemental Loan Agreement.

Section 9. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 10. This Supplemental Resolution shall be effective immediately upon adoption.

CITY OF ELKINS


Mayor


Clerk

[SEAL]



STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY

1201 DUNBAR AVENUE
DUNBAR, WV 25064

Telephone (304) 558-3612
Telecopier (304) 558-0299

August 22, 1996

The City of Elkins
Sewer Revenue Bonds, Series 1996 A
West Virginia SRF Program

TO WHOM IT MAY CONCERN:

The undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the entire outstanding aggregate principal amount of the Series 1986 Primary Bond and the Series 1986 Supplemental Bond, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program) (the "Bonds"), in the original aggregate principal amount of \$300,000, by the City of Elkins (the "Issuer"), under the terms of the ordinance authorizing the Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding Sewer Revenue Bonds, Series 1986 (the "Series 1986 Primary Bond"), and senior and prior, with respect to liens, pledge and source of and security for payment, to the Issuer's outstanding Supplemental Subordinate Sewer Revenue Bond, Series 1986 (the "Series 1986 Supplemental Bond").

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: *Daniel B. Hanko*
Its Director



RECEIVED MAR 15 1994

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1201 Greenbrier Street
Charleston, WV 25311-1088

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

March 10, 1994

Honorable Jimmy D. Hammond
Mayor, City of Elkins
401 Davis Street
Elkins, WV 26241

CERTIFIED RETURN RECEIPT REQUESTED

Dear Mayor Hammond:

Enclosed find WV/NPDES Water Pollution Control Permit No. WV0020028, dated the 7th day of March 1994, for the City of Elkins, West Virginia.

All facilities permitted to discharge pollutants to the waters of the State under Chapter 20, Article 5A of the West Virginia Code are required to test their effluent in order to verify permit compliance. ~~This testing is the responsibility of the permittee and these test results are to be submitted to the office on the Discharge Monitoring Reports (DMRs) which are attached to the back of this permit. A (DMR) is to be completed and received by this office each month no later than 20 days following the end of the reporting period.~~ The address to which DMRs are to be sent is noted in Section E.2, Attention: Municipal Branch. It is suggested that several copies of the enclosed DMR forms be made for your future use, as this office does not supply permittees with DMR forms.

Please note the attachment to this permit which describes the annual permit fee requirement.

Please also note Requirement No. 7 on page 20 prohibiting the acceptance of new nondomestic wastewater discharges without prior Office approval.

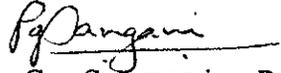
This permit has been revised to incorporate materials relative to Outlet No. 020 as requested by correspondence, dated the 10th day of February 1994.

Honorable Jimmy D. Hammond
Page 2
March 10, 1994

If you have any questions, please contact John Morgan of
this office at (304) 558-4086 or TDD No. (304) 558-2751.

Very truly yours,

OFFICE OF WATER RESOURCES



Pravin G. Sangani, P. E.
Municipal Branch Leader

PGS:mll

Enclosure



RD 1A-82
Revised 3/93

STATE OF WEST VIRGINIA
DEPARTMENT OF COMMERCE, LABOR, AND ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES
1201 GREENBRIER STREET
CHARLESTON, WV 25311

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

WATER POLLUTION CONTROL PERMIT

Permit No. WV0020028

Issue Date: March 7, 1994

Subject: Sewage Facilities

Effective Date: April 7, 1994

Expiration Date: March 6, 1999

Supersedes: WV/NPDES Permit No.
WV0020028; Issue Date December 8, 1988

Location: Elkins Randolph Monongahela
(City) (County) (Drainage Basin)

Outlet Latitude: 38°55'12"N
Sites: Longitude: 79°51'52"W

To whom it may concern:

This is to certify that
City of Elkins
401 Davis Avenue
Elkins, WV 26241

is hereby granted a NPDES Water Pollution Control Permit to operate and maintain an existing wastewater collection system and an existing 2.49 MGD oxidation ditch wastewater treatment plant which are further described as follows.

A wastewater collection system comprised of approximately 200 linear feet of four(4) inch diameter gravity sewer line, 18,400 linear feet of six(6) inch diameter gravity sewer line, 67,000 linear feet of eight(8) inch diameter gravity sewer line, 40,600 linear feet of 10 inch diameter gravity sewer line, 29,700 linear feet of 12 inch diameter gravity sewer line, 10,100 linear feet of 15 inch diameter gravity sewer line, 10,400 linear feet of 18 inch diameter gravity sewer line, 3,400 linear feet of 21 inch diameter gravity sewer line, 6,600 linear feet of 24 inch diameter gravity sewer line, 650 linear feet of 27 inch diameter gravity sewer line, 2,300 linear feet of 30 inch diameter gravity sewer line, 350 linear feet of 36 inch diameter gravity sewer line, 400 linear feet of 48 inch diameter gravity sewer line, 450 manholes, 11 lift stations, 70 linear feet of four(4) inch diameter force main, 7,000 linear feet of six(6) inch diameter force main, 2,700 linear feet of eight(8) inch diameter force main, 4,500 linear feet of 10 inch diameter force main, 400 linear feet of 12 inch diameter force main, 2,800 linear feet of 18 inch diameter force main and all requisite appurtenances.

(Continued on Page 2)

wastewater treatment plant comprised of grit removal facilities, a comminutor, a mechanical bar screen, an oxidation ditch with a volume of 1,925,000 gallons and equipped with six(6) rotors, two(2) clarifiers with a volume of 241,000 gallons each and a surface area of 5,600 square feet each, ultraviolet disinfection facilities, a post aeration unit with a volume of 44,600 gallons, a sludge decant tank with a volume of 115,000 gallons, two(2) sludge dewatering belt presses and all requisite appurtenances.

To acquire, construct, install, operate and maintain a post lime sludge stabilization unit to be comprised of a lime silo with a volume of 2,000 cubic feet, mechanical mixing unit and all requisite appurtenances to become an integral part of the existing sludge handling facilities.

These facilities are to serve a population equivalent of approximately 16,151 persons in the City of Elkins, Leadsville Public Service District and Midland Public Service District and discharge treated wastewater to the Tygart Valley River, approximately 66.5 miles from its mouth, of the Monongahela River.

This permit is subject to the following terms and conditions:

The information submitted on and with Permit Application No. WV0020028, dated the 2nd day of June 1993, and additional information, received the 24th day of November 1993, are all hereby made terms and conditions of this Permit with like effect as if all such Permit application information was set forth herein, and with other conditions set forth in Sections A, B, C, D, E, F and G.

THE POST LIME SLUDGE STABILIZATION FACILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH:

Plans, Specifications and Reports:

Date Received: June 10, 1993

Prepared by: City of Elkins
401 Davis Avenue
Elkins, WV 26241

Title: City of Elkins
Randolph County, West Virginia
Proposed Post Lime Treatment Unit

A.1. D. CHARGE LIMITATIONS AND MONITORING REQUIREMENTS

a) summer Limitations during the period of May 1 through October 31

During the period beginning April 7, 1994 and lasting through midnight, March 6, 1999 the permittee is authorized to discharge from outlet number(s) 001-Discharge from the sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>			
	<u>(Quantity) lbs/day</u>	<u>Other Units(Specify)</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>		
	<u>Avg. Monthly</u>	<u>Max. Daily</u>	<u>Avg. Monthly</u>	<u>Max. Daily</u>		
Flow		2.49 MGD		Continuous	Measured	
Biochemical Oxygen Demand (5 Day)	311.5	623.0	15.0 mg/l	30.0 mg/l	1/Week	8 Hr. Composite
Total Suspended Solids	623.0	1,246	30.0 mg/l	60.0 mg/l	1/Week	8 Hr. Composite
Ammonia Nitrogen	20.8	41.5	1.0 mg/l	2.0 mg/l	1/Week	8 Hr. Composite
Fecal Coliform			200 $\frac{\text{counts}}{100 \text{ ml}}$	400 $\frac{\text{counts}}{100 \text{ ml}}$	1/Week	Grab
Dissolved Oxygen	Not less than 6.0 mg/l at any given time				1/Week	Grab
Cadmium, Total				0.0011 mg/l	1/Month	8 Hr. Composite
Chromium, Hexavalent				0.0100 mg/l	1/Month	8 Hr. Composite
Copper, Total				0.0110 mg/l	1/Month	8 Hr. Composite
Lead, Total				0.0032 mg/l	1/Month	8 Hr. Composite
Nickel, Total				0.1577 mg/l	1/Month	8 Hr. Composite

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(Continued from page 3 of 23)

A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

a) Summer Limitations during the period of May 1 through October 31

During the period beginning April 7, 1994 and lasting through midnight, March 6, 1999 the permittee is authorized to discharge from outlet number(s) 001-Discharge from the sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	<u>Avg. Monthly</u>	<u>(Quantity)lbs/day</u> <u>Max. Daily</u>	<u>Other Units(Specify)</u> <u>Max. Daily</u>	<u>Measurement Frequency</u> <u>Sample Type</u>
Silver, Total			0.0040 mg/l	1/Month 8 Hr. Composite
Zinc, Total			0.0500 mg/l	1/Month 8 Hr. Composite
Mercury, Total			0.0002 mg/l	1/Month 8 Hr. Composite

The pH shall not be less than 6.0 standard units and not greater than 9.0 standard units and shall be monitored weekly by grab sampling.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent BOD₅ samples shall be collected at a location immediately preceding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 20, Article 5A.

A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

a. Summer Limitations during the period of May 1 through October 31

During the period beginning April 7, 1994 and lasting through midnight, March 6, 1995 the permittee is authorized to discharge from outlet number(s) .001-Discharge from sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations		Monitoring Requirements			
	Avg. Monthly	(Quantity) lbs/day Max. Daily	Other Units (Specify) Avg. Monthly	Max. Daily	Measurement Frequency	Sample Type
Acute Toxicity, Pimephales Promelas, 48 Hour Static			1.0 TU _A		1/Quarter	8 Hour Composite
Acute Toxicity, Daphnia Magna or Pulex, 48 Hour Static			1.0 TU _A		1/Quarter	8 Hour Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent acute toxicity samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 20, Article 5A.

A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

a, Summer Limitations during the period of May 1 through October 31

During the period beginning March 7, 1995 and lasting through midnight, March 6, 1999 the permittee is authorized to discharge from outlet number(s) 001-Discharge from sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>		
	<u>Avg. Monthly</u>	<u>(Quantity) lbs/day</u> <u>Max. Daily</u>	<u>Other Units(Specify)</u> <u>Avg. Monthly</u>	<u>Max. Daily</u> <u>Measurement Frequency</u>	<u>Sample Type</u>
Chronic Toxicity, Pimephales Promelas, 7 Day Larval Growth and Survival			1.41 TU _c	Semiannual	8 Hour Composite
Chronic Toxicity, Ceriodaphnia, Survival and Reproduction			1.41 TU _c	Semiannual	8 Hour Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent chronic toxicity samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 20, Article 5A.

A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

b. Winter Limitations during the period of November 1 through April 30

During the period beginning April 7, 1994 and lasting through midnight, March 6, 1999 the permittee is authorized to discharge from outlet number(s) 001-Discharge from sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations		Monitoring Requirements			
	Avg. Monthly	(Quantity) lbs/day Max. Daily	Other Units (Specify) Avg. Monthly	Max. Daily	Measurement Frequency	Sample Type
Flow			2.49 MGD		Continuous	Measured
Biochemical Oxygen Demand (5 Day)	623.0	1,246	30.0 mg/l	60.0 mg/l	1/Week	8 Hr. Composite
Total Suspended Solids	623.0	1,246	30.0 mg/l	60.0 mg/l	1/Week	8 Hr. Composite
Ammonia Nitrogen	41.5	83.1	2.0 mg/l	4.0 mg/l	1/Week	8 Hr. Composite
Fecal Coliform			200 counts 100 ml	400 counts 100 ml	1/Week	Grab
Dissolved Oxygen	Not less than 6.0 mg/l at any given time					
Cadmium, Total					1/Week	Grab
Chromium, Hexavalent				0.0011 mg/l	1/Week	8 Hr. Composite
Copper, Total				0.0100 mg/l	1/Week	8 Hr. Composite
Lead, Total				0.0110 mg/l	1/Week	8 Hr. Composite
Nickel, Total				0.0032 mg/l	1/Week	8 Hr. Composite
				0.1577 mg/l	1/Week	8 Hr. Composite

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(Continued from page 7 of 23)

A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

b) Winter Limitations during the period of November 1 through April 30

During the period beginning April 7, 1994 and lasting through midnight, March 6, 1999 the permittee is authorized to discharge from outlet number(s) 001-Discharge from sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	<u>Avg. Monthly</u>	<u>(Quantity) lbs/day</u> <u>Max. Daily</u>	<u>Other Units(Specify)</u> <u>Max. Daily</u>	<u>Measurement Frequency</u> <u>Sample Type</u>
Silver, Total			0.0040 mg/l	1/Month 8 Hr. Composite
Zinc, Total			0.0500 mg/l	1/Month 8 Hr. Composite
Mercury, Total			0.0002 mg/l	1/Month 8 Hr. Composite

The pH shall not be less than 6.0 standard units and not greater than 9.0 standard units and shall be monitored weekly by grab sampling.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent BOD₅ samples shall be collected at a location immediately preceding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 20, Article 5A.

A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

b Winter Limitations during the period of November 1 through April 30

During the period beginning April 7, 1994 and lasting through midnight, March 6, 1995 the permittee is authorized to discharge from outlet number(s) 004-Discharge from sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>		
	<u>Avg. Monthly</u>	<u>(Quantity) lbs/day</u> <u>Max. Daily</u>	<u>Other Units (Specify)</u> <u>Avg. Monthly</u>	<u>Max. Daily</u> <u>Measurement Frequency</u>	<u>Sample Type</u>
Acute Toxicity, Pimephales Promelas, 48 Hour Static			1.0 TU _A	1/Quarter	8 Hour Composite
Acute Toxicity, Daphnia Magna or Pulex, 48 Hour Static			1.0 TU _A	1/Quarter	8 Hour Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent acute toxicity samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 20, Article 5A.

A.1. D. CHARGE LIMITATIONS AND MONITORING REQUIREMENTS

b) Winter Limitations during the period of November 1 through April 30

During the period beginning March 7, 1995 and lasting through midnight, March 6, 1999 the permittee is authorized to discharge from outlet number(s) 001-Discharge from sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>		
	<u>Avg. Monthly</u>	<u>(Quantity) lbs/day</u> <u>Max. Daily</u>	<u>Other Units (Specify)</u> <u>Max. Daily</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Chronic Toxicity, Pimephales Promelas, 7 Day Larval Growth and Survival			1.41 TU _c	Semiannual	8 Hour Composite
Chronic Toxicity, Ceriodaphnia, Survival and Reproduction			1.41 TU _c	Semiannual	8 Hour Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent chronic toxicity samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 20, Article 5A.

A.2. SEWER SYSTEM OVERFLOWS

a) Outlet Numbers 002 through 020, listed below, serve as combined sewer relief points. Combined Sewer Overflows (CSOs) are allowed only when flows in combined sewers exceed conveyance capacities during wet weather periods. CSOs are point source discharges which must be provided technology based control measures in accordance with the Clean Water Act. Additional control measures may also have to be provided if determined necessary to comply with water quality standards. At a minimum, technology-based control measures must include best management practices or other noncapital intensive measures to minimize discharges and water quality impacts.

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
002	Barron Avenue and 11th Street Lift Station No. 1 Latitude 38°55'00"N Longitude 79°50'46"W	Tygart Valley River (Mile Point 65.7)
003	Buffalo Creek Entry Latitude 38°56'04"N Longitude 79°50'29"W	Tygart Valley River (Mile Point 65.8)
004	Henry Avenue, North of Tygart Valley River Latitude 38°55'23"N Longitude 79°50'49"W	Tygart Valley River (Mile Point 65.9)
005	Kerens Avenue and Alley, North of Tygart Valley River Latitude 38°55'25"N Longitude 79°50'54"W	Tygart Valley River (Mile Point 66.0)
006	Davis Avenue, North of Tygart Valley River Latitude 38°55'25"N Longitude 79°50'59"W	Tygart Valley River (Mile Point 66.1)
007	Railroad Avenue and 1st Street Latitude 38°55'28"N Longitude 79°51'06"W	Tygart Valley River (Mile Point 66.2)
008	Worth Avenue Lift Station No. 3 Latitude 38°55'32"N Longitude 79°51'28"W	Tygart Valley River (Mile Point 66.3)

A.2. SEWER SYSTEM OVERFLOWS (Continued)

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
009	Lower Pleasant Avenue Latitude 38°56'38"N Longitude 79°51'36"W	Cravens Run
010	Wilson Lane for Stabilization Ponds Latitude 38°55'58"N Longitude 79°52'27"W	Tygart Valley River (Mile Point 67.0)
011	Mountain View Drive for Lift Station No. 6 Latitude 38°55'35"N Longitude 79°52'20"W	Tygart Valley River (Mile Point 66.8)
012	Flood Control Road for Lift Station No. 11 Latitude 38°55'27"N Longitude 79°51'59"W	Tygart Valley River (Mile Point 66.7)
013	Scott Ford Road for Lift Station No. 7 Latitude 38°54'23"N Longitude 79°51'35"W	Tygart Valley River (Mile Point 65.3)
014	Whitman Avenue for Lift Station No. 8 Latitude 38°54'46"N Longitude 79°50'58"W	Tygart Valley River (Mile Point 65.6)
015	15th Street for Lift Station No. 9 Latitude 38°55'13"N Longitude 79°51'27"W	Tygart Valley River (Mile Point 66.4)
016	Railroad Avenue and 10th Street, South of Tygart Valley River Latitude 38°55'23"N Longitude 79°51'02"W	Tygart Valley River (Mile Point 66.2)
017	Davis Avenue, South of Tygart Valley River Latitude 38°55'22"N Longitude 79°50'57"W	Tygart Valley River (Mile Point 66.1)

A.2. SEWER SYSTEM OVERFLOWS (Continued)

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
018	Kerens Avenue, South of Tygart Valley River Latitude 38°55'22"N Longitude 79°50'52"W	Tygart Valley River (Mile Point 66.0)
019	Henry Avenue, South of Tygart Valley River Latitude 38°55'20"N Longitude 79°50'48"W	Tygart Valley River (Mile Point 65.9)
020	Lift Station No. 11 Latitude 38°55'27"N Longitude 79°51'59"W	Tygart Valley River (Mile Point 66.7)

- b) The permittee shall provide and implement a plan of action for minimization of discharges and evaluation of water quality impacts in accordance with the following schedule:

<u>DESCRIPTION OF ACTIVITY</u>	<u>DUE DATE</u>
Submit a final plan to State	November 15, 1993 - Document received November 15, 1993
Completion of planned minimization of discharges	May 15, 1995
Completion of planned evaluation of water quality impacts	May 15, 1996

- c) The plan of action should address, at a minimum, the following measures:

(1) Minimization of Discharges

- (A) Regular inspection and maintenance of the combined sewer system to ensure that:

- (1) Deposition of solids does not cause obstructions which result in overflows.
- (2) Dry weather discharges are not occurring.
- (3) Regulators are in good working order and adjusted to minimize overflows.

A.2. SEWER SYSTEM OVERFLOWS (Continued)

c)(1) Minimization of Discharges (Continued)

(B) Development of a high flow management plan which:

- (1) Maximizes the capacity of the combined sewer system for storage without causing backup or surcharge problems.
- (2) Enables a maximum amount of flow to be conveyed to the treatment plant without upsetting normal plant operations.

Measures to be evaluated should include raising overflow weir levels and possible utilization of primary settling facilities for treatment if sufficient excess capacity is available.

(C) Restrictions of infiltration and inflow into the sewer system where such flows contribute to increased frequencies and amounts of overflows.

(D) Modification of the sewer ordinance where necessary to ensure prohibition of:

- (1) Dry weather overflows.
- (2) Construction of new combined sewers.
- (3) Inflow sources into sanitary sewers tributary to the combined system.
- (4) Motor oil and excessive grease into the sewer system.

(E) Minimization of discharges of floating materials by:

- (1) Regular cleaning of streets and catch basins.
- (2) Installation of screens prior to all, or selected critical, CSO discharges.

d) Evaluation of Water Quality Impacts

- (1) Analysis of water quality upstream and downstream from CSO discharges to assess their impacts. Emphasis should be placed on critical periods, especially summer storm events following dry weather-low flow periods.
- (2) Monitoring of the rates and durations of representative discharges during varying rainfall conditions.
- (3) Analysis of the quality of representative discharges.

e) Reporting Requirements

The permittee shall submit written quarterly progress reports detailing actions taken to meet the above schedule.

B. SCHEDULE OF COMPLIANCE

1. The permittee shall achieve compliance with the provisions for waste treatment and the discharge limitations specified in this permit in accordance with the following schedule:

Effective date of Permit.

2. Reports of compliance or noncompliance with, and progress reports on the interim and final requirements contained in the above compliance schedule, shall be submitted no later than 14 days following each schedule date.

C. MANAGEMENT CONDITIONS

1. **Duty to Comply**
 - (a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.
 - (b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
2. **Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit at least 180 days prior to expiration of the permit.
3. **Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.
4. **Permit Actions**

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions.
5. **Property Rights**

This permit does not convey any property rights of any sort or any exclusive privilege.
6. **Signatory Requirements**

All applications, reports, or information submitted to the Chief shall be signed and certified as required in Title 46, Series 2, Section 4.6 of the West Virginia Legislative Rules of the State Water Resources Board.
7. **Transfers**

This permit is not transferable to any person, except after notice to the Chief. The Chief may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.
8. **Duty to Provide Information**

The permittee shall furnish to the Chief, within a reasonable specified time, any information which the Chief may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Chief, upon request, copies of records required to be kept by this permit.
9. **Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Chief, it shall promptly submit such facts or information.
10. **Inspection and Entry**

The permittee shall allow the Chief, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

 - a) Enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
 - b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
 - c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - d) Samples or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any locations.
11. **Permit Modification**

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 20-5A-8 of the Code of West Virginia.
12. **Water Quality**

The effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the State Water Resources Board.
13. **Outlet Markers**

A permanent marker at the establishment shall be posted in accordance with Title 46, Series 3, Section 9 of the West Virginia Legislative Rules promulgated pursuant to Chapter 20, Article 5A.
14. **Liabilities**
 - a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
 - b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
 - c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
 - d) Nothing in C.14.a), b) and c) shall be construed to limit or prohibit any other authority the Chief may have under the State Water Pollution Control Act, Chapter 20, Article 5A.

D. OPERATION AND MAINTENANCE

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by the WV Bureau of Public Health Regulations authorized under Chapter 16, Article 1, Public Health Laws, Code of West Virginia, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Chief may require a more highly skilled operator.

2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass

a) Definitions

- (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of D.3.c) and D.3.d) of this permit.

- c) (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;
- (2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in F.2.b) of this permit.

d) Prohibition of bypass

- (1) Bypass is permitted only under the following conditions, and the Chief may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (C) The permittee submitted notices as required under D.3.c) of this permit.
- (2) The Chief may approve an anticipated bypass, after considering its adverse effects, if the Chief determines that it will meet the three conditions listed in D.3.d)(1) of this permit.

4. Upset

- a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of D.4.c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in F.2.b) of this permit.
 - (4) The permittee complied with any remedial measures required under C.3. of this permit.
- d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Chief, any solids, sludges, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and a site subject to the approval by the Chief. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Chief in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

E. MONITORING AND REPORTING

1. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Reporting

- a) Permittee shall submit each month, quarter and semiannually according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A analytically determined to be in the plant effluent(s).
- b) The required DMRs should be received no later than 20 days following the end of the reporting period and be addressed to:

Chief

Office of Water Resources

1201 Greenbrier Street

Charleston, WV 25311-1088

Attention: Municipal Branch

Regional Administrator

U. S. Environmental Protection Agency

Region III

841 Chestnut Building

Philadelphia, PA 19107

- c) Enter reported average and maximum values under "Quantity" and "Concentration" in the units specified for each parameter, as appropriate.
- d) Specify the number of analyzed samples that exceed the allowable permit conditions in the columns labeled "N.E." (i.e., number exceeding).
- e) Specify frequency of analysis for each parameter as no. analyses/specified period (e.g. "3/month" is equivalent to 3 analyses performed every calendar month.) if continuous, enter "Cont.". The frequency listed on format is the minimum required.

3. Test Procedures

Samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136, unless other test procedures have been specified elsewhere in this permit.

4. Recording of Results

For each measurement or sample taken pursuant to the permit, the permittee shall record the following information.

- a) The date, exact place, and time of sampling or measurement;
- b) The date(s) analyses were performed;
- c) The individual(s) who performed the sampling or measurement;
- d) The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;
- e) The analytical techniques or methods used, and
- f) The results of such analyses.

Information not required by the DMR form is not to be submitted to this agency, but is to be retained as required in E.6.

5. Additional Monitoring by Permittee

If the permittee monitors any pollutant at any monitoring point specified in this permit more frequently than required by this permit, using approved test procedures or others as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

6. Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three(3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Chief at any time.

7. Definitions

- a) "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
- b) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- c) "Maximum daily discharge limitation" means the highest allowable daily discharge.
- d) "Composite Sample" is a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two hours.
- e) "Grab Sample" is an individual sample collected in less than 15 minutes.
- f) "i-s" -immersion stabilization - a calibrated device is immersed in the effluent stream until the reading is stabilized.
- g) The "daily average temperature" means the arithmetic average of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.
- h) The "daily maximum temperature" means the highest arithmetic average of the temperatures observed for any two(2) consecutive hours during a 24-hour day, or during the operating day if flows are of shorter duration.
- i) The "daily average fecal coliform" bacteria is the geometric average of all samples collected during the month.
- j) "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
- k) "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to pump capabilities, water meters and batch discharge volumes.
- l) "Noncontact cooling water" means the water that is contained in a leak-free system, i.e. no contact with any gas, liquid, or solid other than the container for transport; the water shall have no net poundage addition of any pollutant over intake water levels, exclusive of approved anti-fouling agents.

F. OTHER REPORTING

1. Reporting Spills and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee for any responsibilities, liabilities, or penalties established pursuant to Title 46, Series 3, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 20, Article 5A.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 46, Series 3, Section 2 of the rules as they pertain to the reporting of spills and accidental discharges.

2. Immediate Reporting

- a) The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five(5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- b) The following shall also be reported immediately:
 - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
 - (2) Any upset which exceeds any effluent limitation in the permit; and
 - (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Chief in the permit to be reported immediately. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- c) The Chief may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d) Compliance with the requirements of F.2. of this section, shall not relieve a person of compliance with Title 46, Series 3, Section 2 of the Board's rules.

3. Reporting Requirements

- a) Planned changes. The permittee shall give notice to the Chief of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 2, Title 46 of the Board's rules; or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. The notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under F.2. of this section.
- b) Anticipated noncompliance. The permittee shall give advance notice to the Chief of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c) In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Chief in writing as soon as they know or have reason to believe:
 - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (A) One hundred micrograms per liter (100 ug/l);
 - (B) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitro phenol; and for 2-methyl 4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (C) Five(5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.9 of Series 2, Title 46 of the Board's rules;
 - (D) The level established by the Chief in accordance with Section 6.3.g. of Series 2, Title 46 of the Board's rules;
 - (2) That any activity has occurred or will occur which would result in any discharge (on a non-routine or infrequent basis) of a toxic which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (A) Five hundred micrograms per liter (500 ug/l);
 - (B) One milligram per liter (1 mg/l) for antimony;
 - (C) Ten(10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.7. of Series 2, Title 46 of the Board's rules;
 - (3) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 2, Title 46 of the Board's rules and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.
 - (4) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 2, Title 46 of the Board's rules and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in F.2.a).

5. Additional Noncompliance Reporting Requirement

For any noncompliance reports required to be submitted in writing by this Office, a copy shall also be forwarded to the U. S. Environmental Protection Agency at the location specified in E.2.b).

G. OTHER REQUIREMENTS

1. The herein described treatment works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected 100 year flood level and operability be maintained during the 25 year flood level.
2. The entire sewage treatment facility shall be adequately protected by fencing.
3. Continuous maintenance and operation of the listed sewage treatment facility shall be performed by or supervised by a certified operator possessing at least a class III certificate for Waste Water Treatment Works Operators, issued by the State of West Virginia.
4. An instantaneous flow from the sewage disposal system shall not exceed the peak design flow at any given time.
5. The arithmetic mean of values for effluent samples collected in a period of seven(7) consecutive days shall not exceed 22.5 mg/l for BOD₅, 45.0 mg/l for TSS and 1.5 mg/l for NH₃-N during the period of May 1 through October 31, and 45.0 mg/l for BOD₅ and TSS and 3.0 mg/l for NH₃-N during the period of November 1 through April 30.
6. The arithmetic mean of the effluent values of the BOD₅, winter limitation, and TSS discharged during a period of 30 consecutive days shall not exceed 15 percent of the respective arithmetic mean of the influent values for these parameters during the same time period except as specifically authorized by the permitting authority.
7. The permittee shall not accept any new nondomestic discharges without first obtaining approval from the Chief of the Office of Water Resources as provided in Series 2, Section 14, Title 46 of the Legislative Rules of the State Water Resources Board.
8. If any existing nondomestic discharge causes, or is suspected of causing, interference or pass through (as defined by 40 CFR 403.3) or otherwise violates any provision of 40 CFR 403, the permittee shall notify the Chief of such violation or suspected violation.
9. If any existing nondomestic discharge is identified as being subject to a Categorical Pretreatment Standard under 40 CFR Chapter 1, Subchapter N, and the discharge is not regulated by this permit, the permittee shall notify the Chief of such identification.
10. By facility registration form submitted for landfill and land application, dated the 28th day of September 1987, and subsequent Office approvals, dated the 30th day of September 1987, for landfill and, dated the 1st day of October 1987, for land application, the permittee had fulfilled the requirements of Section D.5, Removed Substances, on page 17 of 23 of this Permit, with respect to the sludge generated by the wastewater treatment facilities permitted herein. The approvals are now subject to revision resultant to the authorization being afforded in Section G.11.

G. OTHER REQUIREMENTS (Continued)

11. The permittee may accept waste sludge generated by the Town of Beverly's wastewater treatment plant and the Town of Belington's wastewater treatment plant into the permittee's sludge decant tank for subsequent dewatering and disposal. The permittee shall, immediately, upon the acceptance of the waste sludges from Beverly and Belington, proceed to obtain the required amendments to the permittee's approved Sludge Management Program. Whereupon approval of the revisions is granted, compliance with the terms and conditions of the approved Sludge Management Program shall become incorporated herewith. Consequently, the permittee's abidance to said Program shall serve to fulfill the requirements of Section D.5, Removed Substances, on page 17 of 23 of this Permit, with respect to the sludge generated and processed by the wastewater treatment facilities permitted herein.
12. The authorizations granted in Section G.10 and Section G.11 are provisional and subject to change resultant to 40 CFR Part 503 and are conditional upon the promulgation and implementation of State sludge regulations.
13. The permittee shall implement a program to identify and eliminate sources of infiltration and inflow. A written report shall be provided on a quarterly basis, as an attachment to the Discharge Monitoring Report, detailing what has been performed in relation to the implementation and accomplishments of the infiltration and inflow elimination program. Failure of the permittee to comply with this requirement shall result in subsequent administrative and/or legal action, as may be necessary, in order to obtain the compliance sought herein.
14. The permittee shall perform whole effluent toxicity testing in accordance with the following.
 - a) The whole effluent toxicity testing prescribed herein shall begin with the performance of quarterly (4/year) 48 hour static acute toxicity tests for a period of one(1) year. Thereafter, the permittee shall perform semiannual (2/year) seven(7) day chronic toxicity testing. The testing requirements are further enumerated as follows.
 - (1) The 48 hour static acute toxicity testing shall be performed on a quarterly (4/year) basis during the period beginning on the effective date of the Permit and ending on one(1) year from the issuance date of the the Permit. An eight(8) hour composite sample of the effluent shall be utilized for testing. The tests shall be conducted using pimephales promelas (fathead minnow) and daphnia magna or daphnia pulex as the test species.
 - (2) The seven(7) day chronic toxicity testing shall be performed on a seminannual (2/year) basis during the period beginning one(1) year from the issuance date of the Permit and ending on the expiration date of the Permit. An eight(8) hour composite sample of the effluent shall be utilized for testing. The tests shall be a seven(7) day pimephales promelas (fathead minnow) larval survival and growth test and a seven(7) day ceriodaphnia survival and reproduction test.

G. OTHER REQUIREMENTS (Continued)

- b) The acute toxicity testing required herein shall be conducted in accordance with the procedures set out in the latest revision of Environmental Protection Agency Publication No. 600/4-85-013, "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms." Test results shall be reported on the attached Discharge Monitoring Reports and copies of all test results provided as an attachment thereto.
- c) The chronic toxicity testing required herein shall be conducted in accordance with the procedures set out in the latest revision of Environmental Protection Agency Publication No. 600/4-89-001, "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms." Test results shall be reported on the attached Discharge Monitoring Reports and copies of all test results provided as an attachment thereto. The permittee shall utilize the no observed effects concentration data results for growth, for the pimephales promelas, and for reproduction, for the ceriodaphnia, when calculating the chronic toxicity units to be reported.
- d) If whole effluent toxicity testing shows noncompliance with the specified limitations prescribed in Section A.1, the permittee shall immediately resample and test the effluent. This shall be performed within 30 days of the initial demonstration of noncompliance with the whole effluent toxicity discharge limitations prescribed herein. Copies of the retesting results shall be provided to this Office immediately upon completion of the test.
- e) If the second test shows compliance, whole effluent toxicity testing shall continue in accordance with the requirements as prescribed herein. However, if the second test shows noncompliance, this Office shall impose further requirements, as may be necessary, in order to obtain compliance with the whole effluent toxicity discharge limitations.
- f) This Office shall impose further requirements should the whole effluent toxicity testing results demonstrate an irregular pattern of noncompliance.
- g) The permittee will be afforded an opportunity to request the following reductions in the chronic whole effluent toxicity testing program. However, consideration shall only be given to such requests after four(4) consecutive tests have demonstrated compliance with the whole effluent toxicity discharge limitations.
 - (1) Reduction in the monitoring frequency of the testing.
 - (2) Limiting the testing to the more sensitive test species, if such a sensitivity determination can be made.

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit; with the plans and specifications submitted with Permit Application No. WV0020028, dated the 2nd day of June, 1993; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the State Water Resources Board.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0020028, dated the 2nd day of June, 1993, and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and for the invocation of all the enforcement procedures set forth in Article 5A, Chapter 20 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Article 5A, Chapter 20 of the Code of West Virginia and is transferable under the terms of Section 7 of said article.

By: Maule A. Scott
Chief

MAS/jdm