CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

DATE OF CLOSING:

June 26, 2003

BOND TRANSCRIPT

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CITY OF FAIRMONT

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BOND TRANSCRIPT

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CITY OF FAIRMONT
SEWER REVENUE BONDS, SERIES 2003 A
(WEST VIRGINIA SRF PROGRAM)

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CITY OF FAIRMONT

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 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 BOND PURCHASE 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 FAIRMONT:

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") 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 Fairmont (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion 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 conventional gravity sewer collection system to serve approximately 111 residential and commercial customers in Meredith Springs/Dakota Camp area, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of 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"), which the Authority administers pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), in the total aggregate principal amount of not more than $600,000 (the "Series 2003 A Bonds"), initially to be represented by a single bond, to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 2003 A Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2003 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 hereafter 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 2003 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 2003 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 30 years.

F. It is in the best interests of the Issuer that its Series 2003 A Bonds be sold to the Authority pursuant to the terms and provisions of a bond purchase agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority, and the DEP (the "Bond Purchase Agreement"), to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will initially rank prior and senior to the Series 2003 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Prior Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. The Issuer will not issue any additional bonds until the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are on a parity with the Prior Bonds.

The Series 2003 A Bonds shall initially be subordinate and junior to the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinance, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

H. 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 costs of operation and maintenance of the System, the principal of and interest on the Bonds (as hereinafter defined) and to make all payments into all funds, accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the Bond Purchase Agreement relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2003 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and 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 2003 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 Governing Body to issue the Series 2003 A Bonds for the purposes set forth herein.

K. The Project has been reviewed and determined to be technically and financially feasible 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.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2003 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 2003 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, and 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 2003 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

"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.

"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 Purchase Agreement" means the Bond Purchase Agreement heretofore entered into, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2003 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.

"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 2003 A Bonds, the Prior Bonds 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.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2003 A Bonds for all or a portion of the proceeds of the Series 2003 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 Greenhorne & O'Mara, Inc., Fairmont, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; 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 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"DEP" means the West Virginia Department of Environmental Protection, 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.

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

"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.

"Grant" means any and all grants received by the Issuer for the payment of a portion of the costs of acquiring and constructing the Project.

"Gross Revenues" means 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, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"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

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, 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.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2003 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2003 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 2003 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 as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means 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, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein 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 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.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund created 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 and Prior Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond or Prior Bonds cancelled by the Bond Registrar or the registrar for Prior Bonds at or prior to said date; (ii) any Bond or Prior Bonds for the payment of which monies, 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 in accordance with the resolution authorizing the issuance thereof; 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 2003 A Bonds in the Supplemental Resolution, with the written consent of the Authority and the DEP.

"Prior Bonds" means the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320.

"Prior Ordinance" means collectively, the ordinance of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account.

"Project" means the Project as described in Section 1.02B hereof.

"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 Investment Management Board 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 excluded 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.

"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 thereto.

"Reserve Accounts" means, collectively, the respective Reserve Account established for the Series 2003 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2003 A Bonds.

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

"Series 2003 A Bonds" means Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"Series 2003 A Bonds Construction Trust Fund" means the Series 2003 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2003 A Bonds Reserve Account" means the Series 2003 A Bonds Reserve Account established in the Series 2003 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 2003 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 2003 A Bonds in the then current or any succeeding year.

"Series 2003 A Bonds Sinking Fund" means the Series 2003 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Fund established for the Prior Bonds and the Series 2003 A Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Bond Purchase 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 2003 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2003 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 Bonds or any other obligation of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and improvements thereto hereafter acquired or constructed for the 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 $1,474,475, 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 2003 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, in an amount and otherwise compatible with the financing plan submitted to the DEP.

The cost of the Project is estimated not to exceed $1,474,475, of which an amount not to exceed $600,000 will be obtained from proceeds of the Series 2003 A Bonds and $872,405 will be obtained from the proceeds of a Small Cities Block Grant.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF BOND PURCHASE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2003 A Bonds, funding a reserve account for the Series 2003 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance 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 the negotiable Series 2003 A Bonds of the Issuer. The Series 2003 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2003 A (West Virginia SRF Program)", in the principal amount of not more than $600,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2003 A Bonds remaining after funding of the Series 2003 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2003 A Bonds, if any, shall be deposited in or credited to the Series 2003 A Bonds 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 2003 A Bonds shall be issued in such principal amounts; 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 Bond Purchase Agreement. The Series 2003 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, if any, on the Series 2003 A Bonds 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 2003 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 2003 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2003 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. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2003 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 2003 A Bonds shall cease to be such officer of the Issuer before the Series 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 A Bonds.

The registered Series 2003 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 2003 A Bonds or transferring the registered Series 2003 A Bonds are exercised, all Series 2003 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2003 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 2003 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 2003 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2003 A Bonds or, in the case of any proposed redemption of Series 2003 A Bonds, next preceding the date of the selection of 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 Series 2003 A 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 2003 A Bonds shall not, in any event, be or constitute a corporate 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 2003 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2003 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2003 A Bonds shall be initially secured forthwith equally and ratably by a subordinate and junior lien on the Net Revenues derived from the operation of the System until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2003 A Bonds and the Prior 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 to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2003 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2003 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 2003 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 2003 A Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the Bond Purchase Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2003 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2003 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 BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWER REVENUE BOND, SERIES 2003 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion 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 _____ 1,200____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative fee (as defined in the hereinafter describe Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____, 200__, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. 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").

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 the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement (the "Bond Purchase Agreement") by and among the Issuer, the Authority and the DEP, dated _____, 200__.

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 fully fund the Series 2003 A Bonds Reserve Account]; and (iii) 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 (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2003, and a Supplemental Resolution duly adopted by the Issuer on _____, 2003 (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 INITIALLY ISSUED SUBORDINATE AND JUNIOR, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, DATED NOVEMBER 30, 1988, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,680,320 (THE "PRIOR BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2003 A BONDS WILL BE UPGRADED TO A FIRST LIEN POSITION ON A PARITY WITH 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, initially junior and subordinate to the pledge of Net Revenues in favor of the Holders of the Prior Bonds until upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2003 A Bonds Reserve Account"), 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 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, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2003 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, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or prior to the Bonds, including the Prior

Bonds; provided however, that so long as there exists in the Series 2003 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, 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 on a parity with or prior 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 (as defined in the Bond Legislation), 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 monies, 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 at the issuance of this Bond do exist, 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 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 FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated _____, 2003.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2003 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: _____, 2003.

HUNTINGTON NATIONAL BANK
as Registrar

_____
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

DEBT SERVICE SCHEDULE

(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 Bond Purchase Agreement. The Series 2003 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Bond Purchase Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Bond Purchase 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 Bond Purchase Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Bond Purchase Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Within 60 days following the Completion Date of the Project, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP, 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 with (or continued if previously established by the Prior Ordinance) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and 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) Depreciation Fund (established by the Prior Ordinance); and

(4) Series 2003 A Bonds Construction Trust Fund.

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

(1) Series 2003 A Bonds Sinking Fund; and

(2) Series 2003 A Bonds Reserve Account.

Section 5.03. 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 the Prior Ordinance and 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 this Bond Legislation and in the Prior Ordinance. All revenues at any time on deposit in the Revenue Fund shall be initially 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 remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay interest on the Prior Bonds.

(3) 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 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Prior Bonds.

(4) 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 1988 Bonds Reserve Account, the amount required by the Prior Ordinance.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinance and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation 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 Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2003 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 2003 A Bonds

Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, if not fully funded upon issuance of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2003 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2003 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 2003 A Bonds Reserve Requirement.

At such time as the Series 1988 Bonds Reserve Account has been fully funded, and the Series 2003 A Bonds hold a first lien position on a parity with the Prior Bonds, all revenues at any time on deposit in the Revenue Fund shall then 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 remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay interest on the Prior Bonds.

(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 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2003 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 2003 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 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 1988 Bonds Reserve Account, the amount required by the Prior Ordinance; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, if not fully funded upon issuance of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2003 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2003 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 2003 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinance and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation 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 Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

Monies in the Series 2003 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2003 A Bonds as the same shall become due. Monies in the Series 2003 A Bonds Reserve Account shall be used only

for the purposes of paying principal of and interest, if any, on the Series 2003 A Bonds as the same shall come due, when other monies in the Series 2003 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2003 A Bonds Sinking Fund and the Series 2003 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 Series 2003 A Bonds 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, if any, due on the Series 2003 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2003 A Bonds Reserve Account which result in a reduction in the balance of the Series 2003 A Bonds Reserve Account to below the Series 2003 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2003 A 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 respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2003 A Bonds Sinking Fund or into the Series 2003 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2003 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall initially be made, with respect to the Prior Bonds and thereafter, with respect to the Series 2003 A Bonds, until such time as the Series 2003 A Bonds are upgraded to a parity position with the Prior Bonds; at that time, all previously mentioned payments shall thereafter be made on a parity and pro rata basis with respect to the Prior Bonds and Series 2003 A Bonds.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account created hereunder, and all required amounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall

be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2003 A Bonds Sinking Fund, including the Series 2003 A Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2003 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer 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 Commission the required interest, if any, principal and reserve account payments with respect to the Series 2003 A 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. The Issuer 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 Commission, the SRF Administrative Fee as set forth in the Schedule Y attached to the Bond Purchase Agreement.

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

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

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. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority anytime make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts 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.

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 relevant provisions of the Prior Ordinance, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

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

J. All Tap Fees shall be deposited by the Issuer, as received, in the Series 2003 A Bonds Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2003 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2003 A Bonds, there shall first be deposited with the Commission in the Series 2003 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2003 A Bonds, there shall be deposited with the Commission in the Series 2003 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2003 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2003 A Bonds, such monies shall be deposited with the Depository Bank in the 2003 A Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2003 A Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2003 A Bonds shall be expended as directed by the DEP.

Section 6.02. Disbursements From the Series 2003 A Bonds 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 2003 A Bonds will be expended and the disbursement procedures of 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 Series 2003 A Bonds Construction Trust Fund shall be made only after submission to, and approved 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 Bond Purchase Agreement, in compliance with the construction schedule; and

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

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

(B) 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) Each of such costs has been otherwise properly incurred; and

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

Pending such application, monies in the Series 2003 A Bonds Construction Trust Fund 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 2003 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 2003 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 2003 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2003 A Bonds shall not be nor constitute a corporate 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 any Series 2003 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2003 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of all Series 2003 A Bonds shall be initially secured forthwith equally and ratably by a subordinate and junior lien on the Net Revenues derived from the operation of the System until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2003 A Bonds and the Prior 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 to such payments as the same become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Bond Purchase Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the sewer rate ordinance of the Issuer enacted November 13, 2002, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2003 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take

all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Bond Purchase Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2003 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement, the Issuer 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 and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

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. Additionally, so long as the Series 2003 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 fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2003 A Bonds, immediately be remitted to the Commission for deposit in the Series 2003 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 of and interest, if any, on the Series 2003 A Bonds. Any balance remaining after the payment of the Bonds and the interest , if any, 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, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution duly adopted, 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 Depreciation Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, in writing determine upon consultation with 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 in accordance with the laws

of the State. The proceeds of any such sale shall be remitted by the Issuer to the Commission for deposit in the Sinking Funds for prepayment of the Bonds. The payment of such proceeds into the Depreciation Fund and the Sinking Funds shall not reduce the amounts required to be paid into such 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, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, 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 of the 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. Until such time as the Series 1988 Bonds Reserve Account is fully funded and except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any 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 2003 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2003 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 2003 A 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 have been made and are current at the time of the issuance of such subordinate obligations.

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 2003 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2003 A Bonds and the interest, if any, 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. The Issuer hereby covenants that it will not issue any additional bonds until the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are on a

parity with the Prior Bonds. When the Series 2003 A Bonds are on a parity with the Prior Bonds, the Issuer further covenants that no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2003 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP under the conditions and in the manner 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 2003 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or improvements to the System or refunding the Series 2003 A Bonds issued pursuant hereto, or both such purposes.

So long as the Prior Bonds are outstanding, 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 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, from the System during the 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such additional 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 additional Parity Bonds, shall not be less than 125% of the average annual amount which will become due for principal of and interest on the following:

(1) The Prior Bonds;

(2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinance then Outstanding; and

(3) The additional Parity Bonds then proposed to be issued.

When the Prior Bonds are no longer outstanding and so long as the Series 2003 A Bonds are still outstanding, 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 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, if any, 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, if any, on the following:

(1) The Bonds then Outstanding;

(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 the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, 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 Independent Certified Public Accountants, as stated in a certificate, 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.

All 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 subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, 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 of one series over any other Bond of the same series. 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.

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 Series 2003 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part

thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2003 A Bonds.

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 with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 7.08. Books; Records and Audit. 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 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 Governing Body. 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 Authority and the DEP, or any other original purchaser of the Series 2003 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2003 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 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 in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, 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 2003 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2003 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 Bond Purchase Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Bond Purchase Agreement and the Act, the Issuer 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 by the Consulting Engineers. 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 Issuer.

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 Bond Purchase 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 and commencement of operation of the Project, the Issuer shall 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. Prior to the issuance of the Series 2003 A Bonds, 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 the 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. 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, to meet the coverage requirements set forth in the Prior Ordinance so long as the Prior Bonds are outstanding and thereafter (i) to provide for all Operating Expenses 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, if any, on the Series 2003 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 A Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2003 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2003 A 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, if any, on the Series 2003 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 A Bonds. In any event, 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 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 DEP and the Authority 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 a registered professional engineer, 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 a registered professional engineer 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 within 30 days of adoption to the Authority and the DEP and to any Holder of the 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 and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, the Authority and to any Holder of any Bonds, or anyone acting for and on behalf of such Holder of any Bonds.

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 Bond Purchase Agreement, and forward a copy of such report to the DEP and the Authority 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 Bond Purchase 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 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 engineer shall certify to the Authority and 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 Bond Purchase 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 shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Bond Purchase Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% 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 water facilities are not owned by the Issuer, the Issuer shall enter into a 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 2003 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 actual 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. The proceeds of all such insurance policies shall be placed in the Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation 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 Bond Purchase 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 $600,000 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 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 facilities of the System 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 verify such bonds prior to commencement of construction.

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 and the Issuer shall verify such insurance prior to commencement of construction. In the event the Bond Purchase 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 Department 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 Department 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 and Operation of Project; Permits and Orders. The Issuer shall 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 has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and has obtained all approvals for the issuance of the Series 2003 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Bond Purchase Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Bond Purchase Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, 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 2003 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 2003 A Bonds during the term thereof is, under the terms of the Series 2003 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) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2003 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 2003 A Bonds during the term thereof is, under the terms of the Series 2003 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 2003 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 2003 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 to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2003 A Bonds 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 2003 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 2003 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 2003 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 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2003 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2003 A Bonds held in "contingency" as set forth in the Schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2003 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investments. Any monies 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 need for such monies 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 monies 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 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 Series 2003 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 2003 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2003 A Bonds as a condition to issuance of the Series 2003 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2003 A Bonds as may be necessary in order to maintain the status of the Series 2003 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the

proceeds of the Series 2003 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the West Virginia Infrastructure and Jobs Development Council or the DEP, as the case may be, from which the proceeds of the Series 2003 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the West Virginia Infrastructure and Jobs Development Council or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2003 A Bonds and any additional information requested by the Authority.

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 2003 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2003 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 2003 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2003 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 2003 A Bonds shall initially be junior and subordinate to the Holders of the Prior Bonds until such time when the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are upgraded to a parity position with the Prior Bonds.

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 such 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 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

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2003 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 monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2003 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, if any, on the Series 2003 A Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2003 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2003 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 2003 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2003 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, if any, 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 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 2003 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 2003 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 2003 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 2003 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. Except for the 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 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 the public hearing and final reading hereof.

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 *Times West Virginian*, a newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2003 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:	-	April 22, 2003
Passed on Second Reading:	-	April 29, 2003
Passed on Final Reading Following Public Hearing:	-	May 13, 2003

Mayor

APPROVED AS TO FORM:

City Attorney

CH591994.1

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 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 the public hearing and final reading hereof.

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 *Times West Virginian*, a newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2003 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:	-	April 22, 2003
Passed on Second Reading:	-	April 29, 2003
Passed on Final Reading Following Public Hearing:	-	May 13, 2003

Mayor

APPROVED AS TO FORM:

City Attorney

CH591934.1

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on the 13th day of May, 2003.

Dated: June 26, 2003.

[SEAL]

Janet L. Keller

City Clerk

06/18/03
268460.00002

EXHIBIT A

Bond Purchase Agreement included in bond transcript as Document 3.

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE BOND PURCHASE 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 council (the "Governing Body") of the City of Fairmont (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective May 13, 2003 (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 FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 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 BOND PURCHASE 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 2003 A (West Virginia SRF Program), of the Issuer (the "Bonds" or the "Series 2003 A Bonds"), in an aggregate principal amount not to exceed $600,000, and has authorized the execution and delivery of the bond purchase agreement relating to the Series 2003 A Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Bond Purchase Agreement"), 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 Bond Purchase Agreement and the exact principal amount, date, maturity date, redemption provision, 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 Bond Purchase Agreement has been presented to the Issuer at this meeting;

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bond Purchase Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, 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 FAIRMONT:

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 2003 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $485,543. The Series 2003 A Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2034 and shall bear no interest. The principal of the Series 2003 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2004, and maturing September 1, 2034, and in the amounts as set forth in the "Schedule Y" attached to the Bond Purchase Agreement and incorporated in and made a part of the Series 2003 A Bonds. The Series 2003 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Bond Purchase Agreement, so long as the Authority shall be the registered owner of the Series 2003 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 0.5% of the principal amount of the Series 2003 A Bonds set forth in the "Schedule Y" attached to the Bond Purchase Agreement.

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 authorize, approve, ratify and accept the Bond Purchase Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Bond Purchase Agreement by the Mayor and the City Manager, 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 Bond Purchase Agreement and in the applications 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 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance 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 City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate Branch Banking & Trust Company, Fairmont, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2003 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2003 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2003 A Bonds proceeds in the amount of $16,188 shall be deposited in the Series 2003 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2003 A Bonds shall be deposited in or credited to the Series 2003 A Bond Construction Trust Fund as received from the DEP from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor, the City Manager 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 June 17, 2003, to the Authority pursuant to the Bond Purchase Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 13. The Issuer hereby determines to invest all monies 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 monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 26th day of June, 2003.

CITY OF FAIRMONT

By: _____
Its: Mayor

By: _____
Its: City Manager

SRF-BPA-1
(02/03/03)

BOND PURCHASE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND BOND PURCHASE AGREEMENT (the "Bond Purchase 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 DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF FAIRMONT
(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 planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 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 acquire bonds of 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 (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) 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 utilize moneys from the Fund to purchase the bonds of local governments to provide the financing 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 acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of 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 Purchase of Bonds with attachments and exhibits and an Amended Application for Purchase of Bonds also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference;

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; and

WHEREAS, the Local Government meets the "disadvantaged community" provisions of the SRF Regulations.

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

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

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

1.6 "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.

1.7 "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.

1.8 "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.

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

1.10 "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.

1.11 Additional terms and phrases are defined in this Bond Purchase 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 Bond Purchase Agreement and 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, during 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 Local Bonds proceeds 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 and shall verify or have verified such bonds prior to commencement of construction.

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 and shall verify or have verified such insurance prior to commencement of construction. 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 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 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 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 shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this Bond Purchase Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% 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 acquisition or construction of the Project and for two years following the completion of acquisition or construction 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 DEP and 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 such forms to DEP in compliance with the Local Government's construction schedule.

ARTICLE III

Conditions to Purchase of Local Bonds; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to purchase the Local Bonds 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 and DEP a report listing the specific purposes for which the proceeds of the Local Bonds will be expended and the procedures as to the disbursement of bond 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 Bond Purchase 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 proceeds of the Local Bonds will refund an interim construction financing, 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") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal 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 without successful appeal, 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 Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountant 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 Bond Purchase 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 purchase the Local Bonds of the Local Government and the Local Government shall issue and sell the Local Bonds to the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall purchase 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 Local Bonds shall be secured and shall be repaid in the manner hereinafter provided in this Bond Purchase 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 Closing." Notwithstanding the foregoing, the Date of Closing shall in no event occur more than ninety (90) days after the date of execution of this Bond Purchase Agreement by the Authority or such later date as is agreed to in writing by DEP.

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 financing of wastewater treatment projects and that the obligation of the Authority to purchase the Local

Bonds is subject to the Local Government's fulfilling all of the terms and conditions of this Bond Purchase Agreement on or prior to the Date of 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 bonds will be purchased in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements, established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to purchase the Local Bonds, 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 adopted or 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. Such gross revenues 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 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 a pledge of either the net or gross revenues of the System as provided in the Local Act;

(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 is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to 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 shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the SRF Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except 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 prior 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 the Authority 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 of 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 Bond Purchase Agreement and that the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government shall annually adopt 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 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) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing 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 West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for all Local Bonds;

(xvii) 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 Commission the required interest, principal and reserve account 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 or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, 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 Internal Revenue Code of 1986, as amended, 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 and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and 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;

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, 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; and

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted 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, validity, 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 Local Bonds 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 Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP 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 purchase the Local Bonds 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 purchase the Local Bonds.

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 Bond Purchase Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to purchase the Local Bonds, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 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 required sums set forth in the Local Act and this Bond Purchase Agreement, 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 (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Bond Purchase Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this Bond Purchase Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Local Bonds 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 charges 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 the Local Government in the terms and covenants of this Bond Purchase Agreement, 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 Bond Purchase Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Bond Purchase 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 purchasing and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Bond Purchase Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the issuance of the Local Bonds 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 Act, the SRF Regulations or this Bond Purchase Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of 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 Local Bonds.

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 System, 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 and DEP 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 Schedules X and Y shall be attached to this Bond Purchase Agreement by the Authority as soon as practicable after the Date of 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 Bond Purchase 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 Bond Purchase Agreement, and this Bond Purchase Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Bond Purchase 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 Bond Purchase Agreement.

7.4 No waiver by any party of any term or condition of this Bond Purchase 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 Bond Purchase Agreement.

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

7.6 By execution and delivery of this Bond Purchase 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 Bond Purchase Agreement shall terminate upon the earlier of:

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

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

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

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

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

CITY OF FAIRMONT
[Name of Local Government]

(SEAL)

By: Nick Gantaton
Its: Mayor
Date: 05/30/03

Attest:

Janet L. Keller
Its: Recorder

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: Allyn B. Turner by WBB
Its: Director
Date: June 3, 2003

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Yankoskey
Its: Director
Date: May 23, 2003

Attest:

Barbara R. Mendez
Its: Secretary-Treasurer

000832/00372
02/03/03

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government _____

Name of Bond Issue(s) _____

Type of Project _____ Water _____ Wastewater

Fiscal Year _____ Report Month _____

Item	Current Month	Total Year To Date	Budget Year To Date	Budget Year To Date Minus Total Year To Date
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
Type of Issue				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development Authority	_____	_____	_____	_____
Rural Utilities Service	_____	_____	_____	_____
Economic Development Administration	_____	_____	_____	_____
Other (Identify)				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
4. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of $1,200 are anticipated to be received for the year, each month the base would be increased by $100 ($1,200/12). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of $900 are anticipated to be incurred for the year, each month the base would be increased by $75 ($900/12). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies 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 as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Bond Purchase Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (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

set forth in Schedule A attached hereto as Exhibit A, and my firm[1] has ascertained that all successful bidders 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 for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) 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 and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Bond Purchase Agreement; (x) 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 approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this _____ day of _____, _____.

_____

By _____

West Virginia License No. __

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of_____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT - The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, ground breaking or project dedication program documents 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.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) - The Local Government that receives $300,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. SUBJECT TO FINAL confirmation of Small Cities Block Grant increase.

D. SUBMITTAL OF FINAL title opinion.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest	$____
Principal	$____
Total:	$____
Reserve Account:	$____

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 Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a bond purchase agreement dated ____, ___, including all schedules and exhibits attached thereto (the "Bond Purchase Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ___ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Bond Purchase Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal only to the Authority, with principal payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending ____ 1, ____, all as set forth in the "Schedule Y" attached to the Bond Purchase Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) 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 adopted or enacted by the Local Government on _____, as supplemented by the supplemental resolution duly adopted by the Local Government on _____

(collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Bond Purchase Agreement 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase Agreement 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 Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____ _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Bond Purchase Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

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 the 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 LOCAL BONDS

Principal Amount of Local Bonds $485,543
Purchase Price of Local Bonds $485,543

The Local Bonds shall bear no interest. Commencing December 1, 2004, principal of the Local Bonds is payable quarterly, with an administrative fee of 0.5%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account 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 Commission. The Local Government shall instruct the 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 Local Bonds are fully registered in the name of the Authority as to principal only and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local 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 Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original principal amount of $3,680,320. The 2003 Bond will be junior to the 1988 Bond until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the 2003 Bond will be upgraded to a first lien position on a parity with the 1988 Bond.

City of Fairmont

Loan of $485,543
30 Years, 0% Interest Rate, 0.5% Administrative Fee
Closing Date: June 26, 2003

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/2003	-	-	-
12/01/2003	-	-	-
3/01/2004	-	-	-
6/01/2004	-	-	-
9/01/2004	-	-	-
12/01/2004	4,047.00	-	4,047.00
3/01/2005	4,047.00	-	4,047.00
6/01/2005	4,047.00	-	4,047.00
9/01/2005	4,047.00	-	4,047.00
12/01/2005	4,047.00	-	4,047.00
3/01/2006	4,047.00	-	4,047.00
6/01/2006	4,047.00	-	4,047.00
9/01/2006	4,047.00	-	4,047.00
12/01/2006	4,047.00	-	4,047.00
3/01/2007	4,047.00	-	4,047.00
6/01/2007	4,047.00	-	4,047.00
9/01/2007	4,047.00	-	4,047.00
12/01/2007	4,047.00	-	4,047.00
3/01/2008	4,047.00	-	4,047.00
6/01/2008	4,047.00	-	4,047.00
9/01/2008	4,047.00	-	4,047.00
12/01/2008	4,047.00	-	4,047.00
3/01/2009	4,047.00	-	4,047.00
6/01/2009	4,047.00	-	4,047.00
9/01/2009	4,047.00	-	4,047.00
12/01/2009	4,047.00	-	4,047.00
3/01/2010	4,047.00	-	4,047.00
6/01/2010	4,047.00	-	4,047.00
9/01/2010	4,046.00	-	4,046.00
12/01/2010	4,046.00	-	4,046.00
3/01/2011	4,046.00	-	4,046.00
6/01/2011	4,046.00	-	4,046.00
9/01/2011	4,046.00	-	4,046.00
12/01/2011	4,046.00	-	4,046.00
3/01/2012	4,046.00	-	4,046.00
6/01/2012	4,046.00	-	4,046.00
9/01/2012	4,046.00	-	4,046.00
12/01/2012	4,046.00	-	4,046.00
3/01/2013	4,046.00	-	4,046.00
6/01/2013	4,046.00	-	4,046.00
9/01/2013	4,046.00	-	4,046.00
12/01/2013	4,046.00	-	4,046.00
3/01/2014	4,046.00	-	4,046.00
6/01/2014	4,046.00	-	4,046.00
9/01/2014	4,046.00	-	4,046.00
12/01/2014	4,046.00	-	4,046.00
3/01/2015	4,046.00	-	4,046.00

City of Fairmont

Loan of $485,543
30 Years, 0% Interest Rate, 0.5% Administrative Fee
Closing Date: June 26, 2003

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2015	4,046.00	-	4,046.00
9/01/2015	4,046.00	-	4,046.00
12/01/2015	4,046.00	-	4,046.00
3/01/2016	4,046.00	-	4,046.00
6/01/2016	4,046.00	-	4,046.00
9/01/2016	4,046.00	-	4,046.00
12/01/2016	4,046.00	-	4,046.00
3/01/2017	4,046.00	-	4,046.00
6/01/2017	4,046.00	-	4,046.00
9/01/2017	4,046.00	-	4,046.00
12/01/2017	4,046.00	-	4,046.00
3/01/2018	4,046.00	-	4,046.00
6/01/2018	4,046.00	-	4,046.00
9/01/2018	4,046.00	-	4,046.00
12/01/2018	4,046.00	-	4,046.00
3/01/2019	4,046.00	-	4,046.00
6/01/2019	4,046.00	-	4,046.00
9/01/2019	4,046.00	-	4,046.00
12/01/2019	4,046.00	-	4,046.00
3/01/2020	4,046.00	-	4,046.00
6/01/2020	4,046.00	-	4,046.00
9/01/2020	4,046.00	-	4,046.00
12/01/2020	4,046.00	-	4,046.00
3/01/2021	4,046.00	-	4,046.00
6/01/2021	4,046.00	-	4,046.00
9/01/2021	4,046.00	-	4,046.00
12/01/2021	4,046.00	-	4,046.00
3/01/2022	4,046.00	-	4,046.00
6/01/2022	4,046.00	-	4,046.00
9/01/2022	4,046.00	-	4,046.00
12/01/2022	4,046.00	-	4,046.00
3/01/2023	4,046.00	-	4,046.00
6/01/2023	4,046.00	-	4,046.00
9/01/2023	4,046.00	-	4,046.00
12/01/2023	4,046.00	-	4,046.00
3/01/2024	4,046.00	-	4,046.00
6/01/2024	4,046.00	-	4,046.00
9/01/2024	4,046.00	-	4,046.00
12/01/2024	4,046.00	-	4,046.00
3/01/2025	4,046.00	-	4,046.00
6/01/2025	4,046.00	-	4,046.00
9/01/2025	4,046.00	-	4,046.00
12/01/2025	4,046.00	-	4,046.00
3/01/2026	4,046.00	-	4,046.00
6/01/2026	4,046.00	-	4,046.00
9/01/2026	4,046.00	-	4,046.00
12/01/2026	4,046.00	-	4,046.00

City of Fairmont

Loan of $485,543
30 Years, 0% Interest Rate, 0.5% Administrative Fee
Closing Date: June 26, 2003

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
3/01/2027	4,046.00	-	4,046.00
6/01/2027	4,046.00	-	4,046.00
9/01/2027	4,046.00	-	4,046.00
12/01/2027	4,046.00	-	4,046.00
3/01/2028	4,046.00	-	4,046.00
6/01/2028	4,046.00	-	4,046.00
9/01/2028	4,046.00	-	4,046.00
12/01/2028	4,046.00	-	4,046.00
3/01/2029	4,046.00	-	4,046.00
6/01/2029	4,046.00	-	4,046.00
9/01/2029	4,046.00	-	4,046.00
12/01/2029	4,046.00	-	4,046.00
3/01/2030	4,046.00	-	4,046.00
6/01/2030	4,046.00	-	4,046.00
9/01/2030	4,046.00	-	4,046.00
12/01/2030	4,046.00	-	4,046.00
3/01/2031	4,046.00	-	4,046.00
6/01/2031	4,046.00	-	4,046.00
9/01/2031	4,046.00	-	4,046.00
12/01/2031	4,046.00	-	4,046.00
3/01/2032	4,046.00	-	4,046.00
6/01/2032	4,046.00	-	4,046.00
9/01/2032	4,046.00	-	4,046.00
12/01/2032	4,046.00	-	4,046.00
3/01/2033	4,046.00	-	4,046.00
6/01/2033	4,046.00	-	4,046.00
9/01/2033	4,046.00	-	4,046.00
12/01/2033	4,046.00	-	4,046.00
3/01/2034	4,046.00	-	4,046.00
6/01/2034	4,046.00	-	4,046.00
9/01/2034	4,046.00	-	4,046.00
Total	**485,543.00**	**-**	**485,543.00 ***

*Plus $305.98 one-half percent Administrative Fee paid quarterly. Total fee over life of loan is $36,717.60.

020397comb062403.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 24th day of June, 2003.

CASE NO. 02-0397-S-CN (REOPENED)

FAIRMONT SANITARY BOARD

Petition to reopen for Commission approval of revised funding for the project to reflect financing consisting of a CWSRA loan of $485,543, at an interest rate of 0% over a term of 30 years, with an administrative fee of 0.5%, and total Small Cities Block Grant funds in the total sum of $872,405. (filed 6/5/03).

COMMISSION ORDER

This is before the Commission on the Fairmont Sanitary Board's ("Fairmont") petition to reopen the case and approve additional financing. Specifically, Fairmont's request of an additional Small Cities Block grant award in the sum of $86,580 is hereby approved. Therefore, the revised funding package in the amount of $1,357,948 would be as follows: CWSRA loan of $485,543 at a rate of 0%, with a 0.5% administrative fee and SCBG in the amount of $872,405 (which includes the additional SCBG of $86,580). The Commission shall grant the petition as set forth herein.

DISCUSSION

A Recommended Decision was issued on December 5, 2002, which went final on December 25, 2002. The Recommended Decision granted a certificate of convenience and necessity to Fairmont to construct certain additions and improvements to its sanitary sewer system. Furthermore, the proposed funding was approved, which consisted of a Small Cities Block Grant of $785,825 and a CWSRA loan of $485,543, at an interest rate of 0% over a term of 30 years, with an administrative fee of 0.5%. Any change in the scope of the project and/or funding required further approval.

Public Service Commission
of West Virginia
Charleston

On June 5, 2003, Fairmont filed a petition to reopen the case as a result of certain increases in costs and additional funding requirements related to the construction of the conventional gravity sewer collection system to serve approximately 111 residential and commercial customers in the Meredith Springs/Dakota Camp area.

According to Fairmont, during the course of construction, overruns have been incurred in engineering design, rights-of-way acquisition, and the actual construction bid. Therefore, Fairmont anticipated the actual cost of the project to be $1,358,248[1] and Fairmont requested an amended Certificate of Convenience and Necessity to reflect financing as follows: CWSRA loan of $485,543, at an interest rate of 0% over a term of 30 years, with an administrative fee of 0.5%, and total Small Cities Block Grant (SCBG) funds totaling $872,405 (which includes an additional SCBG of $86,580).

On June 13, 2003, Fairmont filed a request for expedited treatment and immediate consideration of its petition. Fairmont asserted that the debt service on its CWSRA loan is to be funded by the sale of system revenue bonds. A bond closing date was tentatively scheduled for June 17, 2003. Fairmont also filed, on June 13, 2003, the Notification of Small Cities Block Grant Award for the additional funding of the SCBG award of $86,580 referenced above.

On June 13, 2003, the Initial and Final Joint Staff Memorandum was filed. According to Staff, the total cost now associated with the project is $1,357,948, an increase of $86,580. Staff noted that the Final Order of December 25, 2002, approved funding in the amount of $1,271,368, of which the Board secured a CWSRA loan in the amount of $485,543, at an interest rate of 0% with an administrative fee of 0.5%, for a term of 30 years and a $785,825 SCBG.

Staff stated that Fairmont is now requesting approval of project funding in the amount of $1,357,948 as follows: The loan of $485,543 from CWSRA at a rate of 0%, with a 0.5% administrative fee; SCBG in the amount of $872,405 (which includes the additional $86,580).

It is Staff's opinion that Fairmont previously passed a municipal rate ordinance which contains rates sufficient to support the debt service on this project. As such, Staff recommended that the total revised funding package for the Meredith Springs/Dakota Camp project in the amount of $1,357,948 be approved.

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[1]As set forth more fully hereinbelow, this figure includes a duplicate permit fee.

Public Service Commission
of West Virginia
Charleston

On June 16, 2003, Staff filed a Further Joint Staff Memorandum with respect to an issue involving a $300.00 discrepancy between the amount of funding represented in the commitment letters on file and the funding approval request as expressed in Fairmont's Petition to Reopen. After several attempts to contact counsel for Fairmont and being advised that Kevin V. Sansalone, Esq. was unavailable, Technical Staff spoke with Bruce McDaniel, Fairmont City Manager, regarding this issue. According to Mr. McDaniel, Fairmont seeks approval of the actual amount of funding set forth in the commitment letters, not necessarily the figure expressed in the Petition to Reopen. He further advised Technical Staff that Staff's original recommendation dated June 13, 2003, was correct in recommending approval of a total funding package of $1,357,948, which represented an increase of $86,580 over the total previously approved. In addition, Staff noted that the bond closing previously scheduled for June 17, 2003, was postponed for a day or two, but expedited treatment is still required.

As indicated to Staff and pursuant to the above-referenced conversation, Mr. McDaniel faxed a letter on June 16, 2003, which indicated the total project cost for the Dakota/Meredith Springs sewer project should equal $1,357,948. With respect to the $300.00 discrepancy, Mr. McDaniel explained that the difference apparently accounted for a state health department permit fee of $300.00 being counted twice.

FINDINGS OF FACT

1. By the final Recommended Decision entered on December 25, 2002, Fairmont was granted a certificate of convenience and necessity to construct certain additions and improvements to its sanitary sewer system.

2. The proposed funding was approved, which consisted of a Small Cities Block Grant of $785,825 and a CWSRA loan of $485,543, at an interest rate of 0% over a term of 30 years, with an administrative fee of 0.5%. Any change in the scope of the project and/or funding required further approval.

3. Fairmont petitioned to reopen the case as a result of certain increases in costs.

4. The total project cost for the Dakota/Meredith Springs sewer project is now $1,357,948.

5. The bond closing will take place within one week.

Public Service Commission
of West Virginia
Charleston

6. Staff opined that Fairmont previously passed a municipal rate ordinance with rates sufficient to support the debt service on this project.

7. Staff recommended that the total revised funding package for the Meredith Springs/Dakota Camp project in the amount of $1,357,948 be approved as follows: loan of $485,543 from CWSRA at a rate of 0%, with a 0.5% administrative fee and Small Cities Block Grant in the amount of $872,405 (which includes the $86,580 in increased cost of the project).

CONCLUSION OF LAW

It is reasonable to approve Fairmont's petition to reopen the case and further approve the revised funding package in the amount of $1,357,948 as recommended by Staff.

ORDER

IT IS, THEREFORE, ORDERED that Fairmont's petition to reopen this case is hereby granted.

IT IS FURTHER ORDERED that the additional Small Cities Block grant award in the sum of $86,580 is hereby approved. Therefore, the revised funding package in the amount of $1,357,948 as follows, is hereby approved: CWSRA loan of $485,543 at a rate of 0%, with a 0.5% administrative fee and SCBG in the amount of $872,405 (which includes the additional SCBG of $86,580).

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by **facsimile** and United States First Class Mail and upon Commission Staff by hand delivery.

TBS/ljm
020397cb.wpd

A True Copy, Teste:

Sandra Squire

Sandra Squire
Executive Secretary

Public Service Commission
of West Virginia
Charleston

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
12-25-02

Entered: December 5, 2002

CASE NO. 02-0397-S-CN

FAIRMONT SANITARY BOARD
Application for a certificate of convenience and necessity to construct a conventional gravity sewer collection system to serve approximately 111 residential and commercial customers in the Meredith Springs/Dakota Camp area, located in certain unincorporated territory situate in Fairmont District, Marion County, West Virginia.

RECOMMENDED DECISION

On March 27, 2002, the Fairmont Sanitary Board filed a verified application for a certificate of convenience and necessity to construct certain additions and improvements to its sanitary sewer system in Marion County, West Virginia.

The Fairmont Sanitary Board (Applicant) estimates that construction will cost approximately $1,119,760. It is proposed that the construction will be financed as follows: a Small Cities Block Grant of $785,852 and a West Virginia Infrastructure and Jobs Development Council-State Revolving Fund loan of $333,395, for total project funding of $1,119,760. The Applicant intended to pass a municipal rate ordinance to increase its rates to support the project costs.

The project will serve approximately 106 residential and six commercial customers. The project will encompass two communities which are approximately one mile outside of the corporate boundaries of the City. Currently, there is no formal sanitary sewer collection system in the project area. The majority of residences and businesses are served by septic tanks, many of which are aging and beginning to fail.

The installation of the proposed sanitary sewer is essential to the Meredith Springs/Dakota Camp area of Marion County and is critical to the public health and safety of the residents of Marion County. The proposed system is critical to maintaining and improving the quality and integrity of the environment within the Monongahela/Ohio River Basin. The implementation of the project would assure present and future compliance

with the Clean Water Act and would remove any unsanitary conditions that currently exist.

By Notice of Filing Order entered on March 27, 2002, the Applicant was directed to give notice of the filing of this application by publishing a copy of the Notice of Filing once in a newspaper duly qualified by the Secretary of State, published and of general circulation in Marion County. The Notice of Filing provided that, if no protests were timely filed in response to the published notice, the Commission is authorized to render a decision without a hearing, by virtue of the provisions of West Virginia Code §24-2-11.

On April 23, 2002, an affidavit of publication was filed indicating that publication was made on April 13, 2002, in The Times West Virginian, a newspaper published and of general circulation in Marion County. Anyone objecting to the proposed application was given thirty (30) days to file a protest with the Commission. The protest period expired on May 14, 2002. As of the date of this Order, no protests have been filed. (See affidavit of publication filed April 13, 2002).

On May 2, 2002, Staff Attorney Cecelia Jarrell filed an Initial Joint Staff Memorandum attached to which was an Initial Memorandum from James C. Weimer, P.E., Engineer I, Engineering Division, and James Burdette, Utilities Analyst, Utilities Division. Staff was reviewing the filing and had met with the Fairmont Sanitary Board and its engineers to discuss deficiencies in the filing. Staff needed certain additional information before a final recommendation could be made.

On May 13, 2002, the Applicant filed a motion for an extension of time to file responses to the data requests.

By a Commission Referral Order entered May 16, 2002, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before October 23, 2002.

On June 4, 2002, the Applicant filed its responses to the Staff Data Requests.

On June 28, 2002, Staff Attorney Jarrell filed a Further Joint Staff Memorandum in this proceeding. According to Staff, there are certain unclear issues regarding the project funding and the rates and charges proposed by the Fairmont Sanitary Board for this construction project. Technical Staff members have been in contact with the Fairmont Sanitary Board's accountant regarding the problems and representatives of the Fairmont Sanitary Board have assured Technical Staff that the problems will be resolved as soon as possible. Staff noted that the Fairmont Sanitary Board is currently in the process of adjusting the terms of the financing for this project. Technical Staff has requested that, once the terms have been readjusted, the Fairmont Sanitary Board provide the Commission with revised funding commitment letters which will establish that the funding and rate issues have been resolved. After the revised documents have been filed by the Fairmont Sanitary Board, Commission Staff will make a final recommendation regarding this certificate application.

On August 8, 2002, the Applicant filed a motion with the Commission to toll the 270-day statutory deadline in West Virginia Code §24-2-11(a). For cause, the Fairmont Sanitary Board stated that, due to the most recent cost estimates for the project, it may be necessary to apply for total funding for the project from the West Virginia State Revolving Fund for a term of 30 years, at 0% interest with a 0.5% administrative fee. Additionally, the sewer rates proposed in the original application appear to be inadequate to meet the minimum rates required by the West Virginia State Revolving Fund.

By Commission Order entered on August 15, 2002, the Applicant's motion to toll was granted. The new Administrative Law Judge's decision due date is December 9, 2002, and the new statutory deadline is February 5, 2003.

On September 24, 2002, Staff Attorney Jarrell filed the Final Joint Staff Memorandum, attached to which were Final Recommendations prepared by Mr. Weimer and Mr. Burdette. While, from a technical and engineering standpoint, Mr. Weimer had recommended approval of the project, due to numerous unresolved funding and rate issues, the Staff recommendation was to dismiss the application. The Fairmont Sanitary Board could refile the proceeding as soon as these issues are resolved.

By Procedural Order entered on September 26, 2002, the City of Fairmont was directed to file an amended application on or before October 7, 2002, or this proceeding would be dismissed. Commission Staff was directed to file its recommendation on the amended application on or before November 4, 2002.

On October 4, 2002, the Fairmont Sanitary Board filed an amended application.

On October 16, 2002, the Fairmont Sanitary Board filed a Rule 42 Exhibit, to go with the amended application.

On November 4, 2002, Staff Attorney Jarrell filed a Final Joint Staff Memorandum, attaching a Final Staff Memorandum from James H. Burdette, Utilities Analyst, Utilities Division. Staff recommended that the Commission approve the project and grant the Fairmont Sanitary Board's application for a certificate of convenience and necessity. Staff noted that the Applicant has not completed the legal process required for adoption of the rates that are proposed to be charged for customers living in the project areas of Meredith Springs and Dakota Camp. Legal Staff has been advised by Kevin Sansalone, Esquire, Counsel for the Fairmont Sanitary Board, that the municipal sewer rate ordinance has been read one time and was scheduled for a second and final reading on November 12 or 13, 2002. The statutory thirty (30) day public protest period will not expire until December 11 or 12, 2002. There is, of course, the chance that the municipal ordinance could be challenged by protests during that thirty (30) day period. Therefore, Staff did not assume that the rates proposed for this project area were final, which creates an issue, because the Administrative Law Judge's decision due date is December 9, 2002, several days prior to the end of the 30-day customer protest period. Nevertheless, under the particular circumstances which have developed in this case, Staff recommended that the Public Service Commission grant the Fairmont Sanitary Board's amended

application for a certificate of convenience and necessity, since the Public Service Commission would be exercising its jurisdiction over the proposed rates should a proper protest occur.

On November 12, 2002, the Applicant submitted the revised commitment letter from the West Virginia Water Development Authority.

Upon consideration of all of the above, the Administrative Law Judge is of the opinion and finds that Staff's recommendation is reasonable and should be adopted.

FINDINGS OF FACT

1. On March 27, 2002, the Fairmont Sanitary Board filed a verified application for a certificate of convenience and necessity to construct certain additions and improvements to its sanitary sewer system in Marion County. (See, Application).

2. On October 4, 2002, the City of Fairmont Sanitary Sewer Board filed an amended application which was further amended by a Rule 42 Exhibit filed on October 16, 2002. (See, Amended Application filed October 4, 2002).

3. By Notice of Filing Order entered on March 27, 2002, the Applicant was directed to give notice of the filing of this application. (See, Order entered March 27, 2002).

4. On April 23, 2002, an affidavit of publication was filed indicating that publication was made on April 13, 2002, in the Times West Virginian. The 30-day protest period expired on May 14, 2002, with no protests having been filed. (See, affidavit of publication filed April 13, 2002; case file generally).

5. The State of West Virginia Department of Environmental Protection issued the City of Fairmont a construction permit for the new system. This permit acknowledges that the proposed system meets all current West Virginia Bureau of Public Health requirements. (See, Final Staff Memorandum filed September 24, 2002).

6. The total project cost is estimated to be $1,271,368. Funding for the project is being provided by a Small Cities Block Grant of $785,825 and a CWSRF loan of $485,543. (See, Final Joint Staff Memorandum filed November 4, 2002, with attachment; commitment letters filed March 27 and November 12, 2002).

7. The City of Fairmont has passed a municipal rate ordinance which contains rates that are sufficient to support the project's debt service and costs. (See, Final Joint Staff Memorandum filed November 4, 2002).

8. Currently, there is no formal sanitary sewage collection system in the area to be served. The majority of the residences and businesses are served by septic systems, many of which are aging and beginning to fail. The proposed system will also maintain and improve the quality and integrity of the Monongahela/Ohio River Basin. The project will also provide present and future compliance with the Clean Water Act. (See,

Applications filed March 27 and October 4, 2002; Final Joint Staff Memorandum filed September 24, 2002).

9. Staff recommended approval of the application, contingent on the rates becoming final. (See, Final Joint Staff Memorandum filed November 4, 2002).

CONCLUSIONS OF LAW

1. Public convenience and necessity require the proposed project.

2. The proposed project will provide adequate service.

3. The proposed project is adequately financed and is economically feasible.

4. Good cause has been shown to waive formal hearing in this matter, pursuant to West Virginia Code §24-2-11, since no protests have been received to the project.

5. Since Staff has reviewed the application and recommended approval, contingent upon the municipal rates becoming final, it is reasonable that this certificate should be approved as amended on October 4 and 16, 2002.

6. Any changes in the scope of this project and/or funding after the granting of the certificate shall require further approval from the Public Service Commission.

ORDER

IT IS, THEREFORE, ORDERED that a certificate of convenience and necessity be, and it hereby is, granted to the Fairmont Sanitary Board to construct certain additions and improvements to its sanitary sewer system, all as set forth in the application filed on March 27, 2002, and as amended on October 4, 2002.

IT IS FURTHER ORDERED that the proposed funding for the project, consisting of a Small Cities Block Grant of $785,825 and a CWSRA loan of $485,543, at an interest rate of 0% over a term of 30 years, with an administrative fee of 0.5%, be, and hereby is, approved.

IT IS FURTHER ORDERED that any changes in the scope of this project and/or funding after the granting of the certificate shall require further approval from the Public Service Commission, prior to construction.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions

are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Miles C. Cary
Administrative Law Judge

MCC:jas:mal
020397aa.wpd

Public Service Commission
Richard E. Hitt, General Counsel

201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0317
FAX: (304) 340-0372

June 25, 2003

Kevin V. Sansalone, Esq.
Sansalone and Sansalone
Counsel for City of Fairmont Sanitary Board
221 Monroe Street
Fairmont, West Virginia 26554

RE: Case No. 02-0397-S-CN
City of Fairmont Sanitary Board

Dear Mr. Sansalone:

The purpose of this letter is to confirm that Staff for the Public Service Commission of West Virginia does not intend to appeal the Commission Order entered on June 24, 2003 in the above referenced case.

Sincerely,

Cecelia Gail Jarrell

CECELIA GAIL JARRELL, ESQ.
Staff Attorney - Legal Division
Phone No. (304) 340-0407

CGJ/s

cc: John Stump, Esq. (FAX No. (304) 353-8181)

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Post-it® Fax Note 7671	Date 6-25-03 # of pages ▶
To John Stump, Esq.	From Cecelia Jarrell
Co./Dept. Steptoe & Johnson	Co. WV PSC
Phone #	Phone # [redacted] 340-0407
Fax # 353-8181	Fax # (304) 340-0372

West Virginia Infrastructure & Jobs Development Council

Public Members:
James D. Williams, Chairman
St. Albans
James L. Harrison, Sr., Vice Chairman
Princeton
Lloyd P. Adams, P.E.
Wheeling
Sheirl L. Fletcher
Morgantown

980 One Valley Square
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire
Executive Secretary

May 12, 1999

Douglas R. Amos
Utility Manager
City of Fairmont Sanitary Sewer Board
P.O. Box 1428
Fairmont, West Virginia 26555

Re: Wastewater System Extension Project
(Meredith Springs/Dakota Camp) **99S-474**

Dear Mr. Amos:

The West Virginia Infrastructure and Jobs Development Council (the "Council"), at its May 5, 1999 meeting, reviewed the City of Fairmont's (the "City") preliminary application regarding the above-referenced proposed project to extend service to approximately 112 new customers in the Meredith Springs/Dakota Camp area of Marion County. Based on the findings of the Sewer Technical Review Committee, the Council has determined that the project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The City should carefully review the enclosed comments of the Sewer Technical Review Committee. The City may need to address certain issues raised in said comments as it proceeds with the project.

Upon consideration of the City's preliminary application, the Council recommends that the City pursue a Clean Water State Revolving Fund loan of $333,935 and a Small Cities Block Grant of $785,821 to finance the project. Please contact the Division of Environmental Protection at 558-0641, and the West Virginia Development Office at 558-4010 for specific information on the steps the City needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from these agencies.**

If you have any questions regarding this matter, please contact Susan J. Riggs at the above-referenced telephone number.

Sincerely,

James D. Williams

JDW/tb
Enclosure
cc: Mike Johnson, P.E. (w/o enc)
Debbie Legg (w/o enc)
Greg Belcher, P.E.
Richard Wood

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On this 26th day of June, 2003, 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 Fairmont (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the date hereof, the Authority received the Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), of the Issuer, in the principal amount of $485,543, numbered AR-1, issued as a single, fully registered Bond, and dated June 26, 2003 (the "Series 2003 A Bonds").

2. At the time of such receipt, the Series 2003 A Bonds had been executed by the Mayor, the City Manager 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 Series 2003 A Bonds, of the sum of $34,000, being a portion of the principal amount of the Series 2003 A Bonds. The balance of the principal amount of the Series 2003 A Bonds will be advanced by the Authority and the West Virginia Department of Environmental Protection to the Issuer as acquisition and construction of the Project progresses.

Dated as of the day and year first written above.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: Barbara B Meadows
Its: Authorized Representative

CITY OF FAIRMONT

By: Nick Santarsa
Its: Mayor

05/27/03
268460.00002

CH491223.1

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

On this 26th day of June, 2003, there are delivered to you herewith:

(1) Bond No. AR-1, constituting the entire original issue of the City of Fairmont Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), in the principal amount of $485,543, dated June 26, 2003 (the "Bonds"), executed by the Mayor, the City Manager and the City Clerk of the City of Fairmont (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 May 13, 2003, and a Supplemental Resolution duly adopted by the Issuer on June 10, 2003 (collectively, the "Bond Legislation");

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

(3) Executed counterparts of the bond purchase agreement for the Series 2003 A Bonds, dated May 23, 2003, by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (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 $34,000, 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 as of the day and year first written above.

CITY OF FAIRMONT

By: _____
Its: Mayor

06/18/03
268460.00002

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWER REVENUE BOND, SERIES 2003 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $485,543

KNOW ALL MEN BY THESE PRESENTS: That on this 26th day of June, 2003, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion 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 FOUR HUNDRED EIGHTY-FIVE THOUSAND FIVE HUNDRED FORTY-THREE DOLLARS ($485,543), 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 December 1, 2004, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative fee (as defined in the hereinafter describe Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2004, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. 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").

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 the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement (the "Bond Purchase Agreement") by and among the Issuer, the Authority and the DEP, dated May 23, 2003.

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 fully fund the Series 2003 A Bonds Reserve Account; and (iii) to pay certain costs of issuance of the Bonds of this Series (the

SPECIMEN

"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 (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on May 13, 2003, and a Supplemental Resolution duly adopted by the Issuer on June 10, 2003 (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 INITIALLY ISSUED SUBORDINATE AND JUNIOR, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, DATED NOVEMBER 30, 1988, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,680,320 (THE "PRIOR BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2003 A BONDS WILL BE UPGRADED TO A FIRST LIEN POSITION ON A PARITY WITH 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, initially junior and subordinate to the pledge of Net Revenues in favor of the Holders of the Prior Bonds until upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2003 A Bonds Reserve Account"), 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 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, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2003 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 meet the coverage requirement set forth in the Prior Bonds Ordinance so long as the Prior Bonds are outstanding and thereafter, 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, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that when the Prior Bonds are no longer outstanding and so long as there

SPECIMEN

exists in the Series 2003 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, 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 on a parity with the 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 (as defined in the Bond Legislation), 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 monies, 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 at the issuance of this Bond do exist, 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 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 FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated on the day first above written.

[SEAL]

Mayor

City Manager

SPECIMEN

ATTEST:

City Clerk

SPECIMEN

CH592131.1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2003 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: June 26, 2003.

HUNTINGTON NATIONAL BANK,
as Registrar

SPECIMEN

By: _____
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$34,000	June 26, 2003	(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

City of Fairmont

Loan of $485,543
30 Years, 0% Interest Rate, 0.5% Administrative Fee
Closing Date: June 26, 2003

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/2003	-	-	-
12/01/2003	-	-	-
3/01/2004	-	-	-
6/01/2004	-	-	-
9/01/2004	-	-	-
12/01/2004	4,047.00	-	4,047.00
3/01/2005	4,047.00	-	4,047.00
6/01/2005	4,047.00	-	4,047.00
9/01/2005	4,047.00	-	4,047.00
12/01/2005	4,047.00	-	4,047.00
3/01/2006	4,047.00	-	4,047.00
6/01/2006	4,047.00	-	4,047.00
9/01/2006	4,047.00	-	4,047.00
12/01/2006	4,047.00	-	4,047.00
3/01/2007	4,047.00	-	4,047.00
6/01/2007	4,047.00	-	4,047.00
9/01/2007	4,047.00	-	4,047.00
12/01/2007	4,047.00	-	4,047.00
3/01/2008	4,047.00	-	4,047.00
6/01/2008	4,047.00	-	4,047.00
9/01/2008	4,047.00	-	4,047.00
12/01/2008	4,047.00	-	4,047.00
3/01/2009	4,047.00	-	4,047.00
6/01/2009	4,047.00	-	4,047.00
9/01/2009	4,047.00	-	4,047.00
12/01/2009	4,047.00	-	4,047.00
3/01/2010	4,047.00	-	4,047.00
6/01/2010	4,047.00	-	4,047.00
9/01/2010	4,046.00	-	4,046.00
12/01/2010	4,046.00	-	4,046.00
3/01/2011	4,046.00	-	4,046.00
6/01/2011	4,046.00	-	4,046.00
9/01/2011	4,046.00	-	4,046.00
12/01/2011	4,046.00	-	4,046.00
3/01/2012	4,046.00	-	4,046.00
6/01/2012	4,046.00	-	4,046.00
9/01/2012	4,046.00	-	4,046.00
12/01/2012	4,046.00	-	4,046.00
3/01/2013	4,046.00	-	4,046.00
6/01/2013	4,046.00	-	4,046.00
9/01/2013	4,046.00	-	4,046.00
12/01/2013	4,046.00	-	4,046.00
3/01/2014	4,046.00	-	4,046.00
6/01/2014	4,046.00	-	4,046.00
9/01/2014	4,046.00	-	4,046.00
12/01/2014	4,046.00	-	4,046.00
3/01/2015	4,046.00	-	4,046.00

City of Fairmont

Loan of $485,543
30 Years, 0% Interest Rate, 0.5% Administrative Fee
Closing Date: June 26, 2003

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2015	4,046.00	-	4,046.00
9/01/2015	4,046.00	-	4,046.00
12/01/2015	4,046.00	-	4,046.00
3/01/2016	4,046.00	-	4,046.00
6/01/2016	4,046.00	-	4,046.00
9/01/2016	4,046.00	-	4,046.00
12/01/2016	4,046.00	-	4,046.00
3/01/2017	4,046.00	-	4,046.00
6/01/2017	4,046.00	-	4,046.00
9/01/2017	4,046.00	-	4,046.00
12/01/2017	4,046.00	-	4,046.00
3/01/2018	4,046.00	-	4,046.00
6/01/2018	4,046.00	-	4,046.00
9/01/2018	4,046.00	-	4,046.00
12/01/2018	4,046.00	-	4,046.00
3/01/2019	4,046.00	-	4,046.00
6/01/2019	4,046.00	-	4,046.00
9/01/2019	4,046.00	-	4,046.00
12/01/2019	4,046.00	-	4,046.00
3/01/2020	4,046.00	-	4,046.00
6/01/2020	4,046.00	-	4,046.00
9/01/2020	4,046.00	-	4,046.00
12/01/2020	4,046.00	-	4,046.00
3/01/2021	4,046.00	-	4,046.00
6/01/2021	4,046.00	-	4,046.00
9/01/2021	4,046.00	-	4,046.00
12/01/2021	4,046.00	-	4,046.00
3/01/2022	4,046.00	-	4,046.00
6/01/2022	4,046.00	-	4,046.00
9/01/2022	4,046.00	-	4,046.00
12/01/2022	4,046.00	-	4,046.00
3/01/2023	4,046.00	-	4,046.00
6/01/2023	4,046.00	-	4,046.00
9/01/2023	4,046.00	-	4,046.00
12/01/2023	4,046.00	-	4,046.00
3/01/2024	4,046.00	-	4,046.00
6/01/2024	4,046.00	-	4,046.00
9/01/2024	4,046.00	-	4,046.00
12/01/2024	4,046.00	-	4,046.00
3/01/2025	4,046.00	-	4,046.00
6/01/2025	4,046.00	-	4,046.00
9/01/2025	4,046.00	-	4,046.00
12/01/2025	4,046.00	-	4,046.00
3/01/2026	4,046.00	-	4,046.00
6/01/2026	4,046.00	-	4,046.00
9/01/2026	4,046.00	-	4,046.00
12/01/2026	4,046.00	-	4,046.00

City of Fairmont

Loan of $485,543

30 Years, 0% Interest Rate, 0.5% Administrative Fee

Closing Date: June 26, 2003

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
3/01/2027	4,046.00	-	4,046.00
6/01/2027	4,046.00	-	4,046.00
9/01/2027	4,046.00	-	4,046.00
12/01/2027	4,046.00	-	4,046.00
3/01/2028	4,046.00	-	4,046.00
6/01/2028	4,046.00	-	4,046.00
9/01/2028	4,046.00	-	4,046.00
12/01/2028	4,046.00	-	4,046.00
3/01/2029	4,046.00	-	4,046.00
6/01/2029	4,046.00	-	4,046.00
9/01/2029	4,046.00	-	4,046.00
12/01/2029	4,046.00	-	4,046.00
3/01/2030	4,046.00	-	4,046.00
6/01/2030	4,046.00	-	4,046.00
9/01/2030	4,046.00	-	4,046.00
12/01/2030	4,046.00	-	4,046.00
3/01/2031	4,046.00	-	4,046.00
6/01/2031	4,046.00	-	4,046.00
9/01/2031	4,046.00	-	4,046.00
12/01/2031	4,046.00	-	4,046.00
3/01/2032	4,046.00	-	4,046.00
6/01/2032	4,046.00	-	4,046.00
9/01/2032	4,046.00	-	4,046.00
12/01/2032	4,046.00	-	4,046.00
3/01/2033	4,046.00	-	4,046.00
6/01/2033	4,046.00	-	4,046.00
9/01/2033	4,046.00	-	4,046.00
12/01/2033	4,046.00	-	4,046.00
3/01/2034	4,046.00	-	4,046.00
6/01/2034	4,046.00	-	4,046.00
9/01/2034	4,046.00	-	4,046.00
Total	**485,543.00**	**-**	**485,543.00 ***

***Plus $305.98 one-half percent Administrative Fee paid quarterly. Total fee over life of loan is $36,717.60.**

(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:

_____

06/18/03
268460.00002

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW
Clarksburg Charleston Morgantown Martinsburg Wheeling Parkersburg

Bank One Center, Seventh Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoelaw.com

Writer's Contact Information

June 26, 2003

City of Fairmont
Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of
Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the City of Fairmont (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its $485,543 Sewer Revenue Bonds, Series 2003 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 an intergovernmental agreement dated May 13, 2003, by and between the Issuer and The County Commission of Marion County (the "Intergovernmental Agreement"), a bond purchase agreement, dated May 23, 2003, including all schedules and exhibits attached thereto (the "Bond Purchase Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Bond Purchase Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal only to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2004, and maturing September 1, 2034, all as set forth in the "Schedule Y" attached to the Bond Purchase Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 0.5% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Bond Purchase Agreement.

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

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(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"); (ii) funding the Series 2003 A Bonds Reserve Account; and (iii) 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 May 13, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 10, 2003 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Bond Purchase 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 Bond Purchase Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Bond Purchase Agreement when used herein.

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, to enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Bond Purchase 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 in connection with the issuance and sale of the Bonds 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 Bond Purchase Agreement.

4. The Intergovernmental Agreement has been duly authorized by and executed by the Issuer and The County Commission of Marion County and approved by the Attorney General of West Virginia.

5. 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 and secured by a subordinate lien on and pledge of the Net Revenues of the System, junior and subordinate with respect to liens, pledge and source of and security for payment to the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Prior Bonds"),

until such time as the Series 1988 Bonds Reserve Account has been fully funded and at such time, the Bonds will be on a parity with the Prior Bonds, all in accordance with the terms of the Bonds and the Bond Legislation.

6. 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, if any, is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

7. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Bond Purchase Agreement, the Intergovernmental 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,

Steptoe & Johnson PLLC

STEPTOE & JOHNSON PLLC

06/23/03
268460.00002

CH592136.1

SANSALONE & SANSALONE
ATTORNEYS AT LAW
221 MONROE STREET
FAIRMONT, WEST VIRGINIA 26554

FRANK V. SANSALONE
(1931-1993)

KEVIN V. SANSALONE
MARY B. SANSALONE

TELEPHONE (304) 366-3230
FAX NO. (304) 366-5038

June 26, 2003

City of Fairmont
Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of
Environmental Protection
Charleston, West Virginia

Steptoe & Johnson, PLLC
Clarksburg, West Virginia

Ladies and Gentlemen:

I am counsel to the City of Fairmont in Marion County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, the Intergovernmental Agreement, dated May 13, 2003, by and between the County Commission and the Issuer, a bond purchase agreement for the Bonds, dated May 23, 2003, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Bond Purchase Agreement"), a Bond Ordinance duly enacted by the Issuer on May 13, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 10, 2003 (collectively, the "Bond Legislation"), a Petition of the Sanitary Board duly adopted on April 22, 2003, and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Bond Purchase Agreement when used herein.

I am of the opinion that:

1. 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, Recorder 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.

2. The Sanitary Board has been duly created by the Issuer and is validly existing as a sanitary board under the Act.

3. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

4. The Intergovernmental Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

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

6. The execution and delivery of the Bonds, the Intergovernmental Agreement and the Bond Purchase Agreement and the consummation of the transactions contemplated by the Bonds, the Intergovernmental Agreement, the Bond Purchase 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 by which the Issuer or its properties are bound or any existing law, regulation, court order or consent decree to which the Issuer is subject.

7. The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, including the Final Order entered on December 25, 2002, and the Commission Order dated June 24, 2003, in Case No. 02-0397-S-CN, among other things, granting to the Issuer a certificate of convenience and necessity for the Project

and approving the financing for the Project. The time for appeal of such Final Order has expired prior to the date hereof without any appeal. The time for appeal of the June 24, 2003 Order has not expired prior to the date hereof; however, the Issuer has certified that it does not intend to appeal such Order and the other parties to such Order have stated that they do not intend to appeal such Order. Such Order is not the subject of any protest. Such Order does not appear to be subject to any appeal, further hearing, reopening, rehearing by any customer, protestant, intervenor or other person not a party to such Order.

8. The Issuer has imposed rates and charges for use of the System, 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.

9. To the best of my knowledge, there is no litigation, 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 Intergovernmental Agreement, the Bonds, Bond Purchase 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 therefor.

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

Very truly yours,

Kevin V. Sansalone

Kevin V. Sansalone

KVS/sf

Frances C. Whiteman*
Kristine A. Burdette
Terri L. Tichenor
Susan W. Gifford
Kimberly E. Williams**

*Also Admitted in NC
**Of Counsel

WHITEMAN BURDETTE PLLC

Attorneys at Law

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WesBanco Building
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Fairmont, WV 26555-2798
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June 26, 2003

City of Fairmont
Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

The County Commission of Marion County
Fairmont, West Virginia

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of
Environmental Protection
Charleston, West Virginia

Steptoe & Johnson, PLLC
Clarksburg, West Virginia

Ladies and Gentlemen:

I am special counsel to The County Commission of Marion County (the "County Commission") which has jointly assumed the acquisition and construction of the Project pursuant to the intergovernmental agreement, dated May 13, 2003 (the "Intergovernmental Agreement"), by and between the County Commission and the City of Fairmont (the "Issuer") in Marion County, West Virginia. As such counsel, I have examined copies of the Intergovernmental Agreement, the approving opinion of Steptoe & Johnson, PLLC, as bond counsel, a bond purchase agreement for the Bonds, dated May 23, 2003, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Bond Purchase Agreement"), a Bond Ordinance duly enacted by the Issuer on May 13, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 10, 2003 (collectively, the "Bond Legislation"), a Petition of the Sanitary Board duly adopted on April 22, 2003, and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Bond Purchase Agreement when used herein.

I am of the opinion that:

1. The County Commission has been duly created and is validly existing as a county commission and political subdivision of the State of West Virginia and the commissioners have taken the requisite oaths and are authorized to act on behalf of the County Commission in their respective capacities.

2. The County Commission has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the acquisition and construction of the Project, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Department of Environmental Protection and the West Virginia Infrastructure and Jobs Development Council; provided, however, that we offer no opinion with respect to the Orders of the Public Service Commission of West Virginia.

Pursuant to Chapter 7, Article 1 of the West Virginia Code of 1931, as amended, the county Commission has the authority to jointly assume the acquisition and construction of the Project and enter into the Intergovernmental Agreement.

3. The Intergovernmental Agreement has been duly authorized, executed and delivered by the County Commission and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the County Commission, enforceable in accordance with its terms.

4. All successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Bond Legislation and the Bond Purchase Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,

Frances C. Whiteman

Frances C. Whiteman
Whiteman Burdette, PLLC

Frances C. Whiteman*
Kristine A. Burdette
Terri L. Tichenor
Susan W. Gifford
Kimberly E. Williams**

*Also Admitted in NC
**Of Counsel

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fwhiteman@wblawyers.com

June 26, 2003

Marion County Commission
200 Jackson Street, Room 403
Fairmont, WV 26554

City of Fairmont
200 Jackson Street, Second Floor
Fairmont, WV 26554

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25301

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Steptoe & Johnson PLLC
P.O. Box 1588
Charleston, WV 25326

Re: Final Title Opinion for Marion County Commission

Ladies and Gentlemen:

I am counsel to the Marion County Commission in connection with a proposed project to jointly construct a sanitary sewer system in the Dakota/Meredith Springs area of Marion County (the "Project") with the City of Fairmont. I provide this final title opinion on behalf of the Marion County Commission to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project. Please be advised of the following:

1. I am of the opinion that the Marion County Commission is a duly created and validly existing county commission and political subdivision of the State of West Virginia possessed with all the powers and authority granted to Counties under the laws of the State of West Virginia to acquire and construct the Project as approved by the DEP.

2. The Marion County Commission has obtained all necessary permits and approvals for the construction of the Project.

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Greenhorne & O'Mara, Inc. the consulting engineers for the Project.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Marion County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Marion County Commission has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, with the exception of those listed in Paragraph 5, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project. The Marion County Commission has assigned and conveyed all of its rights, title and interest in all acquired easements and/or rights of way to the City of Fairmont.

5. The following listed properties are to be acquired by eminent domain and the necessary filings have been made in the Office of the Clerk of the Circuit Court of Marion County, West Virginia, to permit the Marion County Commission and the City of Fairmont a right-of-entry for the purpose of construction, operation and maintenance of the Project on the subject properties. The Marion County Commission's title thereto is defeasible in the event the Marion County Commission does not satisfy any resulting judgment and/or award in the proceedings for acquisition of said properties, and our certification is subject to the following pending litigation:

Name	Tax Map	Parcel
Rajenda P. Aggarwal & Shashi B. Aggarwal	01-41	42.3
Carlos Pobega, Anna Pobega & Marjorie Grandstaff	01-44	33
Gerald W. Heater & Susan J. Heater	01-44	50.1 & 51
Harold E. Hough	01-41	500

Regarding the above-listed properties, the Marion County Commission is the Plaintiff in the condemnation/right-of-entry proceedings and after a final Order is entered by the Court in these matters, the acquired interest in these properties will be assigned to the City of Fairmont.

6. All deeds, easements and rights of way which have been acquired to date by the Marion County Commission have been duly recorded in the Office of the Clerk of the County Commission of Marion County to protect the legal title to and interest of the Marion County Commission, and have been assigned and conveyed to the City of Fairmont.

Very truly yours,

Frances C. Whiteman
WV Bar No. 6098

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 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. BOND PURCHASE AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDER
16. SPECIMEN BONDS
17. CONFLICT OF INTEREST
18. GRANTS
19. PROCUREMENT OF ENGINEERING SERVICES
20. CLEAN WATER ACT
21. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR, CITY MANAGER and CITY CLERK of the City of Fairmont in Marion County, West Virginia (the "Issuer"), and the undersigned COUNSEL to the ISSUER and SPECIAL COUNSEL to THE COUNTY COMMISSION OF MARION COUNTY (the "County Commission"), hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated the date hereof (the "Bonds" or the "Series 2003 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 as set forth in the Bond

Ordinance of the Issuer duly enacted May 13, 2003, and the Supplemental Resolution duly adopted June 10, 2003 (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 Net Revenues or any grants, 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 monies 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 collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: (A) The County Commission has received all applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project which have been duly and timely obtained and remain in full force and effect. 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. (Counsel to the Issuer expresses no opinion as to this paragraph 3A.)

(B) The Issuer has received all applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the operation of the System and the issuance of the Bonds which have been duly and timely obtained and remain in full force and effect. (Counsel to the County Commission expresses no opinion as to this paragraph 3B.)

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 Bond Purchase Agreement, and the Issuer has met all conditions prescribed in the Bond Purchase Agreement. 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 initially rank prior and senior to the Series 2003 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Prior Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. The Issuer will not issue any additional bonds until the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are on a parity with the Prior Bonds.

The Series 2003 A Bonds shall initially be subordinate and junior to the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinance, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

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:

Bond Ordinance

Supplemental Resolution

Bond Purchase Agreement

Public Service Commission Order

Infrastructure and Jobs Development Council Approval

Charter and Rules of Procedure

Oaths of Office of Officers and Councilmembers

Ordinance Creating Sanitary Board and Oaths of Members

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

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

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

NPDES Permit

Copies of the Ordinances and Supplemental Resolutions of the Prior Bonds

Small Cities Block Grant Letters

Evidence of Insurance

Closing Memorandum

Intergovernmental Agreement with Marion County Commission

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "City of Fairmont." The Issuer is a municipal corporation in Marion 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, City Manager, City Clerk and 8 council members, 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:

Name		Date of Commencement of Office	Date of Termination of Office
Nick Fantasia	- Mayor	01-01-2003	12-31-2006
Anthony Talerico	- Councilmember	01-01-2003	12-31-2006
Burley Tennant, Jr.	- Councilmember	01-01-2001	12-31-2004
Dennis O'Dell	- Councilmember	01-01-2001	12-31-2004
Fran Warner	- Councilmember	01-01-2003	12-31-2006
De'Andrea Bussey	- Councilmember	01-01-2001	12-31-2004
Scott Sears	- Councilmember	11-26-2002	12-31-2004
Tom Mainella	- Councilmember	01-01-2003	12-31-2006
Ron Straight	- Councilmember	01-01-2003	12-31-2006

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

Chairman	-	Bruce McDaniel
Member	-	J. Peale Davidson, P.E.
Member	-	William David Roberts

The duly appointed and acting City Manager to the Issuer is Bruce McDaniel. The duly appointed and acting Clerk is Janet Keller. The duly appointed special counsel to the County Commission is Frances Whiteman, Esquire, Fairmont, West Virginia. The duly appointed and acting Counsel to the Issuer is Sansalone & Sansalone in Fairmont, West Virginia.

7. LAND AND RIGHTS-OF-WAY: This Project is being undertaken as a joint Project by and between the Issuer and The County Commission of Marion County pursuant to that certain Intergovernmental Agreement dated May 13, 2003, and approved as to form by the Attorney General of the State of West Virginia. Except as set forth herein, 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 by The County Commission of Marion County and assigned by The County Commission of Marion County to the Issuer. The County Commission of Marion County has filed condemnation actions against the owners of, and obtained rights of entry for, five parcels of real property, as more fully described in the Opinion of Special Counsel to the Issuer delivered contemporaneously herewith. After a final Order is entered by the Court in each condemnation action, the acquired interest in each property shall be assigned to the Issuer. The Issuer shall exercise its best efforts to effectuate the transfer of each property acquired through condemnation by The County Commission of Marion County to the Issuer. All such properties, whether acquired by condemnation or otherwise, 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 of such properties for the acquisition and construction of the Project and the operation and maintenance of the System and are adequate for such purpose. The costs thereof, including costs of any properties which are being 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. (Counsel to the Issuer expresses no opinion as to this paragraph 7.)

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 and financing of the Project or the operation of 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 and Bond Purchase Agreement is in full force and effect. (Counsel to the Issuer expresses no opinion as to this paragraph 9.)

10. BOND PURCHASE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Bond Purchase Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Bond Purchase 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 dates of the Bond Purchase 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 Bond Purchase Agreement not misleading; and (iv) the Issuer is in compliance with the Bond Purchase Agreement.

11. RATES: The Issuer has duly enacted a sewer rate ordinance on November 13, 2002, 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 are currently effective.

12. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor and City Manager did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by their manual signatures, 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 their manual signatures, 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 Bond Purchase Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. BOND PROCEEDS: On the date hereof, the Issuer received $34,000 from the Authority and the DEP, being a portion of the principal amount 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 *Times West Virginian*, a qualified newspaper published and of general circulation in the City of Fairmont, 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 Governing Body at the public hearing held at a public meeting of Governing Body on the 13th day of May, 2003, at 7:00 p.m., at the City

Hall, Fairmont, West Virginia 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: The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, including the Final Order entered on December 25, 2002, and the Commission Order entered on June 24, 2003, in Case No. 02-0397-S-CN, among other things, granting to the Issuer a certificate of convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Final Order has expired prior to the date hereof without any appeal. The time for appeal of the June 24, 2003 Commission Order has not expired prior to the date hereof. The Issuer hereby certifies that it does not intend to appeal such Order and the other parties to such Order have stated that they do not intend to appeal such Order. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to such Order.

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

17. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the Board 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.

18. GRANTS: As of the date hereof, the Small Cities Block Grant in the amount of $872,405 is in full force and effect.

19. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds. (Counsel to the Issuer expresses no opinion as to this paragraph 19.)

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

21. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

WITNESS our signatures and the official seal of the CITY OF FAIRMONT on this 26th day of June, 2003.

[CORPORATE SEAL]

SIGNATURE	OFFICIAL TITLE
_____	Mayor
_____	City Manager
Janet L. Kellen	City Clerk
_____	Counsel to the Issuer
_____	Special Counsel (as to paragraphs 3, 7, 9 and 19 only)

06/18/03
268460.00002

WITNESS our signatures and the official seal of the CITY OF FAIRMONT on this 26th day of June, 2003.

[CORPORATE SEAL]

SIGNATURE	OFFICIAL TITLE
_____	Mayor
_____	City Manager
_____	City Clerk
Kevin V Amsbury	Counsel to the Issuer
_____	Special Counsel to the County Commission* (as to paragraphs 3A, 7, 9 and 19 only)

06/23/03
268460.00002

CH608125.2

WITNESS our signatures and the official seal of the CITY OF FAIRMONT on this 26th day of June, 2003.

[CORPORATE SEAL]

SIGNATURE	OFFICIAL TITLE
_____	Mayor
_____	City Manager
_____	City Clerk
_____	Counsel to the Issuer
_____	Special Counsel (as to paragraphs 3A, 7, 9 and 19 only)

06/18/03
268460.00002

CH608125.2

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

CERTIFICATE OF ENGINEER

I, Steven A. Cain, Registered Professional Engineer, West Virginia License No. 15264, of Greenhorne & O'Mara, Inc., Fairmont, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of the City of Fairmont (the "Issuer") to be constructed primarily in Marion County, West Virginia, which acquisition and construction are being permanently financed in part by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance enacted by the Issuer on May 13, 2003, as supplemented, and the Bond Purchase Agreement, by and among the Issuer, the West Virginia Department of Environmental Protection ("DEP") and the West Virginia Water Development Authority (the "Authority"), dated May 23, 2003 (the "BPA").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; (ii) funding the Series 2003 A Bonds Revenue Account; and (iii) paying certain costs of issuance of the Bonds and related costs.

3. To the best of our knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 30 years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (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 set forth in the Schedule A, attached hereto as Exhibit A and Whiteman Burdette PLLC, has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all

addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain the critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all applicable permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of Issuer's certified public accountant, Gary K. Bennett, CPA, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the BPA; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously 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 approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 26th day of June, 2003.

GREENHORNE & O'MARA, INC.

Steven A. Cain, P.E.
West Virginia License No. 15264

06/23/03
268460.00002

SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: City of Fairmont

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

		A. Cost of Project	
1.	Construction	$999,530	
2.	Technical Services	$211,600	
3.	Legal and Fiscal	$25,585	
4.	Administrative	$20,000	
* 5.	Site and Other Lands	$17,733	
** 6.	Fac. Plan/Design or Other Loan Repayment (Specify Type: _____)	$	
7.	Interim Financing Costs	$	
8.	Contingency	$51,812	
9.	Miscellaneous	$	
10.	Total of Lines 1 Through 9		$1,326,260

			B. Sources of Funds	
11.	Federal Grants:[1]		$	
	(Specify Sources)		$	
12.	State Grants:[1]	SCBG	$872,405	
	(Specify Sources)		$	
13.	Other Grants:[1]		$	
	(Specify Sources)		$	
14.	Any Other Source[2]		$	
	(Specify)		$	
15.	Total of Lines 11 Through 14			$872,405
16.	Net Proceeds Required from Bond Issue (Line 10 minus Line 15)			$453,855

		C. Cost of Financing	
17.	Bond Council & Registrar Fee	$15,500	
18.	Funded Reserve Account:[3]	$16,188	
19.	Total Cost of Financing (lines 17 + 18)		$31,688
20.	Size of Bond Issue (Line 16 plus Line 19)		$485,543

* not allowable for State Revolving Fund Assistance

** WDA loans associated with EPA grants are not allowable

Signature of Applicant

Date 6/23/03

Signature of Consulting Engineer

Date 6-19-03

GARY K. BENNETT

Certified Public Accountant

317 Cleveland Avenue
Fairmont, WV 26554
Telephone: (304) 366-4295
Fax: (304) 366-4311

June 26, 2003

City of Fairmont
Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development
Authority
Charleston, West Virginia

West Virginia department of
Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the sewer rate ordinance of the City of Fairmont (the "Issuer"), enacted November 13, 2002, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Greenhorne & O'Mara, Inc., it is my opinion that such rates and charges will be sufficient to produce Net Revenues equal to not less than 125% of (i) the maximum annual debt service on the Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program) (the "Bonds"), to be issued in the original aggregate principal amount of $485,543 to the West Virginia Water Development Authority on the date hereof, and all other obligations secured by or payable from the revenues of the System, on a parity with the Bonds, including the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988 and the Sewerage System Refunding Revenue Bonds, Series 1985 (collectively, the "Prior Bonds"); and (ii) the amount due under the Investment Purchase Agreement, in each Fiscal Year, all as defined in the ordinance authorizing the Prior Bonds.

It is my 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 3 succeeding years after the completion of the improvements to be financed by the Bonds, will not be less than 125% of the average annual 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,

Gary K. Bennett
Certified Public Accountant

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Mayor of the City of Fairmont in Marion County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of $485,543 Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), of the Issuer, dated June 26, 2003 (the "Bonds" or the "Series 2003 A Bonds"), hereby certifies as follows:

1. 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 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 meanings set forth in the Bond Ordinance duly enacted by the Issuer on May 13, 2003, as supplemented (the "Bond Ordinance"), authorizing the Bonds.

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

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on June 26, 2003, the date on which the Bonds are being physically delivered in exchange for an initial advance of $34,000, being a portion of the principal amount of the Series 2003 A Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority"), the West Virginia Department of Environmental Protection (the "DEP") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2003 A Bonds were sold on June 26, 2003, to the Authority, pursuant to a Bond Purchase Agreement dated May 23, 2003, by and among the Issuer, the Authority and the DEP, for an aggregate purchase price of $485,543 (100% of par), at which time, the Issuer received $34,000 from the Authority and the DEP, being the first advance of the principal amount of the Series 2003 A Bonds. No accrued interest has been or will be paid on the Series 2003 A Bonds. The balance of the principal amount of the Series 2003 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2003 A 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 certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding the Series 2003 A Bonds Reserve Account; and (iii) paying certain costs of issuance of the Bonds and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Series 2003 A Bonds Reserve Account, 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 September 1, 2004. The acquisition and construction of the Project is expected to be completed by June 1, 2004.

8. The total cost of the Project is estimated at $1,357,948. Sources and uses of funds for the Project are as follows:

SOURCES	
Small Cities Block Grant	$ 872,405
Proceeds of the Series 2003 A Bonds	$ 485,543
Total Sources	$1,357,948

USES

Costs of Acquisition and Construction of the Project	$1,326,760
Fund Series 2003 A Bonds Reserve Account	$ 16,188
Costs of Issuance	$ 15,000
Total Uses	$1,357,948

9. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created or continued relative to the Series 2003 A Bonds:

(1) Revenue Fund;

(2) Operation and Maintenance Fund;

(3) Depreciation Fund;

(4) Series 2003 A Bonds Construction Trust Fund;

(5) Series 2003 A Bonds Sinking Fund; and

(6) Series 2003 A Bonds Reserve Account.

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

(1) Series 2003 A Bonds proceeds in the amount of $16,188 will be deposited in the Series 2003 A Bonds Reserve Account.

(2) The balance of the proceeds of the Series 2003 A Bonds will be deposited in the Series 2003 A Bonds 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 2003 A Bonds and related costs.

11. Monies held in the Series 2003 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2003 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on monies in the Series 2003 A Bonds Sinking Fund and Series 2003 A Bonds Reserve Account, if any, will

be withdrawn therefrom and deposited into the Series 2003 A Bonds 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.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2003 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 15 months from the date of issuance thereof.

15. 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.

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

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

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

20. 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.

21. The Bonds are not federally guaranteed.

22. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain public purpose bonds.

23. The Issuer has either (a) funded the Series 2003 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 2003 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2003 A Bonds Reserve Account hold 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. Monies in the Series 2003 A Bonds Reserve Account and the Series 2003 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

24. 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 the Bonds and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

25. 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.

26. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

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

WITNESS my signature on this 26th day of June, 2003.

CITY OF FAIRMONT

By: _____
Its: Mayor

06/18/03
268460.00002

CH592169.1

CHARTER

OF THE CITY OF

FAIRMONT, WEST VIRGINIA

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CHARTER

OF THE

CITY OF FAIRMONT, WEST VIRGINIA

ARTICLE I - Incorporation; Form of Government; Powers

Section 1.01 Incorporation.

The inhabitants of the City of Fairmont, Marion County, West Virginia, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the City of Fairmont.

Section 1.02 Form of Government.

There is established by this Charter the Council-Manager form of municipal government, as prescribed in section two, article three, chapter eight of the official code of West Virginia, as amended. Except as otherwise provided in this Charter, the Council shall be the governing authority of the City, and shall appoint the City Manager who shall execute the laws and administer the government of the City, except as otherwise provided herein.

Section 1.03 Powers of City.

The City shall have all the powers specifically provided for in this Charter, and shall also have all the powers now hereafter granted to municipal corporations and to cities of its class by the constitution and general laws of the State, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the City shall have and may exercise all the powers which under the Constitution and laws of the State might properly be specifically enumerated in this Charter.

Section 1.04 Intergovernmental Relations.

The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states in civil divisions or subdivisions or agencies thereof, or the United States of America or any agencies thereof.

ARTICLE II - The Council

Section 2.01 Composition, Eligibility, Election and Terms.

(a) Composition. There shall be nine councilmembers. The councilmembers shall b elected by the voters of the City at large. The City shall be divided into nine voting districts, which districts shall be established by Council by ordinance and changed from time to time by Council to reflect population changes.

(b) Eligibility and Qualifications. Only qualified voters of the City shall be eligible to hold the office of councilman or councilwoman. Each councilmember shall have been a resident of the City for at least two years immediately preceding his election and shall, at the time of his announcement for office and during his term of office, reside within the district from which elected or appointed to office; provided, however, that no redistricting of the City shall affect the term of any incumbent councilmember during his then existing term of office. If a councilmember shall cease to possess any of these qualifications or shall be convicted of a crime involving moral turpitude, his office shall immediately become vacant. The terms of councilmembers shall be four years except as otherwise provided in this Charter respecting the first election under this Charter.

Section 2.02 Mayor.

The Council shall elect, at the first meeting of a new Council one of its members to serve at the pleasure of the Council as Mayor, and it shall also elect from among its members a Deputy Mayor who shall at the pleasure of the Council act as Mayor during the absence or disability of the Mayor. The Mayor shall preside at all meetings of the Council, shall be recognized as head of the City government for all ceremonial purposes and by the Governor for purposes of military law but shall have no administrative duties. If the Deputy Mayor acts as Mayor, he shall be compensated as such as set out in Section 2.03.

Section 2.03 Compensation; Expenses.

The salary of the Mayor shall be sixty dollars for each regular meeting of the Council attended by him, not to exceed $1440 dollars in any fiscal year. The salary of each of the other councilmembers shall be fifty dollars for each regular meeting of the Council attended by him, not to exceed $1200 in any fiscal year. Until the maximum limit is reached, the salary of the Mayor and each of the councilmembers shall be paid monthly as earned. Councilmembers shall receive their actual and necessary expenses incurred in the performance of their duties of office as approved by the Council.

Section 2.04 Powers.

All powers of the City shall be vested in the Council, except as otherwise provided by law or this Charter, and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

Section 2.05 Prohibitions.

(a) During his term of office no councilmember shall hold any other elected public office, nor shall be employed by the City in any other capacity and no former councilmember shall hold any compensated appointive City office or employment until one year after the expiration of the term for which he was elected to the Council. However, any member of any political executive committee shall not be deemed to hold an elected public office within the meaning of this section.

(b) Appointments and Removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officer or employee whom the Manager or any of his subordinates are empowered to appoint, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to the appointment or the removal of such officer or employee.

(c) Interference with Administration. Except for the purpose of inquiries and investigations under Section 2.09, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officers or employees, either publicly or privately. Violation of this provision shall provide grounds for removal from office.

Section 2.06 Vacancies, Forfeiture of Office, Filling of Vacancies.

(a) Vacancies. The office of a councilmember shall become vacant upon his death, resignation or removal from office in any manner authorized by law or forfeiture of his office.

(b) Forfeiture of Office. A councilmember shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by this Charter (2) violates any express prohibition of this Charter, (3) is convicted of a crime involving moral turpitude, or (4) fails to attend three consecutive regular meetings of the Council without being excused by the Council as reflected in the minutes.

(c) Filling of Vacancies. A vacancy in the Council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than 60 days upon the occurrence of the vacancy, but the Council by a majority vote of all its remaining members shall appoint a qualified person from the same political party or independent as the case may be to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the Council fails to do so within 30 days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than 90 days and not later than 120 days following the occurrence of the vacancy and to be otherwise governed by the provisions of Article VII. Notwithstanding the requirement in Section 2.11 that a quorum of the Council consists of five members, if at any time the membership of the Council is reduced to less than five, the remaining members may by majority action appoint additional members to raise the membership to five.

Section 2.07 Judge of Qualifications.

The Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearings shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to review by the courts.

Section 2.08 City Clerk.

The Council shall appoint upon recommendation of the City Manager a resident of the City to serve as City Clerk at the will and pleasure of the Council. Except as otherwise provided in this Charter and subject to the supervision of the City Manager, the Clerk shall have the power, and it shall be his or her duty to:

(1) Give notice of and attend all meetings of the Council, keep the journal of its proceedings, authenticate by his or her signature and record in full in a book kept for the pu [illegible] Council, prepare and keep up to date an index [illegible]

(2) Make and certify copies of any ordinance, resolution or order of the Council whenever required to do so, and affix the corporate seal of the City to any paper required to be sealed and to any certified copy of any paper, order or proceeding which he may make.

(3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice he shall file and preserve the same.

(4) Have custody of and keep available for public inspection the permanent records of the City and file and properly index all records of such City officers and departments as the City Manager may direct.

(5) Perform such other duties as may be required of him or her by this Charter, by general law, or by City ordinance or order of the City Manager not inconsistent with this Charter or with general law.

Section 2.09 Investigations.

The Council may make investigations into the affairs of the City and the conduct of any City department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the Council shall be guilty of a misdemeanor and punishable by a fine of not less than $50 or more than $500.

Section 2.10 Independent Audit.

The Council shall provide for an independent annual audit of all City accounts including Fairmont General Hospital and other such boards or commissions, and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The Council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding three years, provided that the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. If the State makes such an audit, the Council may accept it as satisfying the requirements of this section.

Section 2.11 Procedure. * see Resolution 5-3-83 - (48 hrs. notice)

(a) Meetings. The Council shall meet regularly at least twice every month at such time and place as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor or of five or more members and, whenever practicable, upon no less than * ~~twenty-four hours'~~ notice to each member. All meetings shall be public; however, the Council may recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council until the matter is placed on the agenda.

(b) Rules and Journal. The Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public

(c) Voting. Voting, except on procedural motions, shall be by roll call and the yeses and noes shall be recorded in the journal. Five members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. No action of the Council, except as otherwise provided in the preceding sentence and in Section 2.06, shall be valid or binding unless adopted by the affirmative vote of five or more members of the Council. (Passed by Council 9-20-83)

Section 2.12 Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

(1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency;
(2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
(3) Grant, renew or extend a franchise;
(4) Regulate the rate charged for its services by a public utility;
(5) Authorize the borrowing of money;
(6) Convey or lease or authorize the conveyance or lease of any lands of the City;
(7) Adopt with or without amendment ordinances proposed under the initiative power; and
(8) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article VIII with respect to repeal of ordinances reconsidered under the referendum power.

Section 2.13 Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "the City of Fairmont hereby ordains....."Any ordinance which repeals or amends an existing ordinance or part of the City Code shall set out in full the ordinance, sections, or subsections to be repealed or amended, and shall include the matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

(b) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the City Clerk shall read fully and distinctly the proposed ordinance in its entirety. When the introducer of an ordinance considers it to be of such technical nature, or of such length that the intent will be more fully understood in synopsis form the Council member may request the Clerk to read the synopsis in lieu of the entire ordinance. Provided however the ordinance will be read in its entirety instead of in synopsis upon request of the majority of the Council members present. The City Clerk shall distribute a copy to

each Council member and to the Manager, shall file a reasonable number of copies in the office of the City Clerk, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. At the commencement of the public hearing the Clerk shall read the title only of the proposed ordinance, unless a request is made by any person present at the public hearing that the proposed ordinance be read, upon which request the Clerk shall read fully and distinctly the proposed ordinance in its entirety. Copies of the proposed ordinance shall be made available to those in attendance at the public hearing. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance.
(Passed by Council 6-17-80; 11-15-83; 5-23-89) ord. #808

(c) Effective Date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Published" Defined. As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the City: (1) the title of the ordinance and a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection.

Section 2.14 Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the Council may adopt one or more emergency ordinances but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in subsection 5.09(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least six members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to subsection 5.09(b) shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Section 2.15 Codes of Technical Regulations.

The Council may adopt any standard code of technical regulat ions by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that:

(1) The requirements of Section 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

(2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the City Clerk pursuant to subsection 2.16(a).

Copies of any adopted code of technical regulations shall be made available by the City Clerk for distribution or for purchase at a reasonable price.

Section 2.16 Authentication and Recording; Codification; Printing.

(a) Authentication and Recording. The City Clerk shall authenticate by his signature and record in full in a properly indexed book kept for the purpose all ordinances and resolu tions adopted by the Council.

(b) Codification. Within three years after adoption of this Charter and at least every ten years thereafter, the Council shall provide for the preparation of a general codification of all City ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and shall be published promptly in bound or loose-leaf form, together with this Charter and any amendments thereto, pertinent provisions of the Constitution and other laws of the State of West Virginia and such codes of technical regulations and other rules and regulations as the Council may specify. This compilation shall be known and cited officially as the Fairmont City Code. Copies of the Code shall be furnished to City officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the Council.

(c) Printing of Ordinances and Resolutions. The Council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be copied promptly following its adoption, and the said copies of the ordinances, resolutions and Charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the Council. Following publication of the first Fairmont City Code and at all times thereafter, the ordinances, resolutions and Charter amendments shall be reproduced in substantially the same style as the Code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangeme as it deems desirable with respect to reproduction and distribution of any current change in or additions to the provisions of the Constitution and other laws of the State of West Virginia, or the codes of technical regulations and other rules and regulations included i the Code.

ARTICLE III - City Manager

Section 3.01 Appointment; Qualifications; Compensation.

The Council shall appoint a City Manager for an indefinite term and fix his compensation. The Manager shall be appointed solely on the basis of his executive and administrative qualifications with particular emphasis on education and experience in City government. He need not be a resident of the City or State at the time of his appointment but must reside within the City while in office.

Section 3.02 Removal.

The Council may remove the Manager from office in accordance with the following procedures:

(1) The Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the Manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the Manager.

(2) Within five days after a copy of the resolution is delivered to the Manager, he may file with the Council a written request for a public hearing. This hearing shall be held at a Council meeting not earlier than fifteen days nor later than thirty days after the request is filed. The Manager may file with the Council a written reply not later than five days before the hearing.

(3) The Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the Manager, if he has not requested a public hearing, or at any time after the public hearing if he has requested one.

The Manager shall continue to receive his salary until the effective date of a final resolution of removal. The action of the Council in suspending or removing the Manager shall not be subject to review by any court or agency.

Section 3.03 Acting City Manager.

By letter filed with the City Clerk the Manager shall designate, subject to approval of the Council, a qualified City administrative officer to exercise the powers and perform the duties of Manager during his temporary absence or disability. During such absence or disability the Council may revoke such designation at any time and appoint another officer of the City to serve until the Manager shall return or his disability shall cease; however, in the event that the Manager has failed to designate an Acting Manager, the Council may by resolution appoint an officer of the City to perform the duties of the Manager until he shall return or his disability shall cease.

Section 3.04 Powers and Duties of the City Manager.

The City Manager shall be the chief administrative officer of the City. He shall be responsible to the Council for the administration of all City affairs placed in his charge by or under this Charter. He shall have the following powers and duties:

(1) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.

(2) He shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.

(3) He shall attend all Council meetings and shall have the right to take part in discussion but may not vote.

(4) He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision are faithfully executed.

(5) He shall prepare and submit the annual budget and capital program to the Council.

(6) He shall propose personnel rules, and the Council may by ordinance adopt them with or without amendment.

(7) He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.

(8) He shall make such other reports as the Council may require concerning the operations of City departments, offices and agencies subject to his direction and supervision.

(9) He shall keep the Council fully advised as to the financial condition and future nee of the City and make such recommendations to the Council concerning the affairs of the City as he deems desirable.

(10) He shall prepare and mail to each councilmember a proposed agenda of the next regular Council meeting at least three days prior to the meeting.

(11) He shall perform such other duties as are specified in this Charter or may be required by the Council.

ARTICLE IV - Administrative Departments, Boards and Commissions

Section 4.01 Administrative Offices and Departments.

There shall be in the City government a Police Department, a Fire Department, a Department of Public Works, a Department of Finance, and such other administrative departments as may by ordinance be created by the Council. The City Manager shall appoint as the head of each department a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the Manager. With the consent of Council, the Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

The Council may by ordinance create, combine, change or abolish offices, boards, commissions, departments or agencies, other than those established by this Charter. Except as otherwise provided in this Charter, the Council may assign additional functions or duties to any office, department or agency created by it or by this Charter, but may not discontinue or transfer any function or duty assigned by this Charter to any particular office, department or agency.

Section 4.02 City Attorney.

(a) There shall be a City Attorney who shall be a member in good standing of the Marion County Bar, appointed by the Manager with the approval of the Council to serve at the pleasure of Council. He shall serve as chief legal advisor to the Council, the Manager and all City departments, offices and agencies, shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter or by ordinance.

(b) Whenever the exigencies of the business of the City require such action, the City Manager shall have right to employ special counsel to assist the City Attorney.

Section 4.03 Municipal Court.

There shall be a police court, to be known as the "Fairmont Municipal Court", which shall have criminal jurisdiction over violations of City ordinances and the criminal jurisdiction of a magistrate of the State of West Virginia with respect to offenses committed within any territory in or beyond the City over which the City has police jurisdiction under provisions of general law. (Passed by Council 6-17-80)

There shall be a police court judge, to be known as the "Municipal Judge", who shall be appointed by the Council and who shall serve for a term of four years and who shall be subject to removal for cause only. The Municipal Judge shall be an attorney in good standing of the Marion County Bar. He may succeed in office.

In the event of the temporary absence or disability of the Municipal Judge, the City Manager shall appoint a person similarly qualified to serve as Municipal Judge during such absence or disability. Salary shall be transferred from the regular judge in the temporary judge for the time serving.

In the event of the death, resignation, removal or permanent disability of the Municipal Judge, the Council shall appoint a person similarly qualified to serve as Municipal Judge for the unexpired term within fifteen days.

The Municipal Judge shall preside over the Municipal Court and with respect to offenses over which the Municipal Court has jurisdiction. The Municipal Judge shall have power to issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the Court. The Municipal Judge shall try and determine all cases over which the Court has jurisdiction, and within the limits prescribed by ordinance or by general law shall have the power to punish by fine or imprisonment, or both. The Municipal Judge shall have power to summons persons or subpoena witnesses for the trial of any case before him, to compel the attendance of police officers of the City, to require the Chief of Police to enforce all judgments or orders entered by him in the exercise of his powers as Municipal Judge, and to issue executions for all fines, penalties and costs imposed by him.

Section 4.04 City Planning Commission.

The Council shall provide for the establishment and financial support of a City Planning Commission as provided by general law. The Commission shall consist of no fewer than 9 nor more than 13 members who shall be appointed by the Council and who shall serve without compensation. Members of the Commission shall meet the qualifications as delineated by law, and the Commission shall have the powers and shall perform the duties presented by the West Virginia Code. These duties shall include recommendations to the City Manager and Council on all matters related to the physical development of the City, shall be consulted on the comprehensive plan and the implementation thereof. The Planning Director will act as secretary to the Commission and will attend all meeting

Section 4.05 Board of Adjustment.

The Council shall by ordinance establish a Board of Adjustment whose members shall serve without compensation. The Council shall provide standards and procedures for such Board to hear and determine appeals from administrative decisions, petitions for variance in the case of peculiar and unusual circumstances which would prevent the reasonable use of land and such other matters as may be required by the Council or by law.

Section 4.06 Hospital Board.

(a) Management. The management, maintenance, administration, operation, custody and control of the Municipal hospital and all the appurtenances thereof and grounds and site thereof, is hereby committed to a board of directors to be known as the "Fairmont Hospital Board".

(b) The Board shall consist of eleven members to be nominated and appointed by the Council. It shall be composed of two members of Council, and forty percent of the remainder shall be composed of an equal portion of consumer representatives from each of the following four categories: small businesses, organized labor, elderly persons and persons whose income is less than the national median income. Special consideration shall be made to select women, racial minorities and handicapped persons. The terms of the consumer member shall be six years, and members shall be eligible for reappointment. The Board shall at its first meeting of each calendar year elect from its members a president, vice-president, secretary and treasurer. The Board shall serve without compensation. All vacancies shall be filled by the City Council within fifteen (15) days. The Board members may be removed at any time by City Council for cause. (Passed by Council 4-3-84.) CPD. 630

(c) Fiscal Matters. The Hospital Board shall cause accurate and proper books of accounts to be maintained in accordance with acceptable accounting practices. The Hospital Board shall submit to the Council a monthly statement of income and expenses. An annual independent audit will be provided as per Section 2.10.

(d) First Board. The lay members of the initial Board under this Charter shall be composed of the present lay members of the Hospital Board. Terms of office will be determined by the Hospital Board using the following guidelines: Three members will serve for three years; two members will serve for two years; and two members will serve for one year.

The Board will provide the City Council with the names and terms of its lay members within fifteen days after this Charter is in effect; otherwise, the Council will designate terms of office.

(e) Any other municipal hospitals must be governed in the same manner with a separate board as prescribed in this section.

ARTICLE V - Financial Procedures

Section 5.01 Fiscal Year.

The fiscal year of the City shall begin on the first day of July and end on the last day of June.

Section 5.02 Submission of Budget and Budget Message.

On or before the 15th day of February of each year, the Manager shall submit to the Council a budget for the ensuing fiscal year and an accompanying message.

Section 5.03 Budget Message.

The Manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position and include such other material as the Manager deems desirable.

Section 5.04 Budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the Manager deems desirable or the Council may require. In organizing the budget the Manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose of activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

(a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;

(b) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure.

The total of proposed expenditures shall not exceed the total of estimated income.

Section 5.05 Capital Program.

(a) Submission to Council. The Manager shall prepare and submit to the Council a five-year capital program prior to the final date for submission of the budget.

(b) Contents. The capital program shall include:

(1) A clear general summary of its contents;

(2) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to to the necessity for such improvements;

(3) Cost estimates, method of financing and recommended time schedule for each such improvement; and

(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Section 5.06 Council Action on Budget.

(a) Notice and Hearing. At the meeting of the Council at which the budget is submitted, the Council shall determine the time and place of a public hearing. The Council shall publish in one or more newspapers of general circulation in the City a notice stating:

(1) The times and places where copies of the message and budget are available for inspection by the public, and

(2) The time and place for a public hearing on the budget.

(b) Amendment Before Adoption. After the public hearing, the Council may adopt the budget with or without amendment.

(c) Adoption. The Council shall adopt the budget on or before the 28th day of March of the fiscal year currently ending. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

Section 5.07 Council Action on Capital Program.

(a) The Council shall make known, no less than one month prior to adoption of the capital program, the times and places where copies of the capital program are available for inspection by the public.

(b) Adoption. The Council by resolution shall adopt the capital program with or without amendment on or before the 28th day of March of the current fiscal year.

Section 5.08 Public Records.

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the City.

Section 5.09 Amendments After Adoption.

(a) Supplemental Appropriations. If during the fiscal year the Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

(b) Emergency Appropriations. To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of Section 2.14. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by ordinance reduce one or more appropriations.

(d) Transfer of Appropriations. At any time during the fiscal year the Manager may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon written request by the Manager, the Council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office or agency to another.

(e) Limitations; Effective Date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Section 5.10 Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Section 5.11 Administration of Budget.

(a) Work Programs and Allotments. At such time as the Manager shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to Section 5.09.

(b) Payments and Obligations Prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made, and unless the Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void, any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improve [illegible] wholly or partly by the issuance of bonds or to prevent the making of

ARTICLE VI-Planning

Section 6.01 Planning Director.

There shall be a Planning Director who shall be appointed by the Manager as provided in Section 4.01. The Planning Director will act as secretary to the Commission and attend all meetings and shall have the following responsibilities:

(1) To advise the City Manager on any matter affecting the physical development of the City,

(2) To maintain and recommend to the City Manager a comprehensive plan and modifications thereof,

(3) To review and make recommendations regarding proposed Council action implementing the comprehensive plan pursuant to Section 6.03,

(4) To participate in the preparation and revision of the capital program provided for in Section 5.05,

(5) To advise the City Planning Board in the exercise of its responsibilities and in connection therewith to provide necessary staff assistance,

(6) To assist in the preparation of grants and/or other established funding program, and

(7) To cooperate with other units of government and public agencies by planning as provided in Section 1.04.

Section 6.02 Comprehensive Plan.

(a) Content. The Council shall adopt and may, from time to time, modify a comprehensive plan setting forth in graphic and textual form policies to govern the future physical development of the City. Such plan may cover the entire City and all of its functions and services or may consist of a combination of plans governing specific functions and services or specific geographic areas which together cover the entire City and all of its functions and services.

(b) Adoption. Upon receipt from the City Manager of a proposed comprehensive plan or proposed modification of the existing plan, the Council shall refer such proposal to the City Planning Commission, which shall within a time specified by the Council report its recommendations thereon.

(c) Effect. The comprehensive plan shall serve as a guide to all future Council action concerning land use and development regulations, urban renewal programs and expenditures for capital improvements.

Section 6.03 Implementation of the Comprehensive Plan.

(a) Land Use and Development Regulations. The Council may by ordinance adopt land use and development regulations, including but not limited to an official map and zoning and subdivision regulations.

(b) Urban Renewal. The Council may by ordinance provide for redevelopment, rehabilitation, conservation and renewal programs for: (1) The alleviation or prevention of slums, obsolescence, blight or other conditions of deterioration, and (2) the achievement of the most appropriate use of land.

(c) Council Action. Before acting on any proposed ordinance concerning land use and development regulations, urban renewal or expenditures for capital improvements, where

by the Council and prior to the public hearing on the proposed ordinance report its recommendations thereon. Upon adopting any such ordinance, the Council shall make findings and report on the relationship between the ordinance and the comprehensive plan and, in the event that the ordinance does not accord with the comprehensive plan, the plan shall be deemed to be amended in accordance with such findings and report.

ARTICLE VII - Elections

Section 7.01 Time of Elections.

The regular municipal elections shall be held at the voting places in each of the election districts of the City on the first Tuesday after the first Monday in November in each even numbered year. (Approved by Voters 11-4-80)

Section 7.02 General Election Laws to Control.

Except as otherwise provided by this Charter, the provisions of the general election laws of the State of West Virginia shall apply to the elections held under this Charter. To the extent that it has not already done so, the Council shall adopt by ordinance all regulations which it considers desirable, consistent with law and this Charter. (Approved by Voters 11-4-80)

Section 7.03 Filing.

(a) Fees. There shall be a filing fee of fifteen dollars ($15.00) to be accompanied by an announcement of candidacy for the office of Council to be submitted to the City Clerk, which fee is to be deposited in the General Fund. Forms for announcement of candidacy will be provided by the City Clerk as follows:

ANNOUNCEMENT OF CANDIDACY

I, _____, hereby certify that I am a candidate for a non-partisan election to membership on the Council of the City of Fairmont, West Virginia, and desire my name printed on the ballot to be voted at the regular municipal election to be held on the _____ day of _____, 19 _____; that I am a legally qualified voter of the City of Fairmont, West Virginia; that my residence is _____, in said City, which is in District Number_____; that I am a candidate for said office in good faith; and that I am eligible to hold the office.

_____
Candidate

STATE OF WEST VIRGINIA,
COUNTY OF MARION, TO-WIT:

Signed and acknowledged before me the undersigned authority this _____ day of _____, 19 _____.

_____

(b) Time for Filing. The announcement of candidacy and filing fee shall be filed with the City Clerk not earlier than 90 days nor later than 60 days prior to the regular municipal election in which the candidate seeks election. The City Clerk shall make a record of the exact time when each announcement is filed.
(Approved by Voters 11-4-80)

Section 7.04 Voting.

(a) All citizens qualified by the Constitution and the laws of the State of West Virginia to vote in the City and who satisfy the requirements for registration prescribed by law shall be qualified voters of the City within the meaning of this Charter.

(b) Every qualified voter shall be entitled to vote for as many candidates as there are districts - but for only one candidate from each district.
(Approved by Voters 11-4-80)

Section 7.05 Council Ballots.

(a) The full names of all candidates seeking membership in the City Council, except those who have withdrawn, died, or become ineligible, shall be placed on the official ballots without party designation or symbol under a heading reading: "Candidates for Councilmember" and also stating the district in which the candidate resides. If there are two or more candidates from the same district, the voter shall be instructed to vote for only one of them. The failure of a voter to cast a ballot for any candidate from one or more districts shall not invalidate his votes cast for candidates from any other districts.

(b) If two or more candidates for the same office have the same surnames or surnames so similar as to be likely to cause confusion, their residence addresses shall be placed with their names on the ballot.

(c) The names on the ballots shall be listed in the numerical order of the districts, and the ballots shall otherwise be in accordance with the requirements of general law. (Approved by Voters 11-4-80)

Section 7.06 Determination of Election Results.

(a) Every voter shall be entitled to cast one vote for one candidate seeking office from each of the nine districts in the City.

(b) The candidate in each district who receives the greatest number of the total votes cast by the qualified voters of the City at large shall be declared elected. All ties between two candidates receiving the highest number of votes cast for that office shall be decided by lot in the presence of the candidates concerned by the persons under whom the supervision of the election is held.
(Approved by Voters 11-4-80)

Section 7.07 Terms.

(a) The terms of councilmembers shall be four (4) years.

(b) At the election to be held in November of 1980, councilmembers will be elected from Districts Numbers 2, 4, 6, and 7. At the election to be held in November of 1982, councilmembers will be elected from Districts Numbers 1,

(c) The councilmembers elected at each regular municipal election shall assume office at the first regular meeting of Council in January of the year immediately following their election, and the term of each shall expire as soon as his successor has assumed office. (Approved by Voters 11-4-80)

ARTICLE VIII-Initiative and Referendum

Section 8.01 General Authority.

(a) Initiative. The qualified voters of the City shall have power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a City election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees.

(b) Referendum. The qualified voters of the City shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a City election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

Section 8.02 Commencement of Proceedings; Petitioners' Committee; Affidavit.

Any five qualified voters may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the Clerk shall issue the appropriate petition blanks to the petitioners' committee.

Section 8.03 Petitions.

(a) Number of Signatures. Initiative and referendum petitions must be signed by qualified voters of the City equal in number to at least 15 percent of the total number of qualified voters registered to vote at the last regular City election.

(b) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petition shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(c) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names

they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) Time for Filing Referendum Petitions. Referendum petitions must be filed within 30 days after adoption by the Council of the ordinance sought to be reconsidered.

Section 8.04 Procedure After Filing.

(a) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within two days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 8.03, and within five days after it is filed, the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the Clerk shall promptly present his certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(b) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.

(c) Court Review, New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Section 8.05 Referendum Petitions; Suspension of Effect of Ordinance.

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

(1) There is a final determination of insufficiency of the petition, or
(2) The petitioners' committee withdraws the petition, or
(3) The Council repeals the ordinance, or
(4) Thirty days have elapsed after a vote of the City on the ordinance.

Section 8.06 Action on Petitions.

(a) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its

(b) Submission to Voters. The vote of the City on a proposed or referred ordinance shall be held not less than 30 days and not later than one year from the date of the final Council vote thereon. If no regular City election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(c) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 8.07 Results of Election.

(a) Initiative. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) Referendum. If a majority of the qualified electors voting on a referred ordinanc vote against it, it shall be considered repealed upon certification of the election results.

ARTICLE IX-General Provisions

Section 9.01 Personal Financial Interest.

Any City officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a City officer or employee in the making of such sale or in the making or performance of such contract. Any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requiremen of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City Manager or the City Council.

Section 9.02 Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations.

(2) No person shall willfully make any false statement, certificate, mark, ratin or report in regard to any test, certification or appointment under the per-

(3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

(4) No person, group, organization or corporation shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any City election from any person holding any compensated appointive City position.

(5) No person who holds any compensated appointive City position shall make, solicit or receive any contribution to the campaign funds for City elections of any political party or any candidate for City office or take any part in management, affairs or political campaign for City elections of any political party, but he may exercise his rights as a citizen to express his opinions and to cast his vote.

(b) Penalties.

(1) Any person who by himself or with others willfully and/or knowingly violates any of the provisions of paragraphs (1) through (4) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars ($500) or less than fifty dollars ($50).

(2) Any person who by himself or with others willfully and/or knowingly violates any of the provisions of paragraph (5) shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500).

(3) Any person convicted under this section (9.02) shall be ineligible for a period of five years thereafter to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit his office or position.

Section 9.03 Separability.

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

ARTICLE X-Transitional Provisions

Section 10.01 Officers and Employees.

(a) Rights and Privileges Preserved. Except as otherwise specifically provided in this Charter, nothing shall impair the rights or privileges of persons who are City officers or employees at the time of its adoption.

(b) Continuance of Office or Employment. Except as specifically provided by this Charter, if at the time this Charter takes full effect a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, he shall continue in such office or position until the taking effect of some specific provision under this Charter directing that he vacate the office or position.

Section 10.02 Departments, Offices and Agencies.

(a) Transfer of Powers. If a City department, office or agency is abolished by this Charter, the powers and duties given it by law shall be transferred to the City department, office or agency designated in this Charter or, if the Charter makes no provision, designated by the City Council.

(b) Property and Records. All property, records and equipment of any department, office or agency existing when this Charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the Council in accordance with this Charter.

Section 10.03 Pending Matters.

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the City department, office or agency appropriate under this Charter.

ORDINANCE NO. 1112

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER- "THE COUNCIL", PARTICULARLY THAT PORTION OF SECTION 2.11 PROCEDURE SUBPART (a) MEETINGS WHICH PROVIDES THE CIRCUMSTANCES UNDER WHICH COUNCIL MAY RECESS AND MEET IN EXECUTIVE SESSION

WHEREAS, the Fairmont City Charter §2.11(a) defines or establishes the circumstances under which Council may recess and meet in executive session.

WHEREAS, City Charter §2.11(a) particularly provides that "All meetings shall be public; however, the Council may recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall be taken by the Council until the matter is placed on the agenda;"

WHEREAS, it appears that said charter provision was patterned after the provisions of West Virginia Code §6-9A-1 et seq., "Open Governmental Proceedings";

WHEREAS, the West Virginia Legislature at its 1999 session amended the provisions of West Virginia Code §6-9A-1 et seq., and particularly the provisions of §6-9A-4 which describes the circumstances under which a governing body of a public agency may recess and meet in executive session;

WHEREAS, the 1999 amendments to West Virginia Code §6-9A-1 et seq., have an effective date of June 21, 1999;

WHEREAS, the Council for the City of Fairmont constitutes a governing body of a public agency under the Act and its meetings are subject to its provisions [See West Virginia Code §6-9A-2(3), (4) and (6)];

WHEREAS, the City of Fairmont deems it necessary to amend Article II of the Fairmont City Charter, particularly Section 2.11 Procedure subpart (a) Meetings which provides the circumstances under which council may recess and meet in executive session so as to cause it to be consistent with the provisions of West Virginia Code §6-9A-4, as amended;

WHEREAS, although the provisions of West Virginia Code §6-9A-4, as amended provide broad circumstances under which a governmental body may recess and meet in executive session,

the City Charter has historically been much more restrictive by its terms and by application. This amendment retains the historical restrictions imposed upon Council by the Framers of the original City Charter;

WHEREAS, West Virginia Code §8-4-8 provides that an amendment to the City Charter under the alternate plan must be by ordinance.

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

Article II **The Council**, Section 2.11 **Procedure**, Part (a) **Meetings** of the Charter of the City of Fairmont, West Virginia be and is hereby amended as follows: (New Matters Double Underlined, Matters To Be Deleted Bracketed)

Section 2.11 Procedure

(a) Meetings. The Council shall meet regularly at least twice every month at such time and place as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor or of five or more members and, whenever, practicable, upon no less than twenty-four hours notice to each member. All meetings shall be open to the public; however, the Council may [recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council until the matter is placed on the agenda] hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the mayor, or in the absence of the mayor, the presiding member of council, shall identify the authorization under this section for holding the executive session and present it to the council and to the general public, but no decision may be made in the executive session and no final action thereon shall be taken by Council until the matter is placed on the agenda.

An executive session may be held only upon a majority affirmative vote of the council members present. Council may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider:

(A) Matters arising from appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a City officer or employee, or prospective officer or employee unless the officer or employee or prospective officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a City officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by the council for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation shall be taken in an open meeting;

(2) To develop security personnel or devices;

(3) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the City; *Provided*, that information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meeting requirements of this section only until the commercial competition has been finalized and completed: *Provided*, however, that information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

The effective date of this amendment shall be July 1, 1999, or thirty (30) days from adoption which ever is the latter.

Adopted this the 14th day of September, 1999.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No.** 1112 entitled:

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER - "THE COUNCIL", PARTICULARLY THAT PORTION OF SECTION 2.11 PROCEDURE SUBPART (a) MEETINGS WHICH PROVIDES THE CIRCUMSTANCES UNDER WHICH COUNCIL MAY RECESS AND MEET IN EXECUTIVE SESSION

was introduced and publicly read in its entirety at the Regular Meeting of Council held July 27, 1999 and was published in the Times-West Virginian on August 2, 1999 and August 9, 1999 pursuant to Charter provisions Section 2.13(d); a public hearing was held on September 14, 1999. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 14th day of September, 1999.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

A TRUE COPY:

MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

Janet L. Keller
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

ORDINANCE NO. 1055

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER- "THE COUNCIL," PARTICULARLY SECTION 2.01(b) WHICH ESTABLISHES THE QUALIFICATIONS FOR OFFICE OF COUNCIL

WHEREAS, The Fairmont City Charter §2.01(b) defines or establishes the qualifications one must possess to be eligible to seek and hold the office of councilperson.

WHEREAS, City Charter §2.01(b) particularly requires that each person desiring to seek and hold office of councilperson "shall have been a resident of the City for at least two years immediately preceding his election . . . ";

WHEREAS, the Supreme Court of Appeals of West Virginia in Marra v. Zink, 256 S.E, 2d 581 (W.Va.. 1979), reviewed the constitutionality of a City Charter provision requiring "[a]ll candidates for City Council to be city residents for one year prior to their nomination for office."

WHEREAS, the Court in Marra, held the above qualification unconstitutional.

WHEREAS, the Court, in Marra, held that Article IV, Section 4 of the West Virginia Constitution is the exclusive constitutional authority for the establishment of qualifications for municipal office and that said constitutional provision envisioned no greater qualifications than those required to vote.

WHEREAS, the Supreme Court of Appeals of West Virginia in Billings v. City of Point Pleasant, 460 S. E.2d 436 (W.Va. 1995), affirmed its holding Marra and further explained the Marra decision to mean that any qualification established in excess of those in Article IV, Section 4 of the West Virginia Constitution must satisfy a compelling state interest analysis.

WHEREAS, the two-year residency requirement established in Fairmont City Charter §2.01(b) for seeking and holding office is in direct conflict with the West Virginia Constitution and the Supreme Court of Appeals of West Virginia's decision in Marra, v. Zink, 256 S.E.2d 581 (W.Va 1979).

WHEREAS, The City of Fairmont deems it necessary to amend Article II of the Fairmont City Charter, particularly Section 2.01(b) so as to comply with the provisions of the West Virginia Constitution governing persons entitled to hold office and the Supreme Court of Appeals for the State of West Virginia holding in Marra, et al. v. Zink, 256 S.E 2d 581 (W.Va. 1979);

WHEREAS, West Virginia Code §8-4-8 further provides that an amendment to the City Charter under the alternate plan must be by ordinance.

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

Section 2.01 (b) of Article II - Eligibility and Qualification is hereby amended as follows:
(New Matters Double Underlined, Matters To Be Deleted Bracketed)

Section 2.01 (b) Eligibility and Qualifications. Only qualified voters of the City shall be eligible to hold the office of Councilman or Councilwoman. Each Councilmember [shall have been a resident of the City for at least two years immediately preceding his election and] shall, at the time of his announcement for office and during his term of office, reside within the district from which elected or appointed to office; provided, however, that no redistricting of the City shall affect the term of any incumbent Councilmember during his then existing term of office. If a Councilmember shall cease to possess any of these qualifications or shall be convicted of a crime involving moral turpitude, his office shall immediately become vacant. The terms of Councilmember shall be four years except as otherwise provided in this Charter respecting the first election under this Charter.

The effective date of this amendment shall be thirty (30) days after adoption.

Adopted this the 28th day of April, 1998.

MAYOR

ATTEST:

CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No. 1055**, entitled:

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER - "THE COUNCIL," PARTICULARLY SECTION 2.01(B) WHICH ESTABLISHES THE QUALIFICATION FOR OFFICE OF COUNCIL

was introduced and publicly read in its entirety at the Regular Meeting of Council held April 14, 1998 and was published in the Times-West Virginian on April 21, 1998, pursuant to Charter provisions Section 2.13(d); a public hearing was held on April 28, 1998. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 28th day of April, 1998.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

A TRUE COPY:

MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

Janet L Keller
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

SYNOPSIS

ORDINANCE NO. ___

A ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER - "THE COUNCIL", PARTICULARLY SECTION 2.01(b) WHICH ESTABLISHES THE QUALIFICATION FOR OFFICE OF COUNCIL.

This ordinance amends and revises Article II, Section 2.01(b) of the City Charter which provides for and establishes the qualifications for office of council. Said ordinance provides for the deletion of the requirement that a candidate for councilman or councilwoman be a resident of the City for at least two years immediately preceding his/her election. Said amendment is necessary in light of the provisions of Article IV, Section 4 of the West Virginia Constitution and the decisions of the Supreme Court of Appeals of West Virginia in Marra, et al., v. Zink, 256 S..E.2d 581 (W.Va. 1979) and Billings v. City of Point Pleasant, 460 S.E.2d 436 (W.Va. 1995).

FAIRMONT CITY COUNCIL

RULES OF ORDER AND PROCEDURE

MARCH, 1995

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CITY COUNCIL

RULES OF ORDER AND PROCEDURE

1. Council Meetings

1.1 Place for Meetings. The designated place for meetings of the Fairmont City Council (Council) shall be the Council Chambers, City Building, Fairmont, West Virginia unless otherwise provided by the Council.

1.2 Organization (City Charter Sec. 2.02). The City Council shall meet bi-annually on the second Tuesday in January at 7:00 p.m. prevailing time at the designated place for meetings of the Council. When the meeting falls on a national or legal holiday, the Organizational Meeting shall be held at the same hour on the next succeeding secular day not a holiday. The Council shall select from its membership, the Mayor and the Deputy Mayor. The Council shall also adopt its Rules of Order and Procedure for the organization and conduct of its business. (Amendment No. 5, adopted 02/03/87).

In electing the Mayor and Deputy Mayor, the following procedures shall be followed:

(1) The previously elected Mayor, or in his/her absence, the Deputy Mayor, shall be the presiding officer of the organization meeting and shall preside until the election of the Mayor has been accomplished;

(2) Nominations for and election of the Mayor and Deputy Mayor shall take place separately;

(3) Nominations for Mayor shall be the first order of business;

(4) Nominations for Mayor shall be made by and from the Council membership and shall not require a seconding motion;

(5) Nominations shall be closed by motion, duly seconded, and voted by a majority of the entire Council;

(6) The Council shall proceed with electing the Mayor by voice vote. The presiding officer shall request the City Clerk to take a roll call on the first nominee and if the nominee does not

receive a majority vote of the entire Council, the process shall be repeated for each nominee until one person is elected by the majority vote (Amendment No. 7, adopted 03/10/92);

(7) Upon election of the Mayor, the Council shall proceed with the election of the Deputy Mayor. The council shall use the same procedures for the election of Deputy Mayor as those required above for the election of the Mayor;

(8) The Mayor and the Deputy Mayor shall be sworn to the duties of the respective offices by the City Clerk;

(9) The offices of Mayor and/or Deputy Mayor shall become vacant upon death, sickness, resignation or removal from office by a two-thirds (2/3) majority vote of the entire Council. Vacancies shall be filled for the remainder of the term at the next regularly scheduled meeting of the Council following the occurrence of the vacancy. (Amendment No. 2, adopted 05/03/83).

1.3 Regular Meetings (City Charter Sec. 2.11(a)). The Council shall meet in regular session on the second and fourth Tuesday of each month at 7:00 p.m. prevailing time unless another day and hour be fixed by resolution of the Council. When the meeting falls on a national or legal holiday, the regular meeting shall be held at the same hours on the next succeeding secular day not a holiday. On the first Tuesday in January of each year, the City Clerk shall prepare and post, and leave posted throughout the year to which is applies, at a conspicuous place in the City Hall, a notice setting forth the times and places of the Council's regularly scheduled meetings for the ensuing year. Such notice shall be of size and style sufficient to give notice and shall be of quality sufficient to withstand deterioration throughout the year to which it applies.

Concurrently with the posting of such notice, the City Clerk shall mail or otherwise distribute to all newspapers of general local distribution and to other available news media customarily covering news of the City notices identical to that posted.

In the event of any modification in the time or place of a regularly schedule meeting of the Council, notice of such modification shall be given to the public and news media by posting at the place and distributing to the news media in the manner set forth above, not less than forty-eight (48) hours prior to the time of such regularly scheduled meeting, or, if such regularly scheduled meeting has been rescheduled for an earlier time, prior to the time of such rescheduled meeting, notices setting

forth such modification in the time or place of such regularly scheduled meeting (Amendment No. 5, adopted 02/03/87).

1.4 **Special Meetings (City Charter Sec. 2.11(a))**. Special meetings may be called by written request of five or more members of the Council, or by the Mayor. The City Clerk shall prepare a notice of the special session stating the time, place, and purpose of the special meeting, and this notice shall be served personally upon each member of the Council and the City Manager, or left at their usual place of residence at least forty-eight (48) hours before the time of the meeting. It shall also be the duty of the City Clerk, immediately upon receipt of written request, to make every diligent effort to notify each member of the Council in person, either by telephone or otherwise, of such special session. Concurrently, with notifying the members of Council, the City Clerk shall also post the notice of the special meeting in a conspicuous place in the City Hall and shall mail or otherwise distribute to all newspapers of general local distribution and to other available news media customarily covering news of the City notices identical to that posted.

Only matters set forth in the notice of the meeting shall be discussed and/or acted upon. This provision of this rule may not be suspended (Amendment No. 3, adopted 05/03/83).

1.5 **Adjourned Meeting**. Any session of the Council may be continued or adjourned from day to day, or for more than one day, but no adjournment shall be for a longer period than until the next regular meeting thereafter. Notice of the adjournment of a meeting and of the time and place for the continuation or reconvening thereof publicly given during such adjourned meeting shall be adequate notice to the public and news media of the time and place thereof (Amendment No. 3, adopted 05/03/83).

1.6 **Conference Meeting**. The Council may meet in conference session at 7:00 p.m. prevailing time on the first and third Tuesdays of each month. When either Tuesday falls on a holiday, the conference shall be on Wednesday.

The conference session shall be devoted primarily to any matters regarding which the interchange of information is deemed desirable by the Council and/or the City Manager, and particularly preliminary to discussion and action at the regular meetings of the Council. No formal vote shall be taken on any matter under discussion nor shall any Council member enter into a commitment with another respecting the vote to be taken subsequently in a regular meeting of the

Council; provided, however, that nothing herein shall prevent a polling of the Council or the taking of any informal vote on any matter under discussion.

Agenda procedures shall be the same as for regular meetings except that matters not included on a conference session agenda shall be taken up by the Council only after listed agenda matters have been considered. No vote of the Council shall be required to consider a non-agenda item.

Additional conference sessions may be held at the request of the Mayor, or of a majority of the Council. It shall be the responsibility of Mayor to advise all other members of the Council and the City Manager of any additional conference sessions (Amendment No. 5, adopted 02/03/87).

1.7 Executive Session (City Charter Sec. 2.11(a)). An executive session may be convened at the request of the City Manager or by a majority vote of the Council as part of any Council meeting. Attendance at the executive session shall be limited to the members of the Council and the City Manager; provided however, that the Council and/or the City Manager may invite such persons as may be required for advice and information.

Executive sessions may be called for the purpose of discussing any matter which would tend to defame or prejudice the character or reputation of any person, or the purpose of discussing purchases of real estate provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council until the matter is placed on the agenda.

1.8 Quorum (City Charter Sec. 2.11(6)). Five members of the Council shall constitute a quorum. In the event that a quorum is not obtained, the member(s) present may adjourn the meeting "sine die" or to a specific date and time.

No action of the Council, except as provided above and by Section 2.06(c) of the City Charter shall be valid or binding unless adopted by the affirmative vote of five or more members of the Council.

1.9 Open Meetings. All meetings of the Council shall be public except as provided by Section 1/7 of these rules and Section 2.11(a) of the City Charter.

2. Duties of Council Officers and Other City Officials

2.1 Presiding Officer. The Mayor, or in his absence, the Deputy Mayor, shall take the chair at the hour appointed for the Council to meet, and shall immediately call the members to order. The

roll shall then be called by the Clerk, who shall enter in the minutes of the meeting the names of the members present. The presiding officer shall preserve decorum and decide all questions or order, subject to appeal to Council.

The presiding officer may move, second and debate from the chair, subject only to such limitations as are by these rules imposed on all members and shall not be deprived of any of the rights and privileges of a Council member by reason of acting as presiding officer.

2.2 Presiding officer-Pro-tem. In case of the absence of the proper presiding officer, the clerk shall call the Council to order and call the roll of the members. If a quorum is found to be present, Council shall proceed to elect, by a majority vote of the Council, a presiding officer of the meeting to act until the proper presiding officer appears.

2.3 City Manager (City Charter Sec. 3.04(3). The City Manager shall attend all meetings of the Council and shall have the right to take part in discussions, but may not vote.

2.4 City Clerk. The City Clerk shall attend all meetings of the Council, keep the journal of its proceedings, authenticate by his or her signature and record in full in a book kept for this purpose, all ordinances and resolutions of the Council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection.

2.5 City Attorney. The City Attorney, when requested by the City Manager or the Council, shall attend meetings of Council. The City Manager or any member of the Council may at the time call upon the City Attorney for an oral or written opinion to decide any question of law, or to advise the Chair upon any parliamentary rule.

2.6 Other City Officers and Employees - Officers and Employees to Attend. The head of any department or any officer of the City, when requested by the City Manager or at the request of the City Manager by the Council shall attend any regular, adjourned or special meeting of Council.

3. Council Procedure

3.1 Order of Business. The business of all regular meetings of the Council shall be transacted in the following order, unless the Council by a vote of at least two-third of the members present shall suspend the rules and change the order.

I. Call to Order

II. Roll Call of Members

III. Opening Ceremonies

A. Prayer/ Meditation

B. Pledge of Allegiance to the Flag

IV. Approval of Minutes of Previous Meeting (s)

V. Communications, Announcement, Public Hearings

VI. Citizens Petitions

VII. City Manager Reports

VIII. Consideration of Council Business

A. Pending

B. New

IX. Adjournment

3.2 Minutes Provided Council Members. Each member of Council shall be provided a copy of the minutes of the previous meeting in advance of the regular meeting whenever practicable. The presiding officer may inquire "whether or not there are any additions or corrections to the minutes as furnished Council members and as are set forth in the minute book of Council". If there are no corrections or additions such minutes shall stand approved and shall be signed by the presiding officer and validated by the Clerk.

3.3 Filing with City Clerk. Every ordinance, resolution and document or other matter to come before Council except as hereinafter provided, must be filed with the City Clerk and/or City Manager at least twenty-four (24) business hours prior to each Council meeting.

3.4 Preparation of Agenda. The City Manager shall arrange or cause to be arranged a list of all matters to come before the Council according to the Order of Business. The City Manager shall deliver to each member of the Council, the City Clerk and the City Attorney a copy of the agenda at least sixteen (16) business hours prior to the Council meeting, or as far in advance of the meeting as time for preparation will permit.

3.5 Supporting Information. All matters included on the agenda unless clearly self-explanatory, shall have been preceded by or shall be accompanied by written explanations or descriptive material, such information to be provided by the sponsor of the agenda item.

3.6 Copies of Agenda. Copies of the agenda shall be made available to the media and the

public after its delivery to the members of the City Council. A sufficient number of copies of the agenda shall also be available to the public at Council meetings.

3.7 City Manager Recommendations. All agenda matters relating to the administration of the City shall be acted upon by the Council only when accompanied by recommendations of the City Manager, said recommendations to be made in writing or orally and made a part of the official record of the Council.

4. Duties and Privileges of Council Members

4.1 Seating Arrangement. Members shall occupy the seats in Council Chamber around the Council table as designated by the Mayor.

4.2 Right of Floor. When recognized by the Chair, a member shall confine himself to the question under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote.

4.3 Right of Appeal. Any member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state his reason for the same, and the presiding officer may briefly explain his ruling; but there shall be no debate on the appeal and no other member shall participate in the discussion. The presiding officer shall then put the question: "Shall the decision of the Chair be sustained:? If a majority of the members present vote "Aye", the ruling of the Chair is sustained; otherwise, it is overruled.

4.4 Limitation of Debate. No member shall be allowed to speak more than once upon any subject until every other member choosing to speak thereon shall have spoken.

4.5 Voting. Every member present when a question is put shall vote either "aye" or "nay", provided, however, that if any member of the Council does not desire to vote on any question, he may be shown on the record as having "abstained". The record shall show whenever the vote is unanimous. In all other cases, the vote shall be called and recorded. No member shall vote or engage in any discussion or debate on any matter in which he has a personal interest other than as a taxpayer of the City.

4.6 Personal Privilege. The right of a member to address the Council on a question of personal privilege shall be limited to cases in which his integrity, character, or motives are assailed, questioned, or impugned.

4.7 **Excusal During Meeting.** No member may leave the Council Chamber while in regular session without permission from the presiding officer.

4.8 **Motions.**

4.81 **Precedence of Motions.** When a question is before the Council, no motion shall be entertained except: (a) to lay on the table, (b) for the previous question, (c) to postpone to a certain day, (d) to amend, and (e) to postpone indefinitely. These motions shall have precedence in the order indicated. All said motions, except the motion to amend, shall be put to a vote without debate.

4.82 **Motions to be Stated by Chair - Withdrawal.** When a motion is made and seconded, it shall be stated by the Chair before debate. A motion may not be withdrawn by the mover without the consent of the member seconding it.

4.83 **Motion to Lay on Table.** A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed at the same meeting, or at the next meeting, by a majority vote, after some business has been transacted after the original laying on the table.

4.84 **The Previous Question.** When the previous questions is moved, and seconded by one other member, it shall be put as follows: "Shall the main question be considered?" There shall then be no further amendments or debate; but pending amendments shall be put in their order before the main question. If the question "Shall the main question be considered?" be decided in the negative, the main question remains before Council.

4.85 **Division of Question.** If the question contains two or more divisible propositions, the presiding officer may, and upon request of a member shall, divide the same.

4.86 **Amendments.** It shall be in order to amend any motion at any time before a final vote.

4.87 **Amend an Amendment.** A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order

4.88 **Reconsideration.** After the question on any question, any member who voted with the majority may move a reconsideration of any action at the same or the next succeeding meeting,

provided, however, that a resolution authorizing or relating to any contract may be reconsidered at any time before the final execution thereof. A motion to reconsider shall require the same number of votes as is required to adopt an ordinance or resolution. After a motion for reconsideration has once been acted on, no other motion for a reconsideration thereof shall be made without unanimous consent.

4.9 **Procedure in Absence of Rule.** In the absence of a rule to govern a point or procedure, reference shall be made to Roberts Rules of Order - Revised.

4.95 **Anonymous Communications.** Unsigned communications shall not be introduced in Council.

5. Ordinance

5.1 **Action Requiring an Ordinance (City Charter Sec. 2.12).** In addition to other acts required by law or by specific provisions of this charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

(1) Adopt or amend an administrative code or establish, alter or abolish any city department, office or agency;

(2) Provide for a fine and other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;

(3) Grant, renew or extend a franchise;

(4) Regulate the rate charged for its services by a public utility;

(5) Authorize the borrowing of money;

(6) Convey or lease or authorize the conveyance or lease of any lands of the city;

(7) Adopt with or without amendment ordinances proposed under the initiative power; and

(8) Amend or repeal any ordinance previously adopted, except as otherwise provided in ArticleVIII with respect to repeal of ordinances reconsidered under the referendum power.

5.2 **Ordinances in General (City Charter Sec. 2.13).**

(a) **Form.** Every proposed ordinance shall be introduced in writing and the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "the City of Fairmont hereby ordains..." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance,

sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

(b) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the council. Upon introduction of any ordinance, the city clerk (1) shall read fully and distinctly the proposed ordinance in its entirety, (2) shall distribute a copy to each council member and to the manager, (3) shall file a reasonable number of copies in the office of the City Clerk, and (4) shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. At the commencement of the public hearing, the clerk shall read fully and distinctly the proposed ordinance by title. Any person present shall then have the right to have the ordinance read in its entirety (Amendment No. 4, adopted 07/19/83).

The public hearing shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard.

After the hearing, the Council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance.

(c) Effective Date. Except as otherwise provided in the charter, every adopted ordinance shall become effective at the expiration of thirty (30) days after adoption or at any later date specified therein.

(d) "Published" Defined. As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the City; (1) the title of the ordinance and a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection.

5.3 Emergency Ordinances (City Charter Sec. 2.14). To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as

provided in subsection 5.09(b).

An emergency ordinance shall be introduced in the form and manner prescribed for ordinances general, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.

An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least six members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify.

Every emergency ordinance except one made pursuant to subsection 5.09(b) of the City Charter shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

5.4 Codes of Technical Regulations (City Charter Sec. 2.15). The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that:

(1) The requirements of Section 2.13 for distribution and filing of copies of the ordinance shall be construed to included copies of the code of technical regulations, as well as the adopting ordinance, and

(2) A copy of each adopted code of technical regulations, as well as of the adopting ordinances shall be authenticated and recorded by the City Clerk pursuant to subsection 2.16(a).

Copies of any adopted code of technical regulations shall be made available by the City Clerk for distribution or for purchase at a reasonable price.

6. Miscellaneous

6.1 Decorum of Employees of the City. Members of the administrative staff and employees

shall observe the same rules of procedure and decorum applicable to members of the Council. While the presiding officer shall have the authority to preserve decorum in meetings as far as staff members and city employees are concerned, the City Manager also shall be responsible for the orderly conduct and decorum of all city employees under his direction and control. The City Manager shall take such action as may be necessary to insure that such decorum is preserved at all times by the city employees in council meetings.

6.2 Public Attending Council Meetings.

(a) Public members attending council meetings also shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Council. Any person making personal, impertinent, and/or slanderous remarks or who becomes boisterous while addressing the Council or while attending the Council meeting shall be removed from the room as directed by the presiding officer, and such person shall be barred from further audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the presiding officer, who shall direct such offenders to be removed from the room. Aggravated cases shall be prosecuted on appropriate complaint signed by the presiding officer. In case the presiding officer shall fail to act, any member of the Council may move to require him to act to enforce the rules, and the affirmative vote of the majority of the Council shall require the presiding officer to act.

(b) Citizen Petitions. Any member of the public desiring to address the Council on matters of city business shall complete the petition provided by the City Clerk immediately before the start of the regular council meeting. Each person shall be recognized by the chair, shall state their name and address clearly, and be limited to a five minute presentation (Amendment No. 7, adopted 03/10/92).

All remarks and questions addressed to the administration of the City shall be addressed to the City Manager through the chair and not to any individual city employee. No person other than members of the Council and the person having the floor shall enter into any discussion either directly or through a member of the Council without permission of the presiding officer.

6.3 Complaints. The procedures for complaints shall be:

(a) All complaints involving municipal policies shall be referred to the Council for appropriate action and, except in the most unusual cases, such action should be preceded by report and

recommendation of the City Manager who shall have been given ample opportunity and time in which to investigate and to render a report.

(b) All complaints involving charges of unfair hearings before boards and/or commissions concerned; provided, however, that such referral shall be accompanied by a written statement from the person complaining of such improper hearing which statement shall delineate the specific charges in order that the particular board of commission concerned may be able to take appropriate action.

(c) All complaints with respect to the management of the City shall be referred to the City Manager for the necessary or appropriate action in each individual case. In the case of those complaints involving the management of the City wherein the Council desires further information, then the City Manager, when so requested by a majority of the Council shall be given adequate time in which to make the necessary investigation and report.

6.4 **The Council Meeting Room.** The meeting room shall be under the supervision and control of the City Manager when the Council is not in session. Except as herein provided, it shall be used solely by the Council and its committees for the transaction of public business of the City. If not required for such use, the Manager may permit its use by agencies of the federal, state, or municipal governments for the transaction of public business. Application for such use must be made to the City Manager in such manner as may be prescribed by him. Any permission so granted may be cancelled or revoked by the City Manager forthwith where necessary for the protection of City property, the preservation of order or other sufficient reason.

6.5 **Suspension of Rules.** Any provision of these rules not governed by State Statue, the City Charter, the City Administrative Code may be temporarily suspended by a two-thirds (2/3) majority vote of all members elected. The vote on any such suspension shall be taken by ayes and nays and entered upon the records.

6.6 **To Amend Rules.** These rules may be amended or new rules adopted by a majority vote of all members of the City Council. Any such alterations or amendments shall be submitted in the manner required for City Council business and included on any agenda for a regular Council meeting. This requirement shall be waived only by unanimous consent of all members.

6.7 **Roberts Rules of Order Revised** shall govern the proceedings of the Council in all cases, unless they are in conflict with these rules or the City Charter.

6.8 <u>Council Appointments</u>. Except as may be otherwise required by City ordinance or State statute, specifically as to terms of office, all appointments made by the City Council from the Council to City boards or commissions, shall be for two (2) years, and shall be made at the second regular meeting of Council in January of each year. Appointments to fill vacancies shall be made as they occur and shall be for the unexpired portion of the two (2) year term (Amendment No. 6, adopted 11/27/90).

ORDINANCE NO. 1112

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER- "THE COUNCIL", PARTICULARLY THAT PORTION OF SECTION 2.11 PROCEDURE SUBPART (a) MEETINGS WHICH PROVIDES THE CIRCUMSTANCES UNDER WHICH COUNCIL MAY RECESS AND MEET IN EXECUTIVE SESSION

WHEREAS, the Fairmont City Charter §2.11(a) defines or establishes the circumstances under which Council may recess and meet in executive session.

WHEREAS, City Charter §2.11(a) particularly provides that "All meetings shall be public; however, the Council may recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall be taken by the Council until the matter is placed on the agenda;"

WHEREAS, it appears that said charter provision was patterned after the provisions of West Virginia Code §6-9A-1 et seq., "Open Governmental Proceedings";

WHEREAS, the West Virginia Legislature at its 1999 session amended the provisions of West Virginia Code §6-9A-1 et seq., and particularly the provisions of §6-9A-4 which describes the circumstances under which a governing body of a public agency may recess and meet in executive session;

WHEREAS, the 1999 amendments to West Virginia Code §6-9A-1 et seq., have an effective date of June 21, 1999;

WHEREAS, the Council for the City of Fairmont constitutes a governing body of a public agency under the Act and its meetings are subject to its provisions [See West Virginia Code §6-9A-2(3), (4) and (6)];

WHEREAS, the City of Fairmont deems it necessary to amend Article II of the Fairmont City Charter, particularly Section 2.11 Procedure subpart (a) Meetings which provides the circumstances under which council may recess and meet in executive session so as to cause it to be consistent with the provisions of West Virginia Code §6-9A-4, as amended;

WHEREAS, although the provisions of West Virginia Code §6-9A-4, as amended provide broad circumstances under which a governmental body may recess and meet in executive session,

the City Charter has historically been much more restrictive by its terms and by application. This amendment retains the historical restrictions imposed upon Council by the Framers of the original City Charter;

WHEREAS, West Virginia Code §8-4-8 provides that an amendment to the City Charter under the alternate plan must be by ordinance.

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

Article II **The Council**, Section 2.11 **Procedure**, Part (a) **Meetings** of the Charter of the City of Fairmont, West Virginia be and is hereby amended as follows: (New Matters Double Underlined, Matters To Be Deleted Bracketed)

Section 2.11 Procedure

(a) Meetings. The Council shall meet regularly at least twice every month at such time and place as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor or of five or more members and, whenever, practicable, upon no less than twenty-four hours notice to each member. All meetings shall be open to the public; however, the Council may [recess for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing in a closed executive session limited to its own membership, any matter which would tend to defame or prejudice the character or reputation of any person, or for the purpose of discussing purchases of real estate, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council until the matter is placed on the agenda] hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the mayor, or in the absence of the mayor, the presiding member of council, shall identify the authorization under this section for holding the executive session and present it to the council and to the general public, but no decision may be made in the executive session and no final action thereon shall be taken by Council until the matter is placed on the agenda.

An executive session may be held only upon a majority affirmative vote of the council members present. Council may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider:

(A) Matters arising from appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a City officer or employee, or prospective officer or employee unless the officer or employee or prospective officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a City officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by the council for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation shall be taken in an open meeting;

(2) To develop security personnel or devices;

(3) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the City; *Provided*, that information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meeting requirements of this section only until the commercial competition has been finalized and completed; *Provided*, however, that information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

The effective date of this amendment shall be July 1, 1999, or thirty (30) days from adoption which ever is the latter.

Adopted this the 14th day of September, 1999.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No.** 1112 entitled:

AN ORDINANCE AMENDING AND REVISING ARTICLE II OF THE FAIRMONT CITY CHARTER - "THE COUNCIL", PARTICULARLY THAT PORTION OF SECTION 2.11 PROCEDURE SUBPART (a) MEETINGS WHICH PROVIDES THE CIRCUMSTANCES UNDER WHICH COUNCIL MAY RECESS AND MEET IN EXECUTIVE SESSION

was introduced and publicly read in its entirety at the Regular Meeting of Council held July 27, 1999 and was published in the Times-West Virginian on August 2, 1999 and August 9, 1999 pursuant to Charter provisions Section 2.13(d); a public hearing was held on September 14, 1999. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 14th day of September, 1999.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

A TRUE COPY:

MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

Janet L. Keller
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

CERTIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Janet L. Keller, City Clerk of the City of Fairmont, West Virginia, keeper of the official records of said City, do hereby certify that the attached is a true copy of the "Oath of Office" for the following City Councilmembers:

Anthony S. "Tony" Talerico
Burley "Butch" Tennant
Nick L. Fantasia
Dennis O'Dell
Frances L. "Fran" Warner
De'Andrea Bussey
Stanley S. "Scott" Sears
Thomas J. Mainella
Ronald J. Straight

Given under my hand and seal this the 2nd day of June, 2003.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Anthony S. "Tony" Talerico, a resident of 126 East Grafton Road, in the City of Fairmont, having been duly elected on November 5, 2002, as the Councilmember from the First District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2003 and expiring on the 31st day of December, 2006, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully fulfill the duties of the Office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

Anthony S. Tony Talerico
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 14th day of January, 2003.

Janet L. Keller
CITY CLERK

OATH

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Burley (Butch) Tennant, Jr., a resident of 1873 Morgantown Avenue, in the City of Fairmont, having been duly elected on November 7, 2000, as the Councilmember from the Second District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2001, and expiring on the 31st day of December, 2004, do solemnly swear, that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that I will faithfully discharge the duties of the office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

B. D. Tennant Jr.

Taken, subscribed and sworn to before me, in said City, County and State on this the 29th day of November, 2000.

Janet L. Keller
City Clerk

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Nick L. Fantasia, a resident of 625 Columbia Street, in the City of Fairmont, having been duly elected on November 5, 2002, as the Councilmember from the Third District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2003 and expiring on the 31st day of December, 2006, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully fulfill the duties of the Office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

Nick L. Fantasia
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 14th day of January, 2003.

Janet L. Keller
CITY CLERK

OATH

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Dennis O'Dell, a resident of 211 Murray Avenue, in the City of Fairmont, having been duly elected on November 7, 2000, as the Councilmember from the Fourth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2001, and expiring on the 31st day of December, 2004, do solemnly swear, that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that I will faithfully discharge the duties of the office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

Dennis O'Dell

Taken, subscribed and sworn to before me, in said City, County and State on this the 29th day of November, 2000.

Janet L. Keller
City Clerk

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Frances L. "Fran" Warner, a resident of 307 First Street, in the City of Fairmont, having been duly elected on November 5, 2002, as the Councilmember from the Fifth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2003 and expiring on the 31st day of December, 2006, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully fulfill the duties of the Office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

Frances L. "Fran" Warner
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 14th day of January, 2003.

Janet L. Keller
CITY CLERK

OATH

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, De'Andrea Bussey, a resident of 811 Short Avenue, in the City of Fairmont, having been duly elected on November 7, 2000, as the Councilmember from the Sixth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2001, and expiring on the 31st day of December, 2004, do solemnly swear, that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont, and that I will faithfully discharge the duties of the office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

De'Andrea Bussey

Taken, subscribed and sworn to before me, in said City, County and State on this the 29th day of November, 2000.

Janet L. Keller
City Clerk

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Stanley Scott Sears, a resident of 818 Eighth Street, in the City of Fairmont, having been duly appointed by City Council of the City of Fairmont, as a member of the Fairmont City Council, Representing the Seventh District thereof, to fill the vacancy created by the resignation of Gary K. Hickman, for the term commencing on November 26, 2002 and expiring on December 31, 2004, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully and impartially fulfill the duties as a member of the Office of Councilmember of the City of Fairmont so long as I shall continue as a member thereof to the best of my skill and judgment, so help me God.

Stanley Scott Sears
MEMBER

Taken, subscribed and sworn to before me by Stanley Scott Sears, this the 10th day of December, 2002.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Thomas J. Mainella, a resident of 8 Hollen Circle, in the City of Fairmont, having been duly elected on November 5, 2002, as the Councilmember from the Eighth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2003 and expiring on the 31st day of December, 2006, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully fulfill the duties of the Office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 14th day of January, 2003.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Ronald J. Straight, a resident of 202 Gary Street, in the City of Fairmont, having been duly elected on November 5, 2002, as the Councilmember from the Ninth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2003 and expiring on the 31st day of December, 2006, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully fulfill the duties of the Office of Councilmember of the City of Fairmont, to the best of my skill and judgment, so help me God.

Ronald J. Straight
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 14th day of January, 2003.

Janet L. Keller
CITY CLERK

ORDINANCE NO. 239

AN ORDINANCE providing for a sanitary board of the City of Fairmont, West Virginia.

* * *

WHEREAS preliminary investigations and proceedings have heretofore been taken for the construction of improvements and extensions to the municipal sewer system in and for the City of Fairmont, West Virginia, under the provisions of Article 13 of Chapter 16 of the West Virginia Code, and it is provided by said enabling law that a sanitary board shall be created for the custody, supervision, control, administration, operation and maintenance of said system;

NOW, THEREFORE, Be It Ordained by the Board of Directors of the City of Fairmont, West Virginia, as follows:

Section 1. That there shall be and there is hereby created in and for the City of Fairmont, West Virginia, a sanitary board for the custody, supervision, control, administration, operation and maintenance of the sewer system, all as permitted and provided by Article 13 of Chapter 16 of the West Virginia Code of 1949, and said sanitary board shall be composed of the Mayor of said city and two persons, one of whom is a registered professional engineer, namely, Bernard E. Sampson, for a term of two years, and Alfred Neely, for a term of three years.

Section 2. That the Mayor of said city shall act as Chairman of said sanitary board, and that upon organization said board shall elect a vice chairman and also designate a secretary and treasurer (who may be separate persons or one and the same), and the Board of Directors of said city hereby reserves the right and privilege from time to time by ordinance to fix the compensation of the members of said board and the secretary and treasurer thereof,

and also to require and fix the amount of bonds which any or all of said officials may be required to furnish.

Section 3. That this ordinance be in full force and effect immediately upon its adoption and publication.

First reading: June 14, , 1954.

Second reading: June 21, , 1954.

Third reading and adopted: June 28, , 1954.

James H. Hanway
Mayor

Attest:

Marchie M. Gutter
City Clerk

Approved as to form and correctness,

June 28, , 1954.

R. E. Johnson
City Attorney

WCW:bjb

We, the undersigned officials of the City of Fairmont, certify that Ordinance No. 239 entitled:

"AN ORDINANCE PROVIDING FOR A SANITARY BOARD OF THE CITY OF FAIRMONT, WEST VIRGINIA",

was introduced and read on the 14th day of June 1954; was read a second time on June 21, 1954; was read a third time on the 28th day of June 1954; and was duly passed on said last named day; that said Ordinance was signed by the undersigned officials and filed with the City Clerk within two days after its final passage in all daily newspapers of opposite politics published in the City of Fairmont, to-wit: by publication in the West Virginian July 1, 1954 and in the Fairmont Times July 1, 1954.

Passed by the Board of Directors June 28, 1954.

James H. Hanway
Mayor

Attest:

Marchie M. Nutter
City Clerk

A TRUE COPY-

James H. Hanway
Mayor

Marchie M. Nutter
City Clerk

CERTIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, Janet L. Keller, City Clerk of the City of Fairmont, West Virginia, keeper of the official records of said City, do hereby certify that the attached is a true copy of the "Oath of Office" for the following Sanitary Sewer Board members:

J. Peale Davidson

William D. Roberts

Given under my hand and seal this the 2nd day of June, 2003.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, J. Peale Davidson, having been duly appointed by City Council of the City of Fairmont, as a member of the Fairmont Sanitary Sewer Board, for a term commencing on October 9, 2002 and expiring on January 1, 2005, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully and impartially fulfill the duties as a member of the Fairmont Sanitary Sewer Board of the City of Fairmont so long as I shall continue as a member thereof to the best of my skill and judgment, so help me God.

J. Peale Davidson
MEMBER

Taken, subscribed and sworn to before me by J. Peale Davidson, this the 26th day of November, 2002.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF MARION,
CITY OF FAIRMONT, TO-WIT:

I, William D. Roberts, having been duly appointed by City Council, of the City of Fairmont, as a member of the Fairmont Sanitary Sewer Board for the term commencing on November 26, 1996 and expiring on January 1, 1997, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Charter of the City of Fairmont; that I will faithfully and impartially discharge the duties of member of the Fairmont Sanitary Sewer Board of the City of Fairmont so long as I shall continue as a member thereof to the best of my skill and judgment, so help me God.

William D Roberts

Taken, subscribed and sworn to before me by William D. Roberts this the 9 day of December, 1996.

Teresa A. Brumage
Deputy CITY CLERK

Sanitary Sewer Board
City of Fairmont
P.O. Box 1428
Fairmont, WV 26555-1428

Phone (304) 366-0540
Fax (304) 366-6242

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

PETITION OF SANITARY SEWER BOARD

The Sanitary Sewer Board of the City of Fairmont (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 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed $500,000 for the purpose of financing a portion of the cost of acquisition and construction of certain additions, betterments, and improvements to the existing sewerage system of the City, together with all necessary appurtenances, and the costs of issuance and related costs.

Directed this 22nd day of April, 2003.

SANITARY SEWER BOARD OF
THE CITY OF FAIRMONT

By: Bruce R. Arrick
Its: Chairman

ORDINANCE NO. 1200

AN ORDINANCE OF THE CITY OF FAIRMONT PROVIDING FOR AND ESTABLISHING RATES, FEES AND CHARGES TO BE CHARGED CUSTOMERS IN THE MEREDITH SPRINGS/DAKOTA PROJECT SERVICE AREA OF MARION COUNTY, WEST VIRGINIA, FOR THE USE OF THE CITY'S SANITARY SEWER SYSTEM AND THE SERVICE TO BE PROVIDED THEREBY

WHEREAS, Chapter 16, Article 13, Section 1 of the Code of the State of West Virginia of 1931, as amended, authorizes and empowers a municipal corporation to own, acquire, operate, and maintain within and/or without its corporate limits a sewage collection system and/or sewage treatment plant for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid waste and solid waste, sewage, night soil and industrial waste of such municipal corporation and its environs; and

WHEREAS, the City of Fairmont currently operates a sewer utility for the collection and treatment of sewage and waste water within and without its corporate limits known as the City of Fairmont Sanitary Sewer Board; and

WHEREAS, the City of Fairmont Sanitary Sewer Board and the Marion County Commission have entered into an Intergovernmental agreement whereby the City of Fairmont will construct an extension of its existing system and will provide sanitary sewer service to approximately 111 customers in the Meredith Springs/Dakota area of Marion County, West Virginia, at a cost of $1,242,868.00; and

WHEREAS, said area is not provided service by any other sewer utility, person or corporation; and

WHEREAS, the rates, fees and charges for such service hereby established will provide for sufficient revenues to meet the increase in debt service and operating and maintenance expenses created by the extension of its system, without burdening the City's other sanitary sewer customers; and

WHEREAS, the Council for the City of Fairmont, West Virginia hereby finds that the following rates, fees and charges for sanitary sewer service for the Meredith Springs/Dakota Project service area are necessary and reasonable to provide sufficient revenue to meet the increase in debt service and operating and maintenance expenses created by the extension of its system, without burdening the City's other sanitary sewer customers; and

WHEREAS, Chapter 24, Article 2, Section 4(b) of the Code of the State of West Virginia of 1931, as amended, authorizes the fixing of all rates and charges of municipally operated utilities by the adoption of appropriate ordinances.

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

SEWER CHARGES FOR THE MEREDITH SPRINGS/DAKOTA PROJECT SERVICE AREA.

SECTION 1. RATES, FEES AND CHARGES: The following schedule of rates, fees, and charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees, charges and delayed payment penalty charges to be charged to customers of the City of Fairmont Sanitary Sewer Board located in the Meredith Springs/Dakota Project service area:

A. RATES:

(i) APPLICABILITY: Applicable in the entire territory or area served by the Meredith Springs/Dakota extension.

(ii) AVAILABILITY: Available for general domestic, commercial and industrial sewer service.

(iii) RATE: The Meredith Springs/Dakota extension service rate for the treatment of waste water shall be $6.191 per 1,000 gallons of metered water supplied.

(iv) EFFECTIVE DATE: The rate hereinabove established shall become effective upon the substantial completion of the project as certified by the project engineer.

B. MINIMUM CHARGE: Upon the effective date of the rates hereinabove established, the minimum charge for sanitary sewer service shall be fifteen dollars and forty-eight cents ($15.48) per month.

C. DELAYED PAYMENT PENALTY: The above rate is net. On all current usage billings not paid within twenty (20) days ten percent (10%) will be added to the net current amount unpaid. This delayed penalty payment is not interest and is to be collected only once for each bill where it is appropriate.

The Finance Director shall insure and provide for collection in the following manner:

(1) The manner provided for the collection of delinquent sewer utility service charges shall be the manner in which delinquent water service charges shall be collected, to-wit, discontinuing water after notice.

(2) All sanitary sewer service fees shall be billed simultaneously and upon the same bill as water utility service.

(3) No customer shall be permitted to pay for only water utility service in order to avoid termination of sewer coverage.

(4) No person, firm or corporation shall receive sewer service without paying the lawful charges therefore, and it shall be the duty of the Director to

institute appropriate criminal proceedings in the Municipal Court for all violations.

D. SERVICE CONNECTION CHARGE: A fee of two hundred and fifty dollars ($250.00) shall be charged new customers connecting to the system.

E. RE-CONNECTION SERVICE CHARGE: In the event water service is terminated due to nonpayment of a sanitary sewer bill, a twenty-five dollar ($25.00) re-connection fee shall be paid in addition to the delinquent sanitary sewer charged prior to restoration of water service.

F. BI-MONTHLY OR QUARTERLY BILLING: The above rates and charges may be adjusted to a bi-monthly or quarterly basis, providing no lower charges.

G. ALTERNATIVE MEASUREMENT OF SEWAGE: Customers having water use which results in a substantial portion of the water purchased not being discharged into the sanitary sewer system shall be entitled, at the option and sole cost of the customer, to request the Sanitary Sewer Board to purchase and install special meters to measure the volume of waste water discharged into the sanitary sewer system. The customer shall advance to the Sanitary Sewer Board on demand, the Sanitary Sewer Board's estimated cost of purchasing and installing the meter and upon installation of such waste discharge meter the rates of such customer shall be based upon the volume of waste discharged into the system rather than upon the volume of water purchased by the customer.

SECTION II: SEVERABILITY: The provisions of this Ordinance are severable, and if any provisions or part thereof shall be deemed invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this Ordinance.

SECTION III: LIMITATION ON EFFECTIVE DATE: Under no circumstance shall any charge, rate or fee herein established become effective until after at least forty-five (45) days from the date of the adoption of this ordinance.

Passed this the 12th day of November, 2002.

Nick J. Santoro
MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No. 1200:**

AN ORDINANCE OF THE CITY OF FAIRMONT PROVIDING FOR AND ESTABLISHING RATES, FEES AND CHARGES TO BE CHARGED CUSTOMERS IN THE MEREDITH SPRINGS/DAKOTA SERVICE AREA OF MARION COUNTY, WEST VIRGINIA, FOR THE USE OF THE CITY'S SANITARY SEWER SYSTEM AND THE SERVICE TO BE PROVIDED THEREBY

was introduced and publicly read in its entirety at the Regular Meeting of Council held October 8, 2002 and was published in the Times-West Virginian on October 28, 2002 and on November 4, 2002, pursuant to Charter provisions Section 2.13(d); a public hearing was held on November 12, 2002. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 12th day of November, 2002.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

A TRUE COPY:

MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

Janet L. Keller
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

NOTICE

NOTICE OF PUBLIC HEARING ON ESTABLISHMENT OF SEWER RATES, FEES, & CHARGES FOR THE MEREDITH SPRINGS/DAKOTA PROJECT SERVICE AREA OF MARION COUNTY, WEST VIRGINIA, FOR THE USE OF THE CITY'S SANITARY SEWER SYSTEM AND THE SERVICE TO PROVIDED THEREBY.

The subject matter of this ordinance is to establish the rates, fees and charges to be charged for sanitary sewer and waste water services which will be provided to approximately 111 customers in the Meredith Springs/Dakota Camp project service area located in Marion County, West Virginia.

Currently no sewer services is provided. It is proposed that the rate to be established for domestic, commercial and industrial sewer service will be $6.191 per 1,000 gallons on metered water supplied. It is further proposed that the minimum monthly charge to be established will be $15.48 per month. This proposed rate will result in an average monthly bill for 4,500 gallons of water supplied of $ 27.80.

Copies of the proposed ordinance are available for inspection in the Office of the Clerk of the City of Fairmont, Room 312 Meredith Building, 200 Jackson Street, Fairmont, Marion County, West Virginia.

A Public hearing on the proposed Ordinance will be held on Tuesday, November 12, 2002, at 7:00 p.m., or as soon thereafter as the matter may be heard, which hearing shall be held in Fairmont City Council Chambers, Room 303, Meredith Building 200, Jackson Street, Fairmont, Marion County, West Virginia.

Any interested person may appear at the public hearing and heard as to whether said proposed Ordinance shall be adopted. All objection and suggestions shall be heard and Council shall take such action as it deems necessary in the premises.

Council for the City of Fairmont shall vote on the adoption of the proposed ordinance on Tuesday, November 12, 2002, following the above Public Hearing, in Fairmont City Council

AFFIDAVIT OF PUBLICATION

State of West Virginia

County of Marion, to wit:

№ 000480

I, Julian M. Sell, being first duly sworn upon my oath, do dispose and say that I am Legal Clerk of the TIMES WEST VIRGINIAN a corporation, publisher of the newspaper entitled the TIMES WEST VIRGINIAN an Independent newspaper:

that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below, that such newspaper is regularly published daily except Saturday and Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforementioned municipality and Marion County; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial or social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices.

that the annexed notice of Public Hearing On was duly published in said newspaper once week for 2 successive weeks (Class II), commencing with the issue of the 28 day of October, 2002, and ending with the issue of the 4 day of November 2002; and was posted at the front door of the Marion County Courthouse on the 28 day of October 2002; that said annexed notice was published on the following dates: October 28 November 4 2002

and the cost of publishing said annexed notice as aforesaid was $ 100.28

Julian M. Sell

Taken, subscribed and sworn to before me in said county this 12 day of November, 2002.

My commission expires Jan 24, 2010.

Sherry K. Gillett

Notary Public of Marion County, West Virginia

My Commission Expires Jan 24, 2010

Original legal ad given to Kevin Sansalone, City attorney.

the above Public Hearing,
in Fairmont City Council
Chambers, Room 303, Muni-
cipal Building 200, Jackson
Street, Fairmont, Marion
County, West Virginia.

TIMES: October 28, &
November 4, 2002

Janet Keller
City Clerk

October 8, 2002

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 8th day of October, 2002, at the J. Harper Meredith Building, Fairmont, West Virginia.

Mayor Fantasia called the meeting to order.

Councilmembers present were:

First District	Anthony Talerico
Second District	Burley (Butch) Tennant
Third District	Nick L. Fantasia
Fourth District	Dennis O'Dell
Fifth District	Fran Warner
Sixth District	De'Andrea Bussey
Eighth District	Thomas Mainella
Ninth District	Ronald J. Straight

Absent:

Seventh District	Gary K. Hickman

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller

IN RE: EXCUSE COUNCILMEMBER HICKMAN

The Mayor reported that Councilmember Hickman called to inform him that he had to go to Florida for some family issues with his son. He then entertained a motion to excuse Councilmember Hickman from tonight's meeting.

Motion:

Councilmember Tennant moved to excuse Councilmember Hickman from tonight's meeting. Councilmember Talerico seconded the motion.

Mayor Fantasia declared Councilmember Hickman excused from tonight's meeting by voice vote of Council.

IN RE: OPENING CEREMONIES

Father Casey of the Immaculate Conception Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember O'Dell.

IN RE: PRESENTATION TO POLICE OFFICER McGLONE

Mayor Fantasia stated that in the Barry Street neighborhood there was a fire that destroyed the Washenitz family house and Officer McGlone helped get the family out and did a fine job saving their lives.

Police Chief Ted Offutt read the citation: "On August 15, 2002, Officer David McGlone while on routine patrol on County Club Road at Lawrence Street detected the odor of smoke in the air. He investigated and found that smoke was coming from the under the eaves of the house at 1499 Barry Street. He called dispatch to alert the Fire Department. Officer McGlone then went to the front of the residence and began beating on the front door. He was able to awaken the sleeping residents, Frank and Pamela Washenitz. Officer McGlone then determined that no one else was in the home and assisted the Fairmont Fire Department in directing traffic at the scene of the fire. Officer McGlone's actions saved the lives of the Washenitz family and this is in the highest tradition of the Fairmont Police Department." The Chief said that he was proud of Office McGlone and all of the officers and staff at the Fairmont Police Department.

On behalf of the City Council, the Mayor and the City Manager, Mayor Fantasia presented Officer McGlone a life saving award certificate. He also presented him with a State of West Virginia Medallion Life Saving Award. He then thanked Officer McGlone for his diligent work.

Frank Washenitz also presented Officer McGlone with a plaque of appreciation and thanked him for saving their lives.

APPROVAL OF MINUTES

Mayor Fantasia noted that each member of Council had received a copy of the minutes from the regular meeting held on September 24, 2002. He asked if there were any corrections, deletions, or amendments.

Councilmember Straight reported a typographical error on page three. He then moved for the adoption of the minutes as amended. Councilmember Talerico seconded the motion.

The Mayor declared the minutes approved as amended by voice vote of Council.

PUBLIC HEARINGS

There were no public hearings for this meeting.

ANNOUNCEMENTS

There were no announcements for this meeting.

CITIZENS PETITIONS

IN RE: HISTORIC PRESERVATION REVIEW COMMISSION

DR. GEORGE SPROWLS, 158 Locust Avenue, addressed Council as the Chair of the Historic Preservation Review Commission. He reported that the Commission was requesting City Council to designate the Fleming Watson District as a Fairmont historic district. He noted this was in accordance with Ordinance No. 1092, passed in May, 1999. He went on to say that they first have to bring it to Council's attention and then if Council accepts the recommendation to make it as a historic district, you refer it to the Planning Commission and then it will come back to City Council for final approval.

The Mayor asked Council if they wanted to act on it and refer it to the Planning Commission or have a work session on it first.

Councilmember Bussey said just to forward it to the Planning Commission.

Dr. Sprowls reported that the City Planner does have a copy of the request that went in.

Dr. Sprowls then mentioned that the Commission is a nine member commission and he understood that there was a consideration being given by Council to drop it from nine to five members to put business people on it and a representative from the City. He then pointed out that there has been a vacancy on the Commission since last January and he then invited Council to put a representative from the City on that Commission while they are pending discussion of bringing it down from nine members to five. He also mentioned if they were going to designate Fleming Watson as an historic district, to consider keeping the membership at nine and putting a couple citizens from that district on there.

Dr. Sprowls then presented City Council a copy of their annual report.

Councilmember Warner asked Dr. Sprowls what streets does the Fleming Watson District take in.

Dr. Sprowls replied that it starts at Watson Avenue, McCoy Street to Alexander Street, across the 4th Street Bridge and runs in the alleyway along Fairmont Avenue but does not include Fairmont Avenue because there are too many businesses and then from 1st Street to 9th Street and over to Mt. Vernon.

Councilmember Mainella stated that he thought it was decided to do this a couple years ago.

The Mayor replied we did, but there were some issues that the City Planner had relating to appearance standards, however, he was not sure what occurred in the time that has past. He stated that he thought we needed to get this to the Planning Commission and let them work on it and get it to City Council.

Dr. Sprowls reported that it was already a historic district according to the Department of the Interior but the City has not designated it yet.

Mr. McDaniel noted that once the Planning Commission acts on it, they will bring it back to City Council for adoption.

IN RE: CLOSING OF HIGH LEVEL BRIDGE

MICHAEL CIAVOLINO, 1770 Morgantown Avenue, Lot A12, asked City Council if they had any thoughts or discussion about the closing of the High Level Bridge after he appeared before Council several meetings ago.

The Mayor replied that Council referred it to the City Manager and the City Manager was to discuss it with Public Works.

Mr. McDaniel explained that they have met, not necessarily because of his comments, but because of all of the special events that we seem to be called on to coordinate in this community. He noted that we were developing a procedure to where an application will be filled out and all of the logistics will be worked out on these procedures and events prior to the events taking place. He mentioned that this will be implemented shortly after the first of the year. He went on to say that he was not saying that will eliminate the need to shut down streets or bridges, but possibly it will make the planning process go smoother and public information go smoother and the public become more aware of what was going on.

Councilmember Mainella stated that Clarksburg shuts down their main street for three days for the Italian Festival so what does it hurt to shut down one bridge that we were without for three years anyhow.

Mr. McDaniel mentioned that the policy will not preclude shutting down bridges or streets, it will give advance planning and notice and procedures for when that is done.

IN RE: COMMEND PUBLIC WORKS DEPARTMENT

Mr. Ciavolino stated that since he has lived here, about 2 ½ years, the Public Works Department has been very cooperative and he wanted to compliment them on their work.

IN RE: YELLOW LINES ON MORGANTOWN AVENUE NEED PAINTED

Mr. Ciavolino reported that the yellow lines on Morgantown Avenue need to be repainted. He said that he was told that the City has contracted the painting of the lines with the State and it depends on when the State will paint the lines.

CITY MANAGER'S REPORT

Mr. McDaniel had nothing to report at this meeting.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE CITY OF FAIRMONT PROVIDING FOR AND ESTABLISHING RATES, FEES AND CHARGES TO BE CHARGED CUSTOMERS IN THE MEREDITH SPRINGS/DAKOTA PROJECT SERVICE AREA OF MARION COUNTY, WEST VIRGINIA, FOR THE USE OF THE CITY'S SANITARY SEWER SYSTEM AND THE SERVICE TO BE PROVIDED THEREBY

The Mayor entertained a motion for the introduction of an ordinance providing for sewer rates to be charged to customers in the Meredith Springs/Dakota service area.

Motion:

Councilmember Straight moved for the introduction of the proposed ordinance and for the reading of a synopsis in lieu of the entire ordinance. Councilmember Talerico seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for October 22, 2002.

IN RE: ONE APPOINTMENT, FAIRMONT SANITARY SEWER BOARD, UNEXPIRED TERM TO END JANUARY 1, 2005

Mayor Fantasia entertained a motion for an appointment to the Fairmont Sanitary Sewer Board for a term to end January 1, 2005.

Motion:

Councilmember Bussey moved for the appointment of J. Peale Davidson to the Fairmont Sanitary Sewer Board for a term ending January 1, 2005. The motion was seconded by Councilmember Mainella.

Roll call was taken by the Clerk.

The Mayor declared J. Peale Davidson appointed to the Fairmont Sanitary Sewer Board for a term ending January 1, 2005 by unanimous vote of those Councilmembers present.

IN RE: ADJOURN TO EXECUTIVE SESSION

Mayor Fantasia entertained a motion to adjourn to Executive Session pursuant to West Virginia Code 6-9A-4. The motion was seconded by Councilmember Mainella.

Roll call was taken by the Clerk.

The Mayor declared the meeting adjourned to Executive Session at 7:20 p.m. by unanimous vote of those Councilmembers present.

IN RE: MEETING RECONVENED

The Mayor declared the meeting reconvened at 7:38 p.m.

ADJOURNMENT

Mayor Fantasia entertained a motion for adjournment.

Motion:

Councilmember Straight moved to adjourn the meeting. Councilmember Talerico seconded the motion.

The Mayor declared the meeting adjourned by voice vote of Council at 7:39 p.m.

November 12, 2002

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 12th day of November, 2002, at the J. Harper Meredith Building, Fairmont, West Virginia.

Mayor Fantasia called the meeting to order.

Councilmembers present were:

First District	Anthony Talerico
Second District	Burley (Butch) Tennant
Third District	Nick L. Fantasia
Fourth District	Dennis O'Dell
Fifth District	Fran Warner
Sixth District	De'Andrea Bussey
Eighth District	Thomas Mainella
Ninth District	Ronald J. Straight

Absent:

Seventh District	Gary K. Hickman

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Planner	Jay Rogers
City Attorney	Kevin Sansalone

IN RE: OPENING CEREMONIES

Rev. Kisner gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Mainella.

APPROVAL OF MINUTES

Mayor Fantasia noted that each member of Council had received a copy of the minutes from the regular meeting held on October 22, 2002. He asked if there were any corrections, deletions, or amendments.

Councilmember Straight moved to approve the minutes as submitted. Councilmember Tennant seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

IN RE: AN ORDINANCE OF THE CITY OF FAIRMONT PROVIDING FOR AND ESTABLISHING RATES, FEES AND CHARGES TO BE CHARGED CUSTOMERS IN THE MEREDITH SPRINGS/DAKOTA PROJECT SERVICE AREA OF MARION COUNTY, WEST VIRGINIA, FOR THE USE OF THE CITY'S SANITARY SEWER SYTEM AND THE SERVICE TO BE PROVIDED THEREBY

Pursuant to a notice duly published in the Times-West Virginian on October 28, 2002 and November 4, 2002, a public hearing was convened to obtain citizen input on an ordinance establishing sewer rates for the Dakota/Meredith Springs project area.

Mayor Fantasia asked if anyone present desired to speak to the proposed ordinance.

DAVID SAGO, Utility Manager, spoke in favor of the proposed ordinance. He said that he has been involved with the project since the mid 1990's and was approached by the West Virginia DEP, the Bureau of Public Health, and the residents in the Dakota/Meredith Springs on progressing to have a viable sewer system established in their community. He went on to say that the City of Fairmont had spent money to have a preliminary engineering report done and this report showed that it was definitely an environmental and public health concern and we were very pro-active to push forward to help the Dakota/Meredith Springs residents to get a viable sewer system. Mr. Sago then stated that we have worked with the Development Council to secure $800,000 worth of Small Cities Block Grant money for the project and the project cannot go unless the grant funding was secured. He then asked Council to proceed in favor of the ordinance so we can proceed to get the contractor on board to do the project. He mentioned that it was appalling that we are in the 21 century and the folks in this area do not have a viable sewer system to treat their sanitary sewer waste.

Councilmember Straight asked when the rates will go into effect.

Mr. Sago said almost at the end of the project or upon substantial completion of the project. He noted that as the homeowners are tying into the system is when the rates would go into effect.

Councilmember Straight noted that people were lead to believe that they were going to be charged before they were hooked up.

Mr. McDaniel stated that the ordinance is effective 45 days from the date that the ordinance is passed. He noted that was necessary so we can get an approved tariff from the Public Service Commission. He mentioned that the rates will not be charged until we start rendering service.

Councilmember O'Dell asked about the projected time line on this project.

Mr. Sago replied probably in the spring to get a contractor in place. He noted that they will have a one year contract to completion.

DEBBIE CONNELLY spoke against the proposed ordinance. She said that she has a septic tank that works and she has the tank pumped every two years. She noted that she was also against the project because of the rates.

GAIL DRAGOO, a resident of Meredith Springs, spoke in favor of the proposed ordinance. She said that she does not have a septic system and their sewage goes directly to the river and has for many years. She noted that some of the neighbors have been after this project for over 30 years. She closed by saying that she was in favor of the project and she hopes that it will move forward.

MICHAEL ABRUZZINO, Rt. 2, Box 60, said that he was in favor of the project. He noted that some of the residents do not have a septic system and he hopes this project goes through.

LINDA ABRUZZINO, Rt. 2, Box 60, spoke in favor of the project. She noted that they need the sewage system because every house runs into one sewage system and is very unsanitary. She mentioned that it has backed up into their basement and has backed up into several basements at different times. She then encouraged Council to vote in favor of the proposed ordinance.

Councilmember O'Dell asked how many residents have septic tanks.

The residents replied probably three.

There being no others to speak, the public hearing was declared closed at 7:15 p.m.

IN RE: AN ORDINANCE OF THE CITY OF FAIRMONT REPEALING ORDINANCE NO. 717, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS ARTICLE 163 "SIGNS AND SIMILAR STRUCTURES" OF THE FAIRMONT CITY CODE AND RE-ENACTING SAID ARTICLE 1763 "SIGNS AND SIMILAR STRUCTURES" TO PROVIDE FOR UPDATED RULES, REGULATIONS, AND RESTRICTIONS FOR PLACEMENT AND LOCATION OF SIGNS AND SIMILAR STRUCTURES WITHIN ALL ZONING DISTRICTS WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRMONT, AND TO PROVIDE A PENALTY FOR THE VIOLATION THEREOF

Pursuant to a notice duly published in the Times-West Virginian on October 28, 2002, a public hearing was convened to obtain citizen input on amendments to the sign ordinance.

Mayor Fantasia mentioned that we have a series of public hearings on the sign ordinance. He noted that public hearing number two basically is the theme of doing the revision of our sign ordinance and public hearings three through thirteen are the individual

amendments. He then said that he was going to have two public hearings, first on item number two and then the second public hearing will be on items three through thirteen in total.

The Mayor asked if anyone present desired to speak against this public hearing first and that way staff will have the ability to write down any questions that the public may have and when we finish the final staff comments that will hopefully address those concerns.

There was no one to speak against the ordinance.

Mayor Fantasia asked if anyone desired to speak for the ordinance.

BRUCE MCDANIEL stated that this has been a process that has been ongoing for over two years and was actually implemented at the direction of City Council. He noted that this Council has met in three work sessions, one with the Planning Commission. He mentioned that the Planning Commission has also worked on this ordinance for over two years, held public hearings and recommended these ordinances to Council. He then asked Council to trust their appointed boards and commissions and the professional staff to do their job and if Council can pass this ordinance, it takes one step in the direction of appearance standards that Councilmember Talerico had asked for.

JAY ROGERS, City Planner, stated this is an ordinance that we did make an attempt to not only preserve but to improve the scenic environment in the City of Fairmont. He mentioned that this was the first step toward establishing some appearance standards that we need to do in Fairmont. He went on to say that what the ordinance effectively does is that it updates some obsolete regulations that are in the current ordinance, establishes regulations that will create a consistent and attractive environment and one that becomes appropriate to the individual planned zone districts that we have. Mr. Rogers noted that the final thing is that we have tried to provide an easier user guide for applicants that come into the office as well as the City staff.

The Mayor noted that the City Planner and his staff have done a nice job in putting the document together and that it was a long process.

Councilmember O'Dell stated that it was not just a matter of trusting staff in what they do but it does take a great effort to put into a project such as this ordinance. He said that we have to be fair to those people who these ordinances will affect, which is every citizen that lives in Fairmont as well as every business owner. He went on to say that it will affect businesses now and may stifle the growth of the City's future. He then stated that in 2000 Council passed a sign ordinance that was supposed to cover most of the concerns that we have talked about.

Mr. Rogers stated that we did not.

Councilmember O'Dell stated that political signs were something that was an eyesore to people and also garage sale signs. He said that he looked in the ordinance and that was

something that was not even addressed that generated this whole thing to begin with. He then asked a series of questions regarding DOH traffic signs, flashing signs at schools, and about signs that are grandfathered.

After a lengthy discussion, City Planner Jay Rogers and City Attorney Kevin Sansalone answered Councilmember O'Dell's questions.

GEORGE GRIBBEN, a member of the Planning and Zoning Commission, stated that the Planning Commission voted unanimously in support of this ordinance. He said that there are several business owners on the Planning Commission. In fact, one member is in the sign business. He noted that this was going to be a pro-business ordinance and the Commission felt very strongly that this was the right thing for the City of Fairmont.

FRAN LAUZAU, owner of Fairmont Avenue Subway, stated that he came here tonight to oppose any sign regulation; however, after having the discussion, he thought all of questions have been answered and he wished to withdraw his objection.

ROGER RAIKES, a member of the Baptist Temple, asked about the temporary Christmas tree signs that they have had for the last forty years. He asked if they would have to get a permit for the tree sales and how that will affect the Boy Scout troop.

The Mayor told Mr. Raikes that they would be exempt because they are a non-profit agency.

Councilmember Bussey noted that they were not promoting a business.

Mr. Sansalone said that if they came in for a permit, they would be told that they were exempt.

There being no others to speak, the public hearing was closed at 8:00 p.m.

IN RE: SIGN ORDINANCES - ITEMS 3 THROUGH 13

Mayor Fantasia noted that the next public hearings involves Items three through thirteen and this is just the specific changes in the code. He asked if anyone present desired to speak to the following ordinances.

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1317, RESIDENCE "A" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES, SUBPART (d) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1318, RESIDENCE "A1" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES, SUBPART (d) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1319, RESIDENCE "B" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES, SUBPART (d) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1321, RESIDENCE "C" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1323, BUSINESS "A" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, SUBPART (b) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1325, BUSINESS "B" DISTRICT, SECTION 04 ACCESSORY BUILDINGS AND USES, SUBPART (b) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1327, CENTRAL BUSINESS DISTRICT, SECTION 04 ACCESSORY BUILDINGS AND USES, SUBPART (b) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1329, INDUSTRIAL "A" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, SUBPART (a) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1331, INDUSTRIAL "B" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1333, INDUSTRIAL "C" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1335, PRO ZONE: PROFESSIONAL, RESIDENTIAL OFFICE ZONE, SECTION 03 ACCESSORY BUILDINGS AND USES, THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mr. Rogers noted that Items three through thirteen are necessitated by the changes in the code. He explained that all signs and how they relate to the zoning ordinance are placed in the sign ordinance.

There being no others to speak, the public hearing was called to a close at 8:03 p.m.

ANNOUNCEMENTS

IN RE: VETERAN'S DAY PARADE

Councilmember Warner reported that the Veteran's Day parade was a nice event.

IN RE: JAY ROGERS, CITY PLANNER, HONORED

The Mayor reported that Jay Rogers, City Planner, was named to the West Virginia Executive magazine's "Young Gun" issue.

IN RE: TRIP TO PITTSBURGH

Councilmember Bussey reported that he had the opportunity of attending the workshop bus trip sponsored by the Fairmont Community Development Partnership to Pittsburgh. He noted that it was also sponsored by Main Street Fairmont. He stated that they were able to see some of the things being done in Pittsburgh that we hope to be doing here. He closed by saying that it was a very worthwhile trip and if we have the opportunity to do something similar in the future, maybe more Councilmembers should attend.

Councilmember Straight stated that he was not aware of the bus trip to Pittsburgh as were a few of the other Councilmembers. He noted that if everyone was aware of it, more would have attended.

IN RE: TAX INCREMENT FINANCING

Councilmember Mainella stated that the development they saw in Pittsburgh most, if not all, of it was the result of tax increment financing which we have now thanks to the passage of Amendment One.

IN RE: CONNECTOR PROJECT STARTED

Councilmember Mainella reported that the connector project finally started.

CITIZENS PETITIONS

There were no petitions for this meeting.

CITY MANAGER'S REPORT

IN RE: PARKING GARAGE PROJECT ON HOLD

City Manager McDaniel reported that today was the day that decisions were made by the Economic Development Grant Committee regarding our parking garage proposal. He said that our proposal did not get certified, which means that it did not get funded, but we also did not get cut. He explained that basically those that were cut were cut for good; however, our project was one of a few that have been set aside and could be funded depending on actual bond proceeds from the bond sale. He said that we would know more in about 30 days.

The Mayor said thanks to the stock market essentially "tanking", municipal and governmental bonds have a higher rate than they ever had so the original bond structure which was $200 million may reach almost $300 million. He noted that then it will be the decision of the Secretary of Tax and Revenue and the Committee to determine what excess funding will be into additional grant requests and what they will leave aside to let the bonds pay off sooner so that they can go through another schedule.

IN RE: RESIGNATION OF COUNCILMEMBER HICKMAN

Mr. McDaniel stated that he received a letter today from Gary Hickman which he submitted copies to City Council. The letter read as follows:

"This letter serves as my official resignation from the 7th District seat on Fairmont City Council as well as my position on the Airport Authority Board and Main Street Fairmont. This resignation comes with my deep regrets as I have thoroughly enjoyed serving the people of Fairmont. I want to thank everyone who voted for me and had confidence in my ability to represent the 7th District on City Council. The reason for may resignation is personal in nature but it has to do with Ann and I retiring and relocating to south Florida and most importantly having the ability to bring our family together in one geographic area, if only for a short period of time. What started out as a possible new job for Ann has turned into a permanent position and with our daughter relocating to south Florida, this December, our family has decided to live here for the time being. I am sorry if I have upset anyone. I apologize to anyone I have offended by not serving out my full term but in my life, my family has always come first and this will possibly be the last chance for us all to be together. This was a very emotional decision for me to make because I did not want to let anyone down as a Council representative. Please accept this resignation effective immediately. Good luck to the person who will replace me and I wish all of my friends on City Council continued success."

The City Manager presented Council with three letters that he had received from persons that reside in the 7th District that are interested in Mr. Hickman's seat.

Mr. McDaniel also presented Council with a legal opinion from Kevin Sansalone, City Attorney, regarding filling the vacancy. He said that the City Attorney's opinion is that the vacancy will be filled at the next regular election, which will be November 2004 and that City Council has a duty to appoint someone to this position by majority vote of those left on Council within 30 days. He said that Council can appoint any person qualified that meets the eligibility requirements of a Councilmember which essentially states that they will be a qualified voter of the City and they will reside and continue to reside within the district from which they are appointed. He then said that Council should immediately engage in a process, maybe to have an identification process for those persons that are qualified by the Charter and request letters of interest by means of a newspaper article or ad or any other methods reasonably calculated to notify the public. He then suggested that Council engage in a meaningful discussion, narrow the candidates down to one person and that Council can conduct these deliberations in Executive Session as long as Council has an open vote of Council to appoint that person.

The City Manager explained that his recommendation is obviously to make this a legitimate process, solicit qualified persons, set a deadline, and meet to appoint someone within 30 days.

IN RE: ACCEPT COUNCILMEMBER HICKMAN'S RESIGNATION

Mayor Fantasia entertained a motion to accept Councilmember Hickman's resignation letter. Councilmember Talerico seconded the motion.

The Mayor declared Councilmember Hickman's resignation letter accepted by voice vote of Council.

IN RE: PROCEDURE TO FILL VACANCY

Mayor Fantasia noted that we have a newspaper story that is going to say anyone interested needs to send a letter to the City Manager. He then suggested that we put a deadline postmarked Saturday and then Council can come in on Tuesday and have a special meeting to go into Executive Session and go over the letters and then act on the appointment the following Tuesday at the regular meeting of Council.

The consensus of Council said that procedure was fine.

The Mayor repeated that the letters will be postmarked by November 16; Council will meet on Tuesday, November 19, at 4:30 p.m., and then act on the appointment on Tuesday, November 26.

City Attorney Sansalone said that the letters of interest should be accepted in person by the close of business on Monday, November 18, 2002 or postmarked by November 16.

Mr. McDaniel then stated that the applicants or the letters of interest should be submitted to the City Clerk's Office since the City Clerk is the Chief Election Officer.

The City Attorney agreed.

The Mayor then asked the City Attorney and the City Clerk to verify the eligibility of the candidates. He also asked the City Clerk to place a legal ad in the newspaper stating that we are accepting letters of interest.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE OF THE CITY OF FAIRMONT PROVIDING FOR AND ESTABLISHING RATES, FEES AND CHARGES TO BECHARGED CUSTOMERS IN THE MEREDITH SPRINGS/DAKOTA PROJECT SERVICE AREA OF MARION COUNTY, WEST VIRGINIA, FOR THE USE OF THE CITY'S SANITARY SEWER SYTEM AND THE SERVICE TO BE PROVIDED THEREBY

Mayor Fantasia entertained a motion for the adoption of an ordinance establishing sewer rates for the Dakota/Meredith Springs area.

Motion:

Councilmember Straight moved for the adoption of the proposed ordinance. Councilmember Talerico seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1200 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE OF THE CITY OF FAIRMONT REPEALING ORDINANCE NO. 717, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS ARTICLE 163 "SIGNS AND SIMILAR STRUCTURES" OF THE FAIRMONT CITY CODE AND RE-ENACTING SAID ARTICLE 1763 "SIGNS AND SIMILAR STRUCTURES" TO PROVIDE FOR UPDATED RULES, REGULATIONS, AND RESTRICTIONS FOR PLACEMENT AND LOCATION OF SIGNS AND SIMILAR STRUCTURES WITHIN ALL ZONING DISTRICTS WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRMONT, AND TO PROVIDE A PENALTY FOR THE VIOLATION THEREOF

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Article 1763 "Signs and Similar Structures".

Motion:

Councilmember Mainella moved for the adoption of the proposed ordinance. Councilmember Straight seconded the motion.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Tennant	Yes	Councilmember Warner	Yes
Councilmember Mainella	Yes	Councilmember O'Dell	No
Councilmember Straight	Yes	Councilmember Bussey	Yes
Mayor Fantasia	Yes	Councilmember Talerico	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1201 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1317, RESIDENCE "A" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES, SUBPART (d) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Residence "A" zoning district.

Motion:

Councilmember Mainella moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Bussey.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Talerico	Yes	Councilmember Bussey	Yes
Councilmember Mainella	Yes	Councilmember Warner	Yes
Councilmember Straight	Yes	Councilmember O'Dell	No
Councilmember Tennant	Yes	Mayor Fantasia	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1202 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1318, RESIDENCE "A1" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES, SUBPART (d) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Residence "A1" zoning district.

Motion:

Councilmember Bussey moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Mainella.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember O'Dell	No	Councilmember Bussey	Yes
Councilmember Straight	Yes	Councilmember Mainella	Yes
Councilmember Talerico	Yes	Councilmember Warner	Yes
Councilmember Tennant	Yes	Mayor Fantasia	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1203 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1319, RESIDENCE "B" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES, SUBPART (d) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Residence "B" zoning district.

Motion:

Councilmember Bussey moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Talerico.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Talerico	Yes	Councilmember Warner	Yes
Councilmember Tennant	Yes	Councilmember Straight	Yes
Councilmember Mainella	Yes	Councilmember Bussey	Yes
Mayor Fantasia	Yes	Councilmember O'Dell	No

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1204 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1321, RESIDENCE "C" DISTRICT, SECTION 02 ACCESSORY BUILDINGS AND USES THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Residence "C" zoning district.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Straight.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Warner	Yes	Councilmember Mainella	Yes
Councilmember Straight	Yes	Mayor Fantasia	Yes

Councilmember O'Dell	No	Councilmember Talerico	Yes
Councilmember Bussey	Yes	Councilmember Tennant	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1205 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1323, BUSINESS "A" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, SUBPART (b) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Business "A" zoning district.

Motion:

Councilmember Bussey moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Warner.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Tennant	Yes	Councilmember Talerico	Yes
Councilmember Mainella	Yes	Mayor Fantasia	Yes
Councilmember Straight	Yes	Councilmember Warner	Yes
Councilmember O'Dell	No	Councilmember Bussey	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1206 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1325, BUSINESS "B" DISTRICT, SECTION 04 ACCESSORY BUILDINGS AND USES, SUBPART (b) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending Business "B" zoning district.

Motion:

Councilmember Talerico moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Bussey.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember O'Dell	No	Councilmember Straight	Yes
Councilmember Tennant	Yes	Councilmember Bussey	Yes
Councilmember Talerico	Yes	Mayor Fantasia	Yes
Councilmember Mainella	Yes	Councilmember Warner	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1207 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1327, CENTRAL BUSINESS DISTRICT, SECTION 04 ACCESSORY BUILDINGS AND USES, SUBPART (b) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending the Central Business zoning district.

Motion:

Councilmember Bussey moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Straight.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Talerico	Yes	Councilmember Tennant	Yes
Councilmember Mainella	Yes	Councilmember O'Dell	No
Councilmember Bussey	Yes	Councilmember Straight	Yes
Councilmember Warner	Yes	Mayor Fantasia	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1208 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1329, INDUSTRIAL "A" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, SUBPART (a) THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending the Industrial "A" zoning district.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Bussey.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Mainella	Yes	Councilmember Bussey	Yes
Councilmember Straight	Yes	Councilmember Tennant	Yes
Councilmember Warner	Yes	Mayor Fantasia	Yes
Councilmember Talerico	Yes	Councilmember O'Dell	No

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1209 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1331, INDUSTRIAL "B" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending the Industrial "B" zoning district.

Motion:

Councilmember Straight moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Bussey.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Tennant	Yes	Councilmember Talerico	Yes
Councilmember Bussey	Yes	Councilmember O'Dell	No
Councilmember Straight	Yes	Councilmember Mainella	Yes
Mayor Fantasia	Yes	Councilmember Warner	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1210 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1333, INDUSTRIAL "C" DISTRICT, SECTION 03 ACCESSORY BUILDINGS AND USES, THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending the Industrial "C" zoning district.

Motion:

Councilmember Talerico moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Bussey.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Bussey	Yes	Councilmember Straight	Yes
Councilmember O'Dell	No	Councilmember Talerico	Yes
Councilmember Tennant	Yes	Councilmember Warner	Yes
Mayor Fantasia	Yes	Councilmember Mainella	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1211 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13, CHAPTER ONE AND THREE OF THE FAIRMONT CITY CODE – PLANNING AND ZONING, AND MORE PARTICULARLY ARTICLE 1335, PRO ZONE: PROFESSIONAL, RESIDENTIAL OFFICE ZONE, SECTION 03 ACCESSORY BUILDINGS AND USES, THEREOF TO PROVIDE FOR AND IMPLEMENT NEW SIGN RESTRICTIONS

Mayor Fantasia entertained a motion for the adoption of an ordinance amending the Pro Zone district.

Motion:

Councilmember Bussey moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Talerico.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Warner	Yes	Councilmember O'Dell	No
Councilmember Talerico	Yes	Councilmember Tennant	Yes

Mayor Fantasia	Yes	Councilmember Mainella	Yes
Councilmember Straight	Yes	Councilmember Bussey	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1212 was duly adopted.

IN RE: ADOPTION, A RESOLUTION BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA AUTHORIZING PARTICIPATION IN THE WEST VIRGINIA HOUSING DEVELOPMENT FUND'S EMPLOYER ASSISTED LOAN PROGRAM

Mayor Fantasia entertained a motion for the adoption of a resolution regarding the Employer Assisted Loan Program.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Straight seconded the motion.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION RESCHEDULING THE REGULAR DECEMBER 24, 2002 MEETING

Mayor Fantasia entertained a motion for the adoption of a resolution rescheduling the December 24, 2002 meeting to December 17, 2002.

Motion:

Councilmember Mainella moved for the adoption of the proposed resolution. The motion was seconded by Councilmember Talerico.

The Clerk read the proposed resolution for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE COMMITMENT LETTER FOR THE MEREDITH SPRINGS/DAKOTA SEWER SYSTEM PROJECT

Mayor Fantasia entertained a motion for the adoption of a resolution authorizing the City Manager to sign the commitment letter for the Meredith Springs/Dakota sewer project.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Talerico seconded the motion.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING AND CONSENTING TO THE ASSIGNMENT BY FAIRMONT BOWLING CENTER, INC., LESSEE, OF A LEASE OF CERTAIN REAL PROPERTY OF THE CITY OF FAIRMONT, TO BANK ONE, WEST VIRGINIA, NA, AS COLLATERAL OR SECURITY FOR A LOAN

Mayor Fantasia entertained a motion for the introduction of an ordinance regarding Fairmont Bowling Center.

Motion:

Councilmember Bussey moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Talerico seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing date for November 26, 2002.

ADJOURNMENT

Mayor Fantasia entertained a motion for adjournment.

Motion:

Councilmember Straight moved to adjourn the meeting. Councilmember Talerico seconded the motion.

The Mayor declared the meeting adjourned by voice vote of Council at 8:35 p.m.

Legals

NOTICE OF PUBLIC HEARING ON CITY OF FAIRMONT BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Fairmont (the "City") to be held on Tuesday, May 13, 2003, at 7:00 p.m., in the Council chambers at the Fairmont City Hall, Fairmont, 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 FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 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 BOND PURCHASE 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 approved by the Council on April 29, 2002. The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used to provide permanent financing of the costs of acquisition and construction of betterments, additions and improvements to the sewerage system of the City and to pay certain costs of issuance of the Bonds and related costs. 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 for review by interested parties during regular office hours.

Following the public hearing, the Council intends to enact the Ordinance upon final reading.

Dated: April 29, 2003.

/s/ Janet L. Keller
City Clerk

Times May 1, 8, 2003

AFFIDAVIT OF PUBLICATION

State of West Virginia

County of Marion, to wit:

N 001104

I, Beverly A. Miller, being first duly sworn upon my oath, do dispose and say that I am legal Clerk of the TIMES WEST VIRGINIAN a corporation, publisher of the newspaper entitled the TIMES WEST VIRGINIAN an Independent newspaper:

that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below, that such newspaper is regularly published daily except Saturday and Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforementioned municipality and Marion County; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial or social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices.

that the annexed notice of Public Hearing was duly published in said newspaper once Week for 2 successive weeks (Class ~~II~~), commencing with the issue of the 1 day of May, 2003, and ending with the issue of the 8 day of May, 2003, and was posted at the front door of the Marion County Courthouse on the 1 day of May, 2003; that said annexed notice was published on the following dates: May 1, 8, 2003

and the cost of publishing said annexed notice as aforesaid was $ 109.24.

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 5 day of June, 2003.

My commission expires Jan 24, 2010

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Sherry L. Gillett
Fairmont, WV 26554
My Commission Expires Jan. 24, 2010

Sherry L. Gillette
Notary Public of Marion County, West Virginia

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

EXCERPT OF MINUTES ON ADOPTION OF
SUPPLEMENTAL RESOLUTION

The undersigned Mayor of the City of Fairmont (the "City") hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of the said City:

*** *** ***

The Council of the City met in special session, pursuant to notice duly posted, on the 10th day of June, 2003, in Fairmont, West Virginia, at the hour of 7:00 p.m.

PRESENT:	Nick Fantasia	- Mayor
	Bruce McDaniel	- City Manager
	Janet Keller	- Clerk
	Anthony Talerico	- Councilmember
	Burley Tennant, Jr.	- Councilmember
	Dennis O'Dell	- Councilmember
	Fran Warner	- Councilmember
	De'Andrea Bussey	- Councilmember
	Scott Sears	- Councilmember
	Tom Mainella	- Councilmember
	Ron Straight	- Councilmember
ABSENT:	None.	

Nick Fantasia, Mayor, presided, and Janet Keller acted as City Clerk. The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Mayor presented the following Resolution:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE

BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE BOND PURCHASE 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.

Thereupon, on motion duly made by Councilmember Straight and seconded by Councilmember Tennant, it was unanimously ordered that the said Supplemental Resolution be finally enacted and put into effect immediately.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the City of Fairmont and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 26th day of June, 2003.

Janet L. Keller
City Clerk

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April 29, 2003

The special meeting of the City Council of the City of Fairmont was held at 4:30 p.m. on the 29th day of April, 2003, at the J. Harper Meredith Building, Fairmont, West Virginia.

Deputy Mayor Straight called the meeting to order.

Councilmembers present were:

First District	Anthony Talerico
Second District	Burley (Butch) Tennant
Fourth District	Dennis O'Dell
Fifth District	Fran Warner
Sixth District	De'Andrea Bussey
Seventh District	Scott Sears
Eighth District	Thomas Mainella
Ninth District	Ronald J. Straight

Absent:

Third District	Nick L. Fantasia

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Attorney	Kevin Sansalone

CONSIDERATION OF COUNCIL BUSINESS

RE: SECOND READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 (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 BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO

Deputy Mayor Straight entertained a motion for the second reading of an ordinance regarding the issuance of bonds for the Dakota/Meredith Springs sewer project.

Motion:

Councilmember Tennant moved for the second reading of the proposed ordinance. The motion was seconded by Councilmember Warner.

The Clerk read the proposed ordinance by title only.

Discussion:

Councilmember Sears said that here we are in 2003 and we are making upgrades in excess of over a million dollars but in the same sense how can we, as a city, keep charging them the same rates to sell them water and sewerage at the same time providing upgrades.

The City Manager replied we do not. He said Dakota/Meredith Springs is an area of about 110 residential customers that do not have sewer service. He said that we have never charged them sewer service as the City of Fairmont and they do not reside at the current time in our dedicated service limit of the City of Fairmont or in any other public service district service limit which would be Greater Paw Paw PSD. He explained that when we built our system and Paw Paw built their system; however, they did not have a system built, no FHA money, no EPA money; do not know why. Mr. McDaniel went on to say that the Health Department and DNR approached the City of Fairmont well over ten years ago and asked us if we would sewer that area and at that time his reaction was that we were interested in looking at it, we provide water to that area, however, if we sewer that area we are going to have to have help with financing, which means grant funds, and the system has to be a stand alone system. He stated that the revenues that we derive from those customers have to pay the operating costs and the debt service on that system into the City.

Councilmember Sears said that whatever this expense is; say around $1 million dollars, those 110 residents are paying for the cost back to the City of Fairmont.

Mr. McDaniel responded by saying yes; however, the $785,000 of the cost of the $1.1 million dollar system is being paid for by a Small Cities Block Grant that we have partnered with the Marion County Commission to obtain. He went on to say that this particular money that we are borrowing is the final piece of the funding and it is money that comes from the Federal Clean Water Act to the State of West Virginia and the State of West Virginia runs a revolving fund for sewer systems and based on the rates and income in the area you qualify for this money at different interest rates. He then stated that we have qualified this money based on the dynamics of this project for 30 years at zero percent interest and one-half percent administrative fee on an annual basis. He added that it was the best possible loan money that you can get.

Deputy Mayor Straight noted that the public hearing will be held on May 13, 2003.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE APPROVING THE EXTENSION OF THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED DECEMBER 15, 2000, BY AND BETWEEN THE CITY OF FAIRMONT AND THE MARION COUNTY COMMISSION AS REVISED BY SUBSEQUENT AGREEMENT TO BE DATED AS OF MAY 13, 2003, WHICH PROVIDES FOR THE CONSTRUCTION OF A SEWERAGE COLLECTION SYSTEM IN THE MEREDITH SPRINGS/DAKOTA AREA OF MARION COUNTY, WEST VIRGINIA

Deputy Mayor Straight entertained a motion for the introduction of an ordinance approving the extension of the Intergovernmental Agreement between the City of Fairmont and the Marion County Commission for the Dakota/Meredith Springs sewer project.

Motion:

Councilmember Mainella moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Tennant seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Deputy Mayor asked the Clerk to set a public hearing for May 13, 2003.

Mr. McDaniel explained that what we have had is an Intergovernmental Agreement with the Marion County Commission for the past two years that authorized this project. He said that it has to be renewed on an annual basis on a fiscal year basis and now that we are in the process of borrowing the SRF money there are some technical requirements that the State of West Virginia requires in order for us to be the recipient of those funds. He said that their bond counsel, Samme Gee from Jackson Kelley, has indicated what those changes are.

ADJOURNMENT

Deputy Mayor Straight entertained a motion for adjournment.

Motion:

Councilmember Mainella moved to adjourn the meeting. Councilmember Talerico seconded the motion.

The Deputy Mayor declared the meeting adjourned by voice vote of Council at 4:47 p.m.

May 13, 2003

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 13th day of May, 2003, at the J. Harper Meredith Building, Fairmont, West Virginia.

Mayor Fantasia called the meeting to order.

Councilmembers present were:

First District	Anthony Talerico
Second District	Burley (Butch) Tennant
Third District	Nick L. Fantasia
Fourth District	Dennis O'Dell
Fifth District	Fran Warner
Sixth District	De'Andrea Bussey
Seventh District	Scott Sears
Eighth District	Thomas Mainella
Ninth District	Ronald J. Straight

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Planner	Jay Rogers

IN RE: OPENING CEREMONIES

Rev. Albert Anderson gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Warner.

APPROVAL OF MINUTES

Mayor Fantasia noted that each member of Council had received a copy of the minutes from the regular meeting held on April 22, 2003 and from the special meeting held on April 29, 2003. He asked if there were any corrections, deletions, or amendments.

Councilmember Tennant moved to approve the minutes as submitted. Councilmember Talerico seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13-PLANNING AND ZONING CODE OF THE CITY OF FAIRMONT TO PROVIDE

FOR CERTAIN REVISIONS TO THE ZONING MAP AND DISTRICTS ESTABLISHED WITHIN THE CITY, PARTICULARLY TO SUPPLEMENT THE PLANNING AND ZONING CODE BY THE ESTABLISHMENT AND CREATION OF ARTICLE 1337, HIGHER EDUCATION DISTRICT, AND TO PROVIDE FOR AND IMPLEMENT DISTRICT RULES, REGULATION AND RESTRICTION FOR LAND USE IN SUCH DISTRICT

Pursuant to a notice duly published in the Times-West Virginian on April 28, 2003, a public hearing was convened to obtain citizen input on an ordinance providing for the establishment of a Higher Education District in the city limits of Fairmont.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

JAY ROGERS, City Planner, explained that this ordinance creates the Higher Education District in the corporate limits of Fairmont. He said at this point in time that is all it does, just actually creates the district. He added that the rezoning of the property by Fairmont State College is at the public hearing level at the Planning Commission next Wednesday night where we will take under advisement the actual rezoning of the property. He then stated that the only property that is being rezoned to the Higher Education Zone is property that is currently owned by Fairmont State College, not property that is being optioned and not property that is proposed for development but only property that is owned by Fairmont State College. He closed by saying that this is a step forward to improve their land use capabilities.

There being no others to speak, the public hearing was declared closed at 7:06 p.m.

RE: AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 (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 BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO

Pursuant to a notice duly published in the Times-West Virginian on May 1, 2003 and May 8, 2003, a public hearing was convened to obtain citizen input on an ordinance providing for the sewer bond issuance for the Dakota/Meredith Springs sewer project.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

VINCE COLLINS, an attorney with Steptoe and Johnson who is the bond counsel for this issue, spoke in favor of the proposed ordinance. He noted that he has appeared before this Council on a couple of other readings and mentioned that this ordinance authorizes the issuance of up to $600,000 in sewer revenue bonds of the City of Fairmont basically to fund the improvements at the Dakota/Meredith Springs area. He went on to say that if this ordinance is adopted tonight the only remaining things to be done will be a supplemental resolution approximately four weeks from now, close to when we will be able to settle the issue. Mr. Collins then said that the funding consists of grant funds and borrowed funds.

There being no others to speak, the public hearing was declared closed at 7:08 p.m.

IN RE: AN ORDINANCE APPROVING THE EXTENSION OF THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED DECEMBER 15, 2000, BY AND BETWEEN THE CITY OF FAIRMONT AND THE MARION COUNTY COMMISSION AS REVISED BY SUBSEQUENT AGREEMENT TO BE DATED AS OF MAY 13, 2003, WHICH PROVIDES FOR THE CONSTRUCTION OF A SEWERAGE COLLECTION SYSTEM IN THE MEREDITH SPRINGS/DAKOTA AREA OF MARION COUNTY, WEST VIRGINIA

Pursuant to a notice duly published in the Times-West Virginian on May 5, 2003, a public hearing was convened to obtain citizen input on an ordinance approving the extension of the Intergovernmental Agreement between the City of Fairmont and the Marion County Commission for the Dakota/Meredith Springs sewer project.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

Mr. McDaniel explained that this is the next piece that we need to complete so that we can proceed with the Dakota/Meredith Springs project. He mentioned the project has been a cooperative effort between the Marion County Commission, who actually applied for and received the original $785,000 Small Cities Block Grant to construct the sewer system improvements and the City of Fairmont who is borrowing up to $600,000 in SRF funds to complete the construction of the project. Mr. McDaniel went on to say that during the project we had to have an Intergovernmental Agreement in place and it can only last for a year at a time and this will be the third time that we have had to extend the agreement as we work through this project. He noted that this ordinance will be approving the draft agreement and authorizing him to make any final changes as dictated by the Attorney General's Office.

There being no others to speak, the public hearing was declared closed at 7:10 p.m.

ANNOUNCEMENTS

IN RE: CERTIFICATES PRESENTED – EAGLE SCOUTS

The Mayor presented Certificates of Achievement to Jason Maffoili and Matthew Rutherford for obtaining the rank of Eagle Scouts. Jason and Matthew helped organize and run a program to collect food for the Soup Opera to help people that cannot afford to get meals. Both scouts collected over 2,000 items for the local Soup Opera.

IN RE: REALITY TELEVISON PROGRAM

Councilmember O'Dell reported that CBS television is planning on producing a reality TV program called The Real Beverly Hillbillies and in that show they are taking a poor, southern West Virginia family and putting them in a mansion in Hollywood, California and producing a show in which they can mock them and make fun of them on national TV. He said that he finds this repulsive and the International President from the United Mine Workers also finds this repulsive and very disrespectful to do that to our cultural. He went on to say that next Wednesday the United Mine Workers plan to go to New York and protest CBS and the producer of this program as well as other people. Councilmember O'Dell then said that they are trying to seek support from such entities like City Council and the County Commission, therefore, he asked that City Council support them in going to New York in this protest and not allow this kind of attitude to be put out on national TV towards our way of life. He then asked Council to support this protest and their efforts in stopping such humiliation.

The Mayor asked the City Manager to draft a letter for his signature. Councilmember O'Dell gave the City Manager the address of who it needs to be addressed to.

CITIZENS PETITIONS

IN RE: MORRIS PARK PROPERTY

MR. SHUCK, of Pleasant Valley, asked Council if the City of Fairmont was developing the Morris Park property. He said that part of it looks like it is being developed and maybe someone from the City should check into it.

Mr. McDaniel reported that we are not developing Morris Park. He also mentioned that we did not sell it or lease it either.

The Mayor noted that there is no development on any city property.

Mr. Shuck stated that there is some development of City property off Beech Drive.

The City Manager said that if someone is building on city owned property, we know nothing about any development at Morris Park.

The Mayor asked Mr. McDaniel to have the City Engineer check it out to make sure that nothing is occurring on city property without the city's knowledge.

IN RE: MAIN STREET FAIRMONT GRANT AWARD

PATTY PIROLO, Main Street Director addressed Council regarding a $12,000 grant that was awarded to Main Street Fairmont. She noted that $4,000 of that award was an educational grant that sends her to Washington, DC in 2004 and 2005 for training and the other $8,000 will be used for projects in the downtown. Ms. Pitrolo then went over some of the other projects that will be undertaken with the grant.

CITY MANAGER'S REPORT

IN RE: LAW ENFORCEMENT DINNER

Mr. McDaniel reminded Council of the annual Law Enforcement Dinner scheduled for May 15th at Westchester Village.

IN RE: CORONATION OF FESTIVAL QUEEN

The City Manager reported that the coronation for the Three Rivers Festival queen and her court will be held May 14th at Westchester Village at 6:30 p.m.

IN RE: PUBLIC SAFETY BUILDING FUNDING

Mr. McDaniel reported that he received information today from the City Planner that we will be meeting with RDA and Jim Anderson on Friday, May 16th, regarding the Public Safety Building funding. He stated that he will have more information for Council after the meeting.

IN RE: WATER FILTRATION PLANT TOUR

The City Manager announced that next Tuesday, May 20th, as part of the West Virginia AWWA meeting the group will be touring the new water filtration plant. He noted that they will be conducting tours and technical sessions of that facility from 9:30 a.m. to 3:30 p.m. on that day.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13-PLANNING AND ZONING CODE OF THE CITY OF FAIRMONT TO PROVIDE FOR CERTAIN REVISIONS TO THE ZONING MAP AND DISTRICTS ESTABLISHED WITHIN THE CITY, PARTICULARLY TO SUPPLEMENT THE PLANNING AND ZONING CODE BY THE ESTABLISHMENT AND CREATION OF ARTICLE 1337, HIGHER EDUCATION DISTRICT, AND TO PROVIDE FOR AND IMPLEMENT DISTRICT RULES, REGULATION AND RESTRICTION FOR LAND USE IN SUCH DISTRICT

Mayor Fantasia entertained a motion for the adoption of an ordinance establishing the Higher Education District.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. Councilmember Talerico seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1222 was duly adopted.

RE: ADOPTION, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 (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 BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO

Mayor Fantasia entertained a motion for the adoption of an ordinance for the sewer bond issuance for the Dakota/Meredith Springs sewer bond project.

Motion:

Councilmember Straight moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Mainella.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1223 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE APPROVING THE EXTENSION OF THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED DECEMBER 15, 2000, BY AND BETWEEN THE CITY OF FAIRMONT AND THE MARION COUNTY COMMISSION AS REVISED BY SUBSEQUENT

AGREEMENT TO BE DATED AS OF MAY 13, 2003, WHICH PROVIDES FOR THE CONSTRUCTION OF A SEWERAGE COLLECTION SYSTEM IN THE MEREDITH SPRINGS/DAKOTA AREA OF MARION COUNTY, WEST VIRGINIA

Mayor Fantasia entertained a motion for the adoption of an ordinance providing for the extension of the Intergovernmental Agreement between the City of Fairmont and the Marion County Commission for the Dakota/Meredith Springs sewer project.

Motion:

Councilmember Mainella moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Talerico.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1224 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING AND CONSENTING TO THE PARTIAL ASSIGNMENT OF THE SOLID WASTE COLLECTION AND DISPOSAL AGREEMENT, DATED JULY 31, 1996, AS AMENDED, BY AND BETWEEN THE CITY OF FAIRMONT AND BFI WASTE SYSTEMS OF NORTH AMERICA, INC., TO ALLIED RECEIVABLES FUNDING INCORPORATED AND THE FURTHER ASSIGNMENT OF SAID AGREEMENT BY ALLIED RECEIVABLES FUNDING INCORPORATED TO WACHOVIA BANK, NATIONAL ASSOCIATION

Mayor Fantasia entertained a motion for the introduction of an ordinance consenting to the partial assignment of the solid waste collection agreement between the City of Fairmont and BFI Waste Systems.

Motion:

Councilmember Straight moved for the introduction of the proposed ordinance the reading of a synopsis in lieu of the entire ordinance. Councilmember Sears seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for May 27, 2003.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE REPEALING ORDINANCE NO. 478, ADOPTED OCTOBER 3, 1978, AS AMENDED, TO PROVIDE FOR THE REPEAL OF THE CITY OF

FAIRMONT'S PERSONNEL RULES AND REGULATIONS AS OF JUNE 30, 2003, AT 11:59 P.M. AND TO FURTHER PROVIDE FOR THE RE-ENACTMENT OF SAID PERSONNEL RULES AND REGULATIONS, AS MODIFIED, TO BECOME EFFECTIVE ON JULY 1, 2003, AT 12:00 A.M.

Mayor Fantasia entertained a motion for the introduction of an ordinance providing for the repeal of the City of Fairmont's Personnel Rules and Regulations in their entirety and for the new Personnel Rules to become effective on July 1, 2003.

Motion:

Councilmember Talerico moved for the introduction of the proposed ordinance the reading of a synopsis in lieu of the entire ordinance. Councilmember Warner seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for May 27, 2003.

IN RE: ADOPTION, A RESOLUTION BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, SUPPORTING THE PASSAGE OF A STATEWIDE CONTAINER RECYCLING LEGISLATION

Mayor Fantasia entertained a motion for the adoption of a resolution supporting a statewide container recycling legislation.

Motion:

Councilmember Straight moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Tennant.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

Mayor Fantasia declared the resolution adopted by unanimous vote of Council.

IN RE: FOUR APPOINTMENTS, HISTORIC PRESERVATION REVIEW COMMISSION, ONE TERM TO END JANUARY 1, 2005 AND THREE TERMS TO END JANUARY 1, 2006.

Mayor Fantasia entertained a motion for four appointments to the Historic Preservation Review Commission.

Motion:

Councilmember Straight moved to re-appoint George Sprowls for a term to end January 1, 2005, re-appoint Sandra Vaughan for a term to end January 1, 2006, and to appoint John Provins and Kevin McClung for terms to end January 1, 2006. The motion was seconded by Councilmember Talerico.

Roll call was taken by the Clerk.

The Mayor declared George Sprowls, Sandra Vaughan, John Provins and Kevin McClung re-appointed and/or appointed to the Historic Preservation Review Commission by unanimous vote of Council.

IN RE: ADJOURN TO EXECUTIVE SESSION

Mayor Fantasia moved to adjourn to Executive Session pursuant to WV Code §6-9A-4, under Item #2, Personnel. Councilmember Straight seconded the motion.

Roll call was taken by the Clerk.

Mayor Fantasia declared the meeting adjourned to Executive Session at 7:47 p.m. with no action to be taken following the Executive Session.

IN RE: MEETING RECONVENED

The Mayor declared the meeting reconvened at 8:08 p.m. for purposes of adjournment.

ADJOURNMENT

Mayor Fantasia entertained a motion for adjournment.

Motion:

Councilmember Mainella moved to adjourn the meeting. Councilmember Sears seconded the motion.

The Mayor declared the meeting adjourned by voice vote of Council at 8:08 p.m.

April 22, 2003

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 22nd day of April, 2003, at the J. Harper Meredith Building, Fairmont, West Virginia.

Mayor Fantasia called the meeting to order.

Councilmembers present were:

First District	Anthony Talerico
Second District	Burley (Butch) Tennant
Third District	Nick L. Fantasia
Fifth District	Fran Warner
Sixth District	De'Andrea Bussey
Seventh District	Scott Sears
Eighth District	Thomas Mainella
Ninth District	Ronald J. Straight

Absent:

Fourth District	Dennis O'Dell

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller

IN RE: EXCUSE COUNCILMEMBER O'DELL

Mayor Fantasia noted that Councilmember O'Dell was out of town on a work conflict and asked to be excused from tonight's meeting.

Motion:

Councilmember Sears moved to excuse Councilmember O'Dell from tonight's meeting due to business. The motion was seconded by Councilmember Tennant.

The Mayor declared Councilmember O'Dell excused by voice vote of Council with Councilmember Mainella voting no.

IN RE: OPENING CEREMONIES

Rev. Jeremiah Jasper of Trinity United Methodist Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Mainella.

APPROVAL OF MINUTES

Mayor Fantasia noted that each member of Council had received a copy of the minutes from the regular meeting held on April 8, 2003 and from the Levy meeting held on April 15, 2003. He asked if there were any corrections, deletions, or amendments.

Councilmember Tennant moved to approve the minutes as amended. Councilmember Talerico seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1051, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS SECTION 1709.01 OF THE CITY CODE, TO PROVIDE FOR THE REPEAL OF THE REVISED STATE BUILDING CODE ADOPTED BY THE STATE OF WEST VIRGINIA ON JUNE 1, 1997, AND TO FURTHER PROVIDE FOR THE REENACTMENT AND ADOPTION OF THE STANDARDS AND REQUIREMENTS AS SET OUT AND PUBLISHED BY THE INTERNATIONAL CODE COUNCIL AND AMERICAN STANDARDS INSTITUTE, WHICH HAVE BEEN ADOPTED BY THE STATE OF WEST VIRGINIA, BY LEGISLATIVE RULE PASSED BY THE WEST VIRGINIA LEGISLATURE ON MARCH 6, 2003, AS CITED IN HOUSE BILL 2615

Pursuant to a notice duly published in the Times-West Virginian on April 14, 2003, a public hearing was convened to obtain citizen input on an ordinance providing for the adoption of the State Building Codes.

Mayor Fantasia asked if anyone desired to speak to the proposed ordinance.

JAY ROGERS, City Planner, explained that this was the first of two ordinances that deal with the State Building Code. He added that this ordinance will adopt the 2000 International Code as the City's Building Code which will replace the 1996 BOCA Code. Mr. Rogers stated that this ordinance repeals the 1996 BOCA Building Code and adopts the 2000 International Code as the State Building Code and empowers the City of Fairmont to enforce that code. He noted that it also, through the provisions of the enforcement, allows the City of Fairmont Code Enforcement and Building Inspection Department to issue citations for violations of these codes as a means of enforcement and, hopefully, in a procedure that we have set forth it will remedy some of the violations.

Councilmember Sears asked if it eliminates the appeal process.

Mr. Rogers replied no. He mentioned that there are provisions in the code which include a standardize appeal form for the building code and in each subsection it spells out the

appeal process for any type of violation. He noted that for the citation authority, there is a separate appeal process that goes with that versus the citation. He added that the appeal would be to the Municipal Judge and from the Municipal Judge to the Circuit Court.

BOB GRIBBEN, 326 Cole Street, spoke in favor of the proposed ordinance on behalf of the Fairmont Community Development Partnership. He said that the ordinance could have great impact on Fairmont neighborhoods. He added that this was a positive step for the community and could help to stop slum and blight in the City.

There being no others to speak, the public hearing was declared closed at 7:10 p.m.

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING THAT PORTION OF CITY ORDINANCE NO. 1052, AS AMENDED, WHICH IS CODIFIED AS PART 17 BUILDING AND HOUSING CODE, ARTICLE 1709 WEST VIRGINIA STATE BUILDING CODE, OF THE CITY CODE, AND PARTICULARLY, SECTION 1709.02 SCHEDULE FOR PERMIT FEES AND PENALTIES AND SECTION 1709.03 DISCRETIONARY PROVISIONS THEREOF, TO AMEND AND SUPPLEMENT THE PERMIT FEES, ENFORCEMENT REMEDIES, PENALTIES, LOCAL CONSTRUCTION STANDARDS, AND DISCRETIONARY SECTIONS SO AS TO PROVIDE FOR CHANGES WROUGHT BY THE ADOPTION OF THE STANDARDS AND REQUIREMENTS SET OUT BY THE INTERNATIONAL CODE COUNCIL AND AMERICAN STANDARDS INSTITUTE, ADOPTED BY THE STATE OF WEST VIRGINIA BY LEGISLATIVE RULE ON MARCH 6, 2003.

Pursuant to a notice duly published in the Times-West Virginian on April 14, 2003, a public hearing was convened to obtain citizen input on an ordinance providing for building permit fees.

Mayor Fantasia asked if anyone desired to speak to the proposed ordinance.

JAY ROGERS, City Planner, stated that with this ordinance there is no change to the permit fees or penalties. He said that all this ordinance does is eliminate the language of the BOCA Code and substitutes the language for the International Code because the BOCA Code and that organization was done away with when the International Code Counsel was formed. He noted that we had to go through the ordinance and every time that there was the word BOCA that was eliminated and every time 1996 appeared it was eliminated and 2000 was put in. He added that because the title mentions permit fees and schedules we did not raise or alter the permit fees that are in place right now at all.

There being no others to speak, the public hearing was declared closed at 7:12 p.m.

ANNOUNCEMENTS

IN RE: JOHNNY JOHNSON FESTIVAL DONATION

Councilmember Sears reported that he talked to Bill Stalnaker with the Johnny Johnson Festival and they are raising money to underwrite the expense of bringing the entertainers in. He said that Mr. Stalnaker asked if there was any possibility of the City of Fairmont making a donation. Councilmember Sears stated that he told Mr. Stalnaker that he did not think because of our budget situation this year that the City of Fairmont will be able to afford to pass any funds along for the festival.

IN RE: YELLOW LINES ON MORGANTOWN AVENUE REQUESTED

Councilmember Tennant asked about painting yellow lines on Morgantown Avenue.

The City Manager reported that the Public Works Director came to him yesterday and said that citizens want yellow lines painted in the City. Mr. McDaniel said that we set aside all of the capital improvements and put those in a separate program and are going to fund those out of major project construction B&O taxes as they come in. He added that it was going to cost $7,500 to paint yellow lines throughout the city and that will be prioritized as the first capital improvement that we should do.

IN RE: YELLOW CURBS ON PARK DRIVE

Councilmember Mainella asked for an update on the yellow curbs for Park Drive.

Mr. McDaniel stated that we have another thought on that. He said that we have had conversations with another resident on Park Drive and there is some thought about a residential parking permit program as opposed to eliminating parking all together. He noted that this was something that the Parking Authority will want to discuss.

IN RE: REGION VI JOB TRAINING

The Mayor reported Region VI Workforce Investments Board announced last week $1.9 million dollars has been appropriated to help in training for miners affected at Loveridge as other displaced and underemployed miners throughout North Central West Virginia.

IN RE: MAPLE/OGDEN AVENUE PROJECT MEETING

Councilmember Bussey announced that on April 29 at 6:00 p.m. there will be a meeting at Mt. Zion Baptist Church for the Maple/Ogden Avenue project. He then invited Council to attend.

IN RE: SPECIAL COUNCIL MEETING

Mr. McDaniel reminded Council of the Special Council meeting at 4:30 p.m. on Tuesday, April 29 for the second reading of the sewer bond ordinance for Dakota/Meredith Springs sewer project.

CITIZENS PETITIONS

IN RE: SIGN ORDINANCE

JOSEPH MUTO, 825 East Park Avenue, addressed Council regarding the new sign ordinance that was recently adopted. He said that his sign in front of his business is in violation of that ordinance and he wants to talk to someone to see what he can do about it.

The Mayor asked if he has talked with anyone in the City Planner's Office.

Mr. Muto stated that he has talked to Kevin McClung, the Assistant City Planner; however, he would like to talk to somebody else.

Mayor Fantasia asked him to wait until after the meeting and he can give his information to the City Manager so a meeting can be set up.

CITY MANAGER'S REPORT

IN RE: INTRODUCE EMERGENCY ORDINANCE

The City Manager stated that he was going to request that Council suspend the rules and amend the agenda to introduce and adopt an emergency ordinance pursuant to Charter 2.14. He went on to say that the purpose for this emergency ordinance is to allow for a $3,000 health care buy out as discussed in general after the meeting last week. He said what has prompted this is the cost of health care and the fact that during the budget work sessions an employee and a couple employee groups brought up the fact that if we made the alternative health care buy out a more reasonable number that more employees will take advantage of it. He mentioned at $3,000 an employee that opts out to alternative health care; it costs us $7,200 for that plan so the City can net $4,200 in savings. He then reported that based on an informal survey that was sent out to the employees, we had 27 positive responses and that equates to $113,400 in savings. He then requested Council adopt this emergency ordinance tonight and then at the May 13th meeting we will have a permanent ordinance. He added that this emergency ordinance will remain in effect for 60 days and at the end of that period the permanent ordinance will take over.

Councilmember Mainella asked if that was $3,000 per year.

Mr. McDaniel replied it will be calculated at $250 per employee per calendar month paid on a quarterly basis.

Councilmember Mainella then asked if there was a provision in the ordinance in case they need to get back in.

The Manager said yes. He said if you would opt out and go to your partner's insurance and there was a change in status, they could come back.

Councilmember Sears asked if all department heads have seen this ordinance.

Mr. McDaniel said the survey went out to all employees in their paychecks but if the question is everybody in favor of this, he has not heard otherwise. He said that he would suspect that there are employees that do not have the opportunity; therefore, they may not be in favor of this.

Councilmember Tennant asked what was going to be done with the $30,000 plus that the City will be saving. He said that would be good to put in a fund for next year's budget to help offset the insurance cost.

The City Manager replied that in order to balance the budget, we cut out a lot of necessary things. He said that in addition to doing this, he and the staff have scheduled a work session on revenue enhancement measures and cost savings measures and what we are going to do is to recommend that City Council reinstate that into the budget.

IN RE: BUILDING COMMISSION MEETING

Mr. McDaniel reported that Fairmont Building Commission met and introduced four ordinances and one ordinance was to start the process for the purchase of the property for the Public Safety Building project.

IN RE: SPECIAL MEETING REMINDER

The City Manager reminded Council of the special meeting on Tuesday, April 29th, at 4:30 p.m. for the second reading of the SRF bond ordinance for Dakota/Meredith Springs.

IN RE: POLICE DEPARTMENT GRANT RECEIVED

Mr. McDaniel reported that State Farm Insurance granted our Police Department a grant in the amount of $4,280 for software for the mobile data terminal project that will track and log vehicular accidents.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1051, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS SECTION 1709.01 OF THE CITY CODE, TO PROVIDE FOR THE REPEAL OF THE REVISED STATE BUILDING CODE ADOPTED BY THE STATE OF WEST VIRGINIA ON JUNE 1, 1997, AND TO FURTHER PROVIDE FOR THE REENACTMENT AND ADOPTION OF THE STANDARDS AND REQUIREMENTS AS SET OUT AND PUBLISHED BY THE INTERNATIONAL CODE COUNCIL AND AMERICAN STANDARDS INSTITUTE, WHICH HAVE BEEN ADOPTED BY THE STATE OF WEST

VIRGINIA, BY LEGISLATIVE RULE PASSED BY THE WEST VIRGINIA LEGISLATURE ON MARCH 6, 2003, AS CITED IN HOUSE BILL 2615

Mayor Fantasia entertained a motion for the adoption of the proposed ordinance regarding the adoption of the State Building Codes.

Motion:

Councilmember Talerico moved for the adoption of the proposed ordinance. Councilmember Warner seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1219 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING THAT PORTION OF CITY ORDINANCE NO. 1052, AS AMENDED, WHICH IS CODIFIED AS PART 17 BUILDING AND HOUSING CODE, ARTICLE 1709 WEST VIRGINIA STATE BUILDING CODE, OF THE CITY CODE, AND PARTICULARLY, SECTION 1709.02 SCHEDULE FOR PERMIT FEES AND PENALTIES AND SECTION 1709.03 DISCRETIONARY PROVISIONS THEREOF, TO AMEND AND SUPPLEMENT THE PERMIT FEES, ENFORCEMENT REMEDIES, PENALTIES, LOCAL CONSTRUCTION STANDARDS, AND DISCRETIONARY SECTIONS SO AS TO PROVIDE FOR CHANGES WROUGHT BY THE ADOPTION OF THE STANDARDS AND REQUIREMENTS SET OUT BY THE INTERNATIONAL CODE COUNCIL AND AMERICAN STANDARDS INSTITUTE, ADOPTED BY THE STATE OF WEST VIRGINIA BY LEGISLATIVE RULE ON MARCH 6, 2003.

Mayor Fantasia entertained a motion for the adoption of the proposed ordinance regarding the building permit fees.

Motion:

Councilmember Straight moved for the adoption of the proposed ordinance. Councilmember Sears seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1220 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 944, AS AMENDED, WHICH CONSTITUTES PART 13-PLANNING AND

ZONING CODE OF THE CITY OF FAIRMONT TO PROVIDE FOR CERTAIN REVISIONS TO THE ZONING MAP AND DISTRICTS ESTABLISHED WITHIN THE CITY, PARTICULARLY TO SUPPLEMENT THE PLANNING AND ZONING CODE BY THE ESTABLISHMENT AND CREATION OF ARTICLE 1337, HIGHER EDUCATION DISTRICT, AND TO PROVIDE FOR AND IMPLEMENT DISTRICT RULES, REGULATION AND RESTRICTION FOR LAND USE IN SUCH DISTRICT.

Mayor Fantasia entertained a motion for the introduction of an ordinance establishing a Higher Education District within the corporate limits of the City of Fairmont.

Motion:

Councilmember Bussey moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. The motion was seconded by Councilmember Straight.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for May 13, 2003.

RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 (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 BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO

Mayor Fantasia entertained a motion for the introduction of an ordinance providing for a sewer bond issue for the Dakota/Meredith Springs sewer project.

Motion:

Councilmember Talerico moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. The motion was seconded by Councilmember Tennant.

The Clerk read the proposed ordinance by synopsis for the first time.

VINCE COLLINS, Attorney with Steptoe and Johnson, reported that they prepared the ordinance before Council regarding the bond issuance. He said that the ordinance before Council says not to exceed $500,000; however, he suggested that we change that to not exceed $600,000 even though the anticipated issue is more like $457,000. He said that the reason being there was a slight cost overrun when the bids were opened and the City is seeking additional grant monies which are about two-thirds of the funding for this project. He went on to say that it was hoped that they are getting those grant monies. He noted that if they do not then we will be a little over $500,000 if we have to borrow that additional amount. He said that to be on the safe side and to avoid having to go back through the ordinance procedure, he suggested to make it not to exceed $600,000 even though the anticipated borrowing is about $457,000. He then went over a couple other changes that would appear out of the same reasoning. Mr. Collins noted that this was the first reading with the second reading at the special meeting to be held on April 29, at 4:30 p.m. He explained that if we are going to get this thing closed in June before the bids expire, we will have to have the final reading on the May 13th meeting date because we have to wait 30 days after the final enactment of the ordinance before we can do anything.

The Mayor noted that the second reading on the proposed ordinance will be at a Special Meeting on Tuesday, April 29, 2003 at 4:30 p.m. with the public hearing date set for May 13, 2003.

IN RE: ADOPTION, A RESOLUTION BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A GRANT FROM THE WEST VIRGINIA DEVELOPMENT OFFICE ENERGY EFFICIENCY PROGRAM TO UPGRADE THE LIGHTING FIXTURES AT THE FAIRMONT WASTEWATER TREATMENT PLANT

Mayor Fantasia entertained a motion for the adoption of a resolution authorizing the filing of a grant application for lighting fixtures at the Wastewater Treatment Plant.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Talerico seconded the motion.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

IN RE: SUSPEND RULES AND AMEND AGENDA

Mayor Fantasia moved to suspend the rules and amend the agenda to add another item this being an emergency ordinance relating to personnel rules and insurance. Councilmember Sears seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the rules suspended and the agenda amended by unanimous vote of Council.

IN RE: ADOPTION, AN EMERGENCY ORDINANCE PROVIDING FOR THE IMMEDIATE ESTABLISHMENT OF THE ALTERNATIVE EMPLOYEE BENEFIT PROVIDED FOR BY RULE 21.2 OF THE CITY OF FAIRMONT PERSONNEL RULES AND REGULATIONS, GROUP INSURANCE/ELECTION/HEALTH CARE ALTERNATIVE

Mayor Fantasia entertained a motion for the adoption of an emergency ordinance relating to health care.

Motion:

Councilmember Tennant moved for the adoption of the emergency ordinance and the reading of the ordinance by synopsis. Councilmember Mainella seconded the motion.

The Clerk read the proposed ordinance by synopsis for the first time.

Discussion:

Councilmember Bussey suggested that Council wait before jumping into making a decision like this because what it amounts to is that the City is going to pay either way for the coverage. He said that was not the goal in achieving some kind of fiscal responsibility. He then asked Council to table this item and have a work session so Council can go over everything regarding this item. He said that way Council can come to something other than this shotgun approach.

The City Manager stated that our options are very limited at this stage of the game because of the end of the open enrollment period which is a very short timeframe on May 2nd. He said that if we do not take this action then we do not have the opportunity to do this until the next open enrollment period which will be one year from now.

Councilmember Bussey stated we will be locked into this for one year.

The City Manager replied that was correct.

Councilmember Straight asked if the bargaining units were under this or would it be after the City Manager negotiates with them.

Mr. McDaniel said that they would have the opportunity to participate in this. He mentioned that this would be available to all employees of the City of Fairmont that are enrolled in PEIA.

The Mayor noted that it was across the board or you cannot do it.

Roll call was taken by the Clerk and the following votes were record:

Councilmember Sears	Yes	Councilmember Mainella	Yes
Councilmember Talerico	Yes	Councilmember Bussey	No
Councilmember Straight	Yes	Councilmember Tennant	Yes
Councilmember Warner	Yes	Mayor Fantasia	Yes

The Mayor declared the ordinance adopted by majority vote of Council and the emergency ordinance designated as Ordinance No. 1221 was duly adopted.

ADJOURNMENT

Mayor Fantasia entertained a motion for adjournment.

Motion:

Councilmember Mainella moved to adjourn the meeting. Councilmember Talerico seconded the motion.

The Mayor declared the meeting adjourned by voice vote of Council at 7:45 p.m.

WV MUNICIPAL BOND COMMISSION
#8 Capitol Street
Terminal Building, Suite 500
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: June 26, 2003

(See Reverse for Instructions)

ISSUE: City of Fairmont, Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program)

ADDRESS: Post Office Box 1428, Fairmont, West Virginia 26555 COUNTY: Marion

PURPOSE OF ISSUE: New Money: X
Refunding: _____

REFUNDS ISSUE(S) DATED: N/A

ISSUE DATE: June 26, 2003

CLOSING DATE: June 26, 2003

ISSUE AMOUNT: $ 485,543

RATE: 0%; Administrative Fee 0.5%

1ST DEBT SERVICE DUE: December 1, 2004

1ST PRINCIPAL DUE: December 1, 2004

1ST DEBT SERVICE AMOUNT: $ 4,047

PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Steptoe & Johnson PLLC
Contact Person: Vincent A. Collins, Esquire
Phone: (304) 624-8161

UNDERWRITERS COUNSEL: Jackson Kelly PLLC
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK: Branch Banking and Trust Company
Contact Person: Susan Tennant
Phone: (304) 368-3217

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT
Contact Person: Bruce McDaniel
Position: City Manager
Phone: (304) 366-6211

OTHER:
West Virginia Department of Environmental Protection
Contact Person: Rosalie Brodersen
Function: Program Manager
Phone: (304) 558-0637

DEPOSITS TO MBC AT CLOSE:

By: ____ Wire
X Check

____ Accrued Interest: $_____
____ Capitalized Interest: $_____
X Reserve Account: $ 16,188
____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE

By: ____ Wire
____ Check
____ IGT

____ To Escrow Trustee: $_____
____ To Issuer $_____
____ To Cons. Invest. Fund $_____
____ To Other: _____ $_____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED: _____
TRANSFERS REQUIRED: _____

CH592204.1

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the West Virginia Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes."

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at closing are required, please submit this form before closing. If no significant facts change by closing, no resubmission at closing is required. If, however, there are changes, please submit an updated form, with changes noted, at closing.

If you should have any questions concerning this form, please call the Commission.

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Branch Banking & Trust Company, Fairmont, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Fairmont (the "Issuer") enacted by the Issuer on May 13, 2003, and a Supplemental Resolution adopted by the Issuer on June 10, 2003 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 26th day of June, 2003.

BRANCH BANKING AND TRUST COMPANY

By: _____
Its: Authorized Officer

06/18/03
268460.00002

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of the City of Fairmont (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bond, Series 2003 A (West Virginia SRF Program), of the Issuer, dated June 26, 2003, in the principal amount of $485,543, numbered AR-1, was registered as to principal only 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 Huntington National Bank, as Registrar.

WITNESS my signature on this 26th day of June, 2003.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

05/23/03
268460.00002

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 26th day of June, 2003, by and between the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $485,543 Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted May 13, 2003, and a Supplemental Resolution of the Issuer duly adopted June 10, 2003 (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 the compensation for services rendered as provided in the annexed schedule.

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: City of Fairmont
Post Office Box 1428
Fairmont, West Virginia 26555
Attention: Mayor

REGISTRAR: The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

9. This document may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute but one and the same document.

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.

CITY OF FAIRMONT

By: _____
Its: Mayor

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

05/23/03
268460.00002

CH592238.1

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See attached)

Private Financial Group
900 Lee Street, 11th Floor
P. O. Box 3985
Charleston, West Virginia 25339-3985

Huntington

STATEMENT OF TRUSTEE'S FEES
Invoice Date June 26, 2003

CITY OF FAIRMONT
Account Number 6089001809

City of Fairmont
Sewer Revenue Bonds, Series 2003 A
C/O John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

****

FEE CALCULATION FOR June 2003

****

TOTAL AMOUNT	$	500.00
TOTAL DUE	**$**	**500.00**

* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT *
* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN *
* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: DEBRA . . *
* .. BOWDEN, PO BOX 633, CHARLESTON, WV 25322-0633 . . . . . *

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304)348-5035

#13

DIVISION OF ENVIRONMENTAL PROTECTION
1201 Greenbrier Street
Charleston, WV 25311-1088

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, Ph.D.
DIRECTOR

March 19, 1996

Edwin J. Thorne, Chairman
City of Fairmont
Sanitary Sewer Board
P.O. Box 1428
Fairmont, WV 26555-1428

CERTIFIED RETURN RECEIPT REQUESTED

Dear Mr. Thorne:

Enclosed find WV/NPDES Water Pollution Control Permit No. WV0023353, dated the 13th day of March, 1996 for the City of Fairmont to serve the City of Fairmont, Town of Barrackville, Kingmill Valley PSD, Greater Paw Paw PSD, and the Whitehall PSD.

All facilities permitted to discharge pollutants to the waters of the State under Chapter 22, Article 11 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 this 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 for each outlet each month no later than 20 days following the end of the reporting period. The address to which DMRs are to be sent is contained in 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. Also note the attachment to this permit describing the annual permit fee requirement.

We wish to first address the changes made to the draft permit that appear in this final version.

1. The reference to Kingsmill Valley PSD has been changed on Page 1 to Kingmill Valley PSD.

2. The compliance schedule found in Section A.2.II.1 on Page 10 of this permit concerning the Combined Sewer Overflow final plan submission has been moved back one month to June 1, 1996.

3. Section G.5 of this permit found on Page 21 has changed the reference of "27.0 mg/l for TKN" to "22.5 mg/l for NH_3-N".

4. Based upon comments made by the US EPA concerning the proposed limitation for total residual chlorine, the final chlorine limitation has been changed to an average monthly limitation of 0.019 mg/l and a maximum daily limitation of 0.028 mg/l.

5. The Annual Loading Rate column contained in Section I.4 was changed to a Five (5) Year Cumulative Loading Rate. Also, we have specified the loading rates for the farms which have the proper information provided.

Regarding your comments made February 16, 1996, we offer the following:

1. The change was made.

2. The permit effluent limitation for Total Residual Chlorine (TRC) was implemented in order to protect the chronic and acute water quality standards for TRC. The final permit limitation was imposed as the acute water quality standard of 0.019 mg/l for an average monthly limitation and the maximum daily limitation is set at 1.5 times the acute standard or 0.028 mg/l. This office has provided a two (2) year period to study the alternatives and install any necessary equipment in order to meet the final TRC permit limitation.

3. A review of past effluent sampling results was done for the specific toxic pollutants during the drafting of this permit. This Office has determined that the toxic pollutant monitoring requirements for permittees which implement their own pretreatment programs should be a 1/Quarter frequency in order to maintain compliance. There are three (3) pollutants ; copper, silver, and mercury; for which the available data was not sensitive enough to determine past compliance. Therefore, these parameters have initially been implemented with a monitoring frequency of 1/Month. Section G.7 on Page 21 of this permit allows for relaxation of the monitoring frequency for these three (3) parameters after a six (6) month period if the sampling results indicate compliance.

4. The Whole Effluent Toxicity (WET) requires the testing of two (2) species on an annual basis. Categorically, the City would normally be required to monitor on a 2/year frequency. However, during our review of the past WET testing done, the effluent discharge has shown no signs of toxicity. That is why we felt comfortable in allowing an annual monitoring frequency. Also, the testing of two (2) species has been imposed in this permit. The use of two (2) test species is imposed because each individual species has a toxic sensitivity to different types of toxic pollutants. Allowing for the testing of only one species would limit the test range for potential toxic pollutants. Therefore, we must deny your request to testing of only one (1) species.

5. Per our discussions during the comment meeting of February 21, 1996, the questions concerning the CSO Final Plan and its implementation were addressed. Changes to the compliance date in Section A.2.II.1 were addressed previously in this correspondence.

6. During our discussions of February 21, 1996, it was determined that Ammonia Nitrogen would be the test parameter implemented in the permit.

7. The 85% removal requirement found in Section G.6 is a permit condition whose origin is found in the Clean Water Acts definition of secondary treatment. This condition is found in all POTW permits simply because it is requirement.

8. Section G.10 was made a condition to the permit due to previous comments by the EPA made on other major facility draft permits. This condition basically states an option this office has anyway. When new toxic pollutant procedures to calculate permit limitations, based on the new water quality standards and Environmental Quality Board Rules, are implemented, if revisions to these limitations are necessary then we reserve the right to do this reevaluation.

9. This can be done quite simply through the Sludge Management Program office. Condition I.4.b is generic enough to allow multiple landfill approvals so long as proper approvals are obtained.

10. This permit can be modified later to address whatever changes may be made to "Table III".

If the City has further questions or wishes to discuss additional permit issues, please feel free to contact Pravin Sangani of my staff at (304) 558-4086 or by TDD at (304) 558-2751.

Sincerely,

OFFICE OF WATER RESOURCES

Barbara S. Taylor
Chief

BST:rb

Enclosure

cc: Env. Insp. Supervisor
Env. Inspector
PIO
U.S. EPA

WRD 1A-82
Revised 4/95

STATE OF WEST VIRGINIA
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. WV0023353

Subject: Sewage Facilities

Issue Date: March 13, 1996

Effective Date: April 13, 1996

Expiration Date: March 12, 2001 - 2004 - 3 year

Supersedes: ~~WV/NPDES Permit No.~~ WV0023353 issued December 27, 1990

DUE TO: WATERSHED MANAGEMENT PROGRAM STUFF

Location: Fairmont (City) Marion (County) Monongahela (Drainage Basin)

Outlet Sites: Latitude: 39° 29' 40" N
Longitude: 80° 07' 20" W

To whom it may concern:

This is to certify that City of Fairmont
Sanitary Sewer Board
P.O. Box 1428
Fairmont, WV 26554

is hereby granted a NPDES Water Pollution Control Permit to operate and maintain an existing 9.0 MGD sewage collection and treatment system consisting of the existing collection system, two (2) trash racks, an aerated grit chamber, a mechanical bar screen, three (3) 150 ft. X 20 ft. each primary clarifiers, 24 rotating biological contactors (RBCs) totaling 2.35 million ft^2 of media, four (4) 150 ft. X 20 ft. each secondary clarifiers, chlorine disinfection with two (2) 45 ft. X 48 ft. each contact tanks, two (2) sludge thickeners, two (2) anaerobic sludge digesters, two (2) sludge belt filter presses, and all necessary appurtenances, and to implement a POTW Pretreatment Program.

The system is designed to serve the City of Fairmont, Town of Barrackville, Kingmill Valley PSD, Greater Paw Paw PSD, and the Whitehall PSD and to discharge the treated wastewater to the Monongahela River (Milepoint 125.5).

(Continued on Page 2)

This permit is subject to the following terms and conditions:

The information submitted on and with Permit Application No. WV0023353 dated the 8th day of June 1995, is 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, G, H, and I.

The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

SEE PRIOR BONDS ON FILE WITH ISSUER

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

June 9, 2003

The Honorable James E. Sago
President
Marion County Commission
200 Jackson Street, Room 403
Fairmont, West Virginia 26554

Dear Commissioner Sago:

Your request for additional funds has been approved in the amount of $86,580. These funds will enable you to complete the Dakota Meredith Springs sanitary sewer system project.

This commitment of $86,580 from our fiscal year 2002 allocation will immediately be available to you. The total Small Cities Block Grant award for this project is $872,405, of which $785,825 was awarded previously from our fiscal year 2000 allocation. I encourage you to expedite this project and reach its completion as quickly as possible.

Please contact Mrs. Pamela K. King of the West Virginia Development Office, at (304) 558-4010, to complete the necessary contract in order to proceed with your project.

The West Virginia Development Office reserves the right to withdraw these funds if your project does not proceed on schedule. These funds would be replaced with a letter of intent for consideration from future allocations.

I am pleased to assist with these improvements for the citizens of Hampshire County.

Very truly yours,

Bob Wise
Governor

BW:pkd

GCU 326-C

ACORDIA OF WV/ST. PAUL INSURANCE COMPANY

GOVERNMENTAL ENTITY INSURANCE PROPOSAL

prepared for:

CITY OF FAIRMONT

by

Acordia of West Virginia
and
Hunter Agency, Inc.

June 2002

This insurance proposal was prepared for your convenience in reviewing the protection afforded by recommended policies. It is based upon risk information supplied by you. The proposal is not intended to represent, supersede or amend the actual terms and conditions of any insurance contracts. For full details, reference should be made to the specific policies involved. We remain available to discuss any additional coverages or increased limits you may deem necessary.

Acordia

A Wells Fargo Company

Property
Special

OPTION 1

Coverage	Limit
Blanket Building/Personal Property #1	$ 30,331,879
Coinsurance: 90 %	
Valuation: Replacement Cost	
Deductible	$ 2,500

Equipment Breakdown	Included
Coverage is included in the property limit. Property deductible applies.	
Sublimits:	
Expediting Expense	$ 250,000
Pollution Clean-Up	$ 250,000
Spoilage	$ 250,000

To add coverage for Mine Subsidence for a basic limit of liability of not exceeding $75,000 per building with a $250 deductible applies to each loss, the additional premium is $3,506.

Program Features and Benefits

PROPERTY

Property covered only if described in the statement of values:

- Underground tanks, flues, pipes and drains
- Fences, except as included under the outdoor property additional benefit

Additional Coverages- The following are included in the property limit:

- Debris Removal - up to 25% of paid loss
- Preservation of property moved to another location for 30 days

Additional Benefits

The following additional benefits are included. These benefits are in addition to the property limit and are subject to the property deductible.

Accounts Receivable	$ 100,000
Arson Reward *(Not available in New York)*	$ 7,500
Building Ordinance or Law- Increased Cost of Construction & Demolition	$ 100,000
Business Income / Extra Expense	$ 100,000
Commandeered Property	$ 100,000
Communication Equipment	$ 50,000
Computer	$ 50,000
Crime Reward *(Not available in New York)*	$ 5,000
Fairs, Exhibits, or Displays	$ 50,000
Fine Arts	$ 50,000
Fire Department Service Charge	$ 25,000
Freestanding Signs	$ 25,000
Grounds Maintenance Equipment	$ 50,000
Inventory & Appraisals	$ 10,000
Money & Securities (Inside / Outside)	$ 10,000 / $5,000
Newly Acquired Property - Building for 180 days	$ 1,000,000
Newly Acquired Property - Personal Property for 180 days	$ 500,000
Off-Premises Utility Failure - Direct Damage	$ 50,000
Other People's Property	$ 25,000
Outdoor Property - Maximum $1,000 any one item	$ 50,000
Pairs & Sets	$ 25,000
Personal Belongings	$ 50,000
Pollution Clean-Up	$ 25,000
Property in Transit	$ 50,000
Spoilage	$ 10,000
Temporary Location	$ 50,000
Valuable Records Research	$ 100,000
Water Damage	$ 50,000

Inland Marine

OPTION 1

Coverage	Valuation	Deductible	Limit
Contractors Equipment	Actual Cash Value		
Scheduled Equipment- Total values		$500	$560,305
Catastrophe Limit			$560,305
Miscellaneous Property	Actual Cash Value		
Scheduled Property- Total values		$250	$13,500
Unscheduled Property Total Limit		$250	$803,537
Maximum any one item			$1,500
Radio & TV Stations Coverage	Retail Replacement Cost	$ 1,000	
Steel Towers & Antennas Limit			$ 3,560

Miscellaneous Property Unschedule is broken out per the following: Street Lights, Christmas Lights $250,000 limit with $500 deductible Miscellaneous (all other) $553,537 limit with $1,500 limit maxiumum any one item at $250 deductible.

Public Entity General Liability

Occurrence

OPTION 1

Coverage	Limit
General Total Limit	$ 2,000,000
Products & Completed Work Total Limit	$ 2,000,000
Personal Injury Each Person Limit	$ 1,000,000
Advertising Injury Each Person Limit	$ 1,000,000
Each Event Limit	$ 1,000,000
The following sub-limits apply:	
Premises Damage	$ 100,000
Medical Expense	$ 0
Sewer Back Up (resulting from negligence)	$ 50,000
Failure To Supply Services	$ 0
Deductible Per Event (Bodily Injury/Property Damage)	$ 5,000

The following are included:
Cemetery Professional Liability

The following additional exclusions apply:
Failure to Supply Total Full Exclusion
Excluded Operations
- Public housing project
- Ski facility
- Public school district
- Administration of the criminal justice system
- Waterslide
- Public gas utility
- Day care, day camp, nursery, or similar facility
- Port, harbor, or terminal district
- Organized or sponsored racing or stunting activity involving wheeled vehicles, including skateboards and roller skates
- Public transportation system, including transport, operations, and premises
- Public electric utility

Excluded Premises
- Landfill, dump, refuse site, or incinerator
- Halfway house, emergency shelter, or other group home
- Medical clinic
- Hospital, nursing home, or other type of medical facility
- Airfield, runway, hangar, terminal, or other property in connection with aviation activities

Program Features and Benefits

GENERAL LIABILITY

Coverage Agreement

This agreement is designed to cover the premises and operations exposures of the named insured. It covers amounts any protected person is legally required to pay as damages for covered injury or damage that results from an event, including:

Extended Bodily Injury
Broad Form Property Damage
Products and Completed Operations
Personal Injury and Advertising Injury
Premises Damage Legal Liability
Broad Form Contractual Liability for covered contracts
Host Liquor Liability
Incidental Medical Malpractice
Intentional Injury or Damage resulting from the use of reasonable force to protect people/property
Non-Owned Watercraft (less than 75 feet)
Owned Watercraft (less than 25 feet) - *included on occurrence form only*
Bodily Injury and Property Damage Pollution Coverage for:

- Pesticide/herbicide application
- Application of chlorine or sodium hypochlorite in sewage/water treatment or swimming pools
- Hostile fire heat, fumes or smoke
- Mobile equipment operating fluids
- Fire fighting or emergency response services

Who is Protected

Public Entity
Elected or Appointed Officials
Board Members
Employees and Volunteers
Real Estate Managers
Landlords
Equipment Lessors
Operators of Mobile Equipment
Watercraft Users - *occurrence form only*

Other

- Coverage for sewer back up, if a limit is shown, is for negligent acts only.
- Law enforcement duties are excluded. Coverage is available under the Law Enforcement Liability agreement.
- Employment related practices are excluded.
- No coverage for injury to volunteer firefighters.
- Fellow employee injury is excluded, unless otherwise indicated on the previous page.
- Inverse condemnation, property devaluation and eminent domain are excluded.

Stop Gap Employers Liability

OPTION 1

Coverage	Limit
Bodily Injury by Accident Each Accident Limit	$ 1,000,000
Bodily Injury by Disease Total Limit	$ 1,000,000
Bodily Injury by Disease Each Employee Limit	$ 1,000,000

This is a separate coverage part, written as a part of your package, which provides Employer's Liability coverage in the state noted below.
State: West Virginia

In the state of West Virginia, the expected or intended bodily injury exclusion does not apply to bodily injury that is substantially certain to happen because of a specific unsafe working condition in the insured's operations to which an employee is subjected by his or her employment if the insured didn't otherwise intentionally cause or aggravate such bodily injury.

Employee Benefit Plans Administration Liability
Claims-Made

OPTION 1

Coverage	Limit
Total Limit	$ 3,000,000
Each Wrongful Act Limit	$ 1,000,000
Each Wrongful Act Deductible	$ 1,000
Retro Date: None	

Program Features and Benefits

EMPLOYEE BENEFIT PLANS ADMINISTRATION LIABILITY

Coverage Agreement

This agreement is designed to cover liability arising out of a wrongful act committed in the administration of certain types of employee benefit plans. Administration includes advise, interpretation and calculation of benefits, except as excluded. No Retroactive Date applies. However, coverage does not apply if the entity knew of a wrongful act prior to the effective date of this policy and could have reasonably foreseen that it would result in a suit or claim against the entity.

Who is Protected

Public Entity
Employees

Law Enforcement Liability

Occurrence

OPTION 1

Coverage	Limit
Total Limit	$ 1,000,000
Each Wrongful Act Limit	$ 1,000,000
Each Wrongful Act Deductible (Loss Only)	$ 5,000

Program Features and Benefits

LAW ENFORCEMENT LIABILITY

Coverage Agreement

This coverage was designed to cover the premises and operations exposures and the professional liability of law enforcement agencies, including jail operations. It covers amounts any protected person is legally required to pay as damages for covered injury or damage that result from the conduct of law enforcement duties by or for your law enforcement agency and is caused by a wrongful act. Wrongful act is defined as any act, error or omission. Includes coverage for the following:

Bodily Injury, Personal Injury and Property Damage
Authorized Moonlighting
Canine & Equine Exposures
False Arrest, Detention or Imprisonment
False or Improper Service of Process
Handling and treatment of corpses and dispensing of medication
Injury due to the use of mace, pepper spray or tear gas
Mental Anguish, Emotional Distress, Humiliation
Mutual Aid Agreements
Violation of Civil protected under any federal, state or local law

Who is Protected

Public Entity
Elected or Appointed Officials
Employees
Volunteer Workers

Other

- Duty to defend claims and suits even if allegations are groundless, false, or fraudulent.
- Punitive damages covered up to full policy limits, if allowed by law.
- Additional Benefit of $25,000 for personal property of others.
- All claims involving use of an auto are subject to the automobile insuring agreement.
- Employment-related practices excluded.
- Injury to employees and volunteer workers excluded.

Public Entity Management Liability
Claims-Made

OPTION 1

Coverage	Limit
Total Limit	$ 1,000,000
Each Wrongful Act Limit	$ 1,000,000
Each Wrongful Act Deductible (Loss Only)	$ 5,000

Retro Date: 07/01/1989

The following are included:
Deletion of Settlement Consent Provision Endorsement

Program Features and Benefits

PUBLIC ENTITY MANAGEMENT LIABILITY

Coverage Agreement

This agreement is designed to cover damages (other than bodily injury, personal injury, advertising injury or property damage) any protected person is legally required to pay for covered loss that results from the conduct of duties by or for a public entity and is caused by a wrongful act. Wrongful act is defined as any act, error or omission. However, wrongful employment practice offenses are not covered.

Who is Protected

Public Entity
Elected or Appointed Officials
Board Members
Employees (including employees of the entity's boards)
Estates, Heirs, Legal Representatives or Assigns
Volunteer Workers

Other

- Pay on behalf of basis.
- Duty to defend claims and suits even if allegations are groundless, false, or fraudulent.
- Punitive damages covered up to full policy limits, if allowed by law.
- No exclusion for Architects, Engineers or Lawyers.
- Automatic Limited Reporting Period of 60 days after agreement is cancelled or not renewed.
- Health care professional services and law enforcement duties exclusions apply.
- Consent to Settle clause applies, unless removed by endorsement.

Employment Practices Liability
Claims-Made

OPTION 1

Coverage	Limit
Total Limit	$ 1,000,000
Each Wrongful Employment Practice Offense Limit	$ 1,000,000
Each Wrongful Employment Practice Offense Deductible - applies to Loss and Defense Expenses	$ 5,000

Retro Date: 07/01/1989

IMPORTANT NOTICE: This is a claims-made insuring agreement that includes defense expenses within the limits of coverage.

The following are included:
Our Right to Settle Claims Without Your Written Consent Endorsement

Program Features and Benefits

PUBLIC ENTITY EMPLOYMENT PRACTICES LIABILITY

Coverage Agreement

This agreement is designed to cover damages (other than bodily injury or property damage) any protected person is legally required to pay for covered employment injury to employees or independent contractors that results from a wrongful employment practice offense first committed after the retroactive date. Wrongful employment practice offense is defined to include discrimination, termination, harassment, retaliation, discipline, hiring, supervision, demotion, promotion, defamation, libel, slander, invasion of privacy.

Who is Protected

Public Entity
Elected or Appointed Officials
Board Members
Employees (including employees of the entity's boards)
Volunteer Workers

Other

- Pay on behalf of basis.
- Duty to defend claims and suits even if allegations are groundless, false, or fraudulent.
- Punitive damages covered up to full policy limits, if allowed by law.
- Administrative proceedings conducted by governmental agencies in which damages are sought are included in the definition of suit.
- Defense costs erode the limit of liability, subject to state exceptions (see Important Notice on preceding page).
- Right, but no duty, to defend any protected person in an administrative proceeding which does not seek damages. Defense costs for these proceedings are in addition to the limit of liability.
- Damages include attorneys' fees of the person bringing the claim if the protected person is legally required to pay them under the law which was violated.
- Declaratory, injunctive or other non-monetary relief costs are excluded.
- Consent to Settle clause applies, unless removed by endorsement.

Automobile Liability Protection

OPTION 1

Coverage	Each Accident Limit
Liability (Any Auto)	$1,000,000
Medical Payments (All Owned Autos)	$5,000
Uninsured/Underinsured Motorist (Owned Autos Subject to Compulsory U.M. Law)	$1000000
Each Accident Deductible (Bodily Injury/Property Damage) Applies to Liability only	$1,000

Number of autos, excluding trailers: 85
Number of trailers: 1
The following are included:
PSS Volunteer or Employee Firefighters as Protected Persons Endorsement.

Program Features and Benefits

AUTOMOBILE

Coverage Agreement

This agreement is designed to cover amounts any protected person is legally required to pay as damages for covered bodily injury and property damage that results from the ownership, maintenance, use, loading or unloading of a covered auto and is caused by an accident. In addition, coverage is provided for covered pollution costs or expense that results from accident which also causes bodily injury or property damage. Coverage also applies for physical damage to covered autos, if shown.

Who is Protected

Public Entity	Any permitted user
Elected or Appointed Officials	Volunteer Workers (for use of a covered auto)
Board Members	Owner of a Commandeered Auto

Other

- Liability coverage for intentional or expected bodily injury and property damage if the injury or damage results from the reasonable use of force to protect people or property.
- Injury to volunteer workers, including firefighters, is excluded.
- Injury to a fellow employee is excluded, unless otherwise shown on the preceding page.
- Physical damage coverage, if written, is extended to provide the following:
  - Coverage for physical damage to covered autos for intentional or expected damage if the physical damage results from the reasonable use of force to protect people or property.
  - Includes coverage for audio and radar detection equipment, if part of the normal inventory of the insureds emergency vehicles.
  - Accidental inflation of airbags $1,000.
  - Personal belongings in a stolen vehicle $250.
  - Automatic coverage for commandeered autos.

Program Features and Benefits

AUTOMOBILE REPORTING REQUIREMENTS

In order to provide our insureds better service and administrative efficiency, St. Paul Public Sector Services is pleased to prov the following process for handling mid-term automobile change requests. All requests will be managed in accordance with the Average Rate Application outlined below. The insured should continue to submit all change requests to their agent or broker f accurate record keeping and claims verification purposes. Particular attention should be paid to Item 5, which specifies the typ of automobiles that will continue to require reporting to the Company.

Average Rate Application

1. The premium for the Automobile Liability and Physical Damage coverages are average rated. Automobile Liability is rated on a "per unit" basis and Automobile Physical Damage is rated on the basis of the original cost new of the autos.

2. The average rates for Automobile Liability and Physical Damage are the rates applicable at the inception of the policy. Based on the information provided for this proposal and as of the date of this proposal, these rates are as follows:

Liability	$ 540
Uninsured Motorist	$ 57
Medical Payments	$ 32

3. The premium charged at inception is the estimated annual premium based on the number of units and total original cos new for all covered autos on file with the company at inception. The insured is to submit a current schedule of owned automobiles as of the expiration of the policy and the total earned premium will be computed on the basis of the avera net change in units and their corresponding original cost new for the policy term.

4. All autos added using the "Average Rate Guidelines" will carry the same Liability limits and Physical Damage deductibles issued at policy inception for autos of the same type.

5. The following autos are not eligible:

   Any auto with an original cost new over $100,000
   Any auto meeting the ISO definition of "Antique" Auto

Automobile Physical Damage

OPTION 1

Coverage	Valuation	Units	Deductible
Specified Autos			
Comprehensive	Actual Cash Value	83	$ 1,000
Comprehensive	Agreed Value	2	$ 1,000
Collision	Actual Cash Value	83	$ 1,000
Collision	Agreed Value	2	$ 1,000

Garagekeepers Liability
Location: Fairmont, WV — Limit: $50,000
Comprehensive Deductible: $250/$1000 — Collision Deductible: $500

The following are included:
PSS Fire District Auto Physical Damage Endt.
Hired Car Physical Damage - Comprehensive and Collision (Deductible: $1,000)

Physical Damage does not apply to 1986 GMC Fire Safety Truck V#0096. If coverage is desired, please provide cost new. Premium adjust will be required.

Agreed Value applies to the following vehicles: 1996 Pierce Saber Pumper V# TA000656 and 1995 Pierce Saber Pumper V# SA00D531

Program Features and Benefits

AUTOMOBILE

Coverage Agreement

This agreement is designed to cover amounts any protected person is legally required to pay as damages for covered bodily injury and property damage that results from the ownership, maintenance, use, loading or unloading of a covered auto and is caused by an accident. In addition, coverage is provided for covered pollution costs or expense that results from accident which also causes bodily injury or property damage. Coverage also applies for physical damage to covered autos, if shown.

Who is Protected

Public Entity
Elected or Appointed Officials
Board Members
Any permitted user
Volunteer Workers (for use of a covered auto)
Owner of a Commandeered Auto

Other

- Liability coverage for intentional or expected bodily injury and property damage if the injury or damage results from the reasonable use of force to protect people or property.
- Injury to volunteer workers, including firefighters, is excluded.
- Injury to a fellow employee is excluded, unless otherwise shown on the preceding page.
- Physical damage coverage, if written, is extended to provide the following:
  - Coverage for physical damage to covered autos for intentional or expected damage if the physical damage results from the reasonable use of force to protect people or property.
  - Includes coverage for audio and radar detection equipment, if part of the normal inventory of the insureds emergency vehicles.
  - Accidental inflation of airbags $1,000.
  - Personal belongings in a stolen vehicle $250.
  - Automatic coverage for commandeered autos.

Program Features and Benefits

AUTOMOBILE REPORTING REQUIREMENTS

In order to provide our insureds better service and administrative efficiency, St. Paul Public Sector Services is pleased to prov the following process for handling mid-term automobile change requests. All requests will be managed in accordance with the Average Rate Application outlined below. The insured should continue to submit all change requests to their agent or broker f accurate record keeping and claims verification purposes. Particular attention should be paid to Item 5, which specifies the typ of automobiles that will continue to require reporting to the Company.

Average Rate Application

1. The premium for the Automobile Liability and Physical Damage coverages are average rated. Automobile Liability is rated on a "per unit" basis and Automobile Physical Damage is rated on the basis of the original cost new of the autos.

2. The average rates for Automobile Liability and Physical Damage are the rates applicable at the inception of the policy. Based on the information provided for this proposal and as of the date of this proposal, these rates are as follows:

Comprehensive	0.471
Collision	0.444

3. The premium charged at inception is the estimated annual premium based on the number of units and total original cos new for all covered autos on file with the company at inception. The insured is to submit a current schedule of owned automobiles as of the expiration of the policy and the total earned premium will be computed on the basis of the avera net change in units and their corresponding original cost new for the policy term.

4. All autos added using the "Average Rate Guidelines" will carry the same Liability limits and Physical Damage deductibles issued at policy inception for autos of the same type.

5. The following autos are not eligible:

   Any auto with an original cost new over $100,000
   Any auto meeting the ISO definition of "Antique" Auto

Commercial Crime

OPTION 1

Coverage	Limit
Employee Theft - Per Loss Coverage, Discovery Form	$ 100,000
Faithful Performance of Duty Endorsement applies	
Deductible	$ 5,000
Forgery or Alteration	$ 100,000
Deductible	$ 5,000
Inside Premises - Theft of Money & Securities	$ 250,000
Deductible	$ 5,000
Inside Premises - Robbery or Safe Burglary of Other Property -	$ 250,000
Deductible	$ 5,000
Outside Premises	$ 250,000
Deductible	$ 5,000
Computer Fraud	$ 100,000
Deductible	$ 5,000
Money Order and Counterfeit Paper Currency	$ 100,000
Deductible	$ 5,000

The following additional exclusions apply:
Treasurer or tax collector excluded under Employee Theft.
Employees required by law to be individually bonded excluded under Employee Theft.
Law enforcement officials excluded under Faithful Performance of Duty Endorsement.

Umbrella
Occurrence

OPTION 1

Coverage	Limit
General Total Limit	$ 1,000,000
Products & Completed Work Total Limit	$ 1,000,000
Personal Injury Each Person Limit	$ 1,000,000
Advertising Injury Each Person Limit	$ 1,000,000
Each Event Limit	$ 1,000,000
Deductible Per Event	$ 10,000
Coverage is provided over the following underlying each event or each wrongful act limit:	
General Liability (Occurrence)	$ 1,000,000
Auto Liability	$ 1,000,000
Stop-Gap	$ 1,000,000/1,000,000/1,000,000
The following are included:	
Government Unit Endorsement	

The following additional exclusions apply:
Employment Related Practices Exclusion Endorsement
Failure to Supply Services Exclusion Endorsement
Health Care Professional Services Exclusion Endorsement
Law Enforcement Duties Exclusion
Injury to Volunteer Firefighters Exclusion Endorsement
Public Use of Property Exclusion Endorsement (eminent domain exclusion)
Described Premises Exclusion Endorsement- use when G0271 applies to underlying
Described Work Exclusion Endorsement- use when G0272 applies to underlying

To add Uninsured/Underinsured Motorist at primary limit of $1,000,000 under the Umbrella Excess the revised Umbrella premium will be $30,607.

Program Features and Benefits

UMBRELLA EXCESS LIABILITY

Coverage Agreement

This agreement is designed to provide excess limits above primary coverage for bodily injury, property damage, personal injury and advertising injury that results from a catastrophic event. "Drop down" coverage responds to a reduction in the available primary insurance limit as a result of an impaired each event limit and replaces the primary insurance should the underlying total limit be exhausted. Coverage is on a broader than primary basis.

Who is Protected

Follows the primary.

Other

- Sewer back up and failure to supply services are excluded.
- Coverage does not apply over Employee Benefit Plans Administration Liability, Public Entity Management Liability or Health Care Professional Liability.
- Deductible applies only to losses covered by the Umbrella Excess but not covered under the primary.

Excess Errors and Omissions Liability
Claims-Made

OPTION 1

Coverage	Limit
Total Limit	$ 1,000,000

Coverage is provided over the following underlying each wrongful act limit:

Employee Benefit Plans Administration Liability	$ 1,000,000

Program Features and Benefits

EXCESS ERRORS AND OMISSIONS LIABILITY

Coverage Agreement

This agreement is designed to provide excess limits above primary coverage for damages *other than* bodily injury, property damage, personal injury and advertising injury that results from a catastrophic event. "Drop down" coverage responds to a reduction in the available primary insurance limit as a result of an impaired each wrongful act limit and replaces the primary insurance should the underlying total limit be exhausted. Coverage is on a following form over primary basis.

Who is Protected

Follows the primary.

Other

- Coverage does not apply over General Liability, Auto Liability, Law Enforcement Liability or any other coverage providing bodily injury, property damage, personal injury or advertising injury.

CLOSING MEMORANDUM

To: **Financing Team**

From: **John C. Stump, Esquire**

Date: **June 26, 2003**

Re: **City of Fairmont Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program)**

---

1. DISBURSEMENTS TO THE CITY OF FAIRMONT

Payor:	West Virginia Department of Environmental Protection
Amount:	$34,000
Form:	Check
Payee:	City of Fairmont
Contact:	Rosalie Brodersen - (304) 558-0637
Account:	Series 2003 A Bonds Construction Trust Fund

2. DISBURSEMENTS BY THE CITY OF FAIRMONT

Payor:	City of Fairmont
Amount:	$16,188
Form:	Check
Payee:	West Virginia Municipal Bond Commission
Contact:	Witter Hallan - (304) 558-3971
Account:	Series 2003 A Bonds Reserve Account

06/18/03
268460.00002

Security enhanced document. See back for details.

0091
69-339/515
35201

City of Fairmont Sanitary Sewer Board
Construction Fund
PO Box 1428
Fairmont, WV 26555-1428

DATE June 26, 2003

PAY TO THE ORDER OF West Virginia Municipal Bond Commission $ $16,188.00

Sixteen thousand one hundred eighty eight and no/oo DOLLARS

Security features are included. Details on back.

BB&T
BRANCH BANKING AND TRUST COMPANY
FAIRMONT, WEST VIRGINIA

FOR Funded Reserve Account

MP

⑈000091⑈ ⑆051503394⑆517261250 6⑈

GUARDIAN ® SAFETY ©Clarke American BA

State of West Virginia

WATER DEVELOPMENT AUTHORITY

180 Association Drive, Charleston, WV 25311-1217
(304) 558-3612 - (304) 558-0299 (Fax)
Internet: www.wvwda.org - Email: contact@wvwda.org

BOND CLOSING ATTENDANCE LIST

Date June 26, 2003 Time 9:30 a.m. LGA City of Fairmont Program CWSRF

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Sammie L. Gee	Jackson Kelly PLLC	340-1318	340-1080	sgee@jacksonkelly.com
Rosalie Brodersen	WV DEP	558 0637	558 3778	rbrodersen@mail.dep.state.wv.us
John C. Stump	Steptoe & Johnson	353.8196	353.8188	stumpjc@steptoe-johnson.com
Daniel B. Yonkosky	WV WDA	558-3612	558-0299	dyonkosky@wvwda.org
Doug Olds	WV WDA	558-3612	558-0299	dolds@wvwda.org
Barbara B. Meadows	Water Development Authority	558.3612	558.0299	bmeadows@wvwda.org

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Bruce McDaniel, City Manager Telephone 304.366.6211 E-Mail
Address P.O. Box 1428, Fairmont WV 26555

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

1-34
X5 Fairmont
268460.
00002

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, dated the 13th day of May, 2003, by and between the CITY OF FAIRMONT (City) and the COUNTY COMMISSION OF MARION COUNTY, WEST VIRGINIA (Commission), (hereinafter referred to jointly as parties).

WHEREAS, the City and the Commission have identified and do clearly recognize the need for a sewage collection system, together will all appurtenances necessary, useful and convenient thereto , in what is commonly referred to as the Dakota/Meredith Springs area, which area lies within the designated boundaries of Marion County, West Virginia;

WHEREAS, the Commission is empowered and authorized by the provisions of West Virginia Code § 7-1-3a to install, construct, repair, maintain and operate sewer lines and sewage disposal plants;

WHEREAS, the City is empowered and authorized by the provisions of West Virginia Code § 16-13-1 et seq., to own, acquire, construct, equip, operate and maintain a sewage collection system and/or a sewage treatment plant or plants, and all appurtenances necessary, useful and convenient thereto;

WHEREAS, inasmuch as the powers, privileges, authority and public works as aforesaid may be undertaken by any one of the parties, it is recognized that pursuant to the provisions of West Virginia Code § 8-23-1 et seq., that said powers, privileges, authority and public works may be exercised, enjoyed, engaged in or undertaken jointly by all the parties hereto;

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WHEREAS, it has been undertaken by these public purpose parties by this Agreement to unite in their desire to cooperate with each other on a basis of mutual advantage and consolidate functions and, thereby, provide services and facilities in a manner and pursuant to forms of governmental organization, which will result in the most economic and expeditious construction of the project.

WHEREAS, it is the intent of these parties to enter into a written agreement with one another for joint and cooperative action as provided by law and pursuant to the terms of this Agreement as hereinafter set forth;

WHEREAS, pursuant to the provisions of the West Virginia Code § 8-11-3, the Council for the City has by Ordinance No. 1224, duly enacted on the 13th day of May, 2003, manifested its approval of the City's participation in the project hereinafter described and has authorized and empowered the City Manager to execute this agreement on behalf of said City; and

WHEREAS, the Commission has by Resolution duly adopted on the 25th day of April, 2003, manifested its approval of County of Marion's participation in said project and has duly authorized and empowered the President of said Commission to execute the agreement on behalf of said Commission.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

The parties hereto do mutually covenant and agree as follows:

1. **PURPOSE:** The Commission and the City will jointly develop, seek financing for, and construct and enable a sewage collection system, together with all appurtenances necessary, useful and convenient thereto, (hereinafter the "Project"),

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according to engineering plans and specifications approved by these cooperative governmental units, reviewed by the Public Service Commission of West Virginia, and approved by the West Virginia Department of Environmental Protection.

2. **PROJECT DESCRIPTIONS:** The Project consists of the acquisition of lands and rights-of- way and the construction of approximately 12,296.00 lineal feet of sewage collection lines, appurtenances and a sewerage lift station.

3. **LOCATION:** The Project will be located exclusively within the designated boundaries of Marion County, West Virginia, in what is commonly referred to as Dakota/Meredith Springs, which area is contiguous to the boundaries of the City of Fairmont. The area is not currently served by any public service district, sanitary sewer district or other sewer utility.

4. **FUNDING:** The Project shall be funded as described herein. The Commission shall secure grant funds from the State of West Virginia Small Cities Block Grant Program (SCBG) for the joint construction project. The State SCBG funds, (the "SCBG Grant") will be obligated in the name of the Commission. The City will apply for and secure a State Revolving Fund loan from the West Virginia Water Pollution Control Fund on behalf of the Department of Environmental Protection and SRF Program (the "SRF Loan"). Based on preliminary project costs, funds are obligated from the following:

Small Cities Block Grant	$ 874,475.00
State Revolving Fund Loan	$ 457,043.00
Project Total Cost	**$1,331,518.00**

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5. **DUTIES AND RESPONSIBILITIES:** A. The parties covenant and agree that the Commission shall be responsible for all matters relating to the administration and financial record keeping regarding all phases of the SCBG Grant from the State of West Virginia. The City shall be responsible for all matters relating to administration and record keeping with respect to the SRF Loan.

B. The parties covenant and agree that the Commission as well as the City shall be responsible for keeping and maintaining, in accordance with generally accepted accounting principles, all financial and other records which may be from time to time be required or generated for the Project, including any and all records or documents which may be required under the terms, regulations or conditions of any governmental regulatory authority, loan document or contract.

C. The parties covenant and agree that the Commission shall be responsible for obtaining timely advances of the SCBG Grant for work on the Project and the City shall be responsible for obtaining timely advances of the SRF Loan for work on the Project. No such payments shall be made, however, except upon the joint approval of the City and the Commission. Any such Project payment shall only be made following the submission of an appropriate Project voucher which has been signed by or bears the signature of a representative of both the City and the Commission. Project payments shall be made from the monies received from the SCBG and the SRF Loan. All financial records shall be available for audit and inspection at any time during the construction of the project following proper notification of needs. At the conclusion of the Project, following final inspection and acceptance of the Project by the City and the

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Commission, a final project audit shall be made by the Commission, and the audit report shall be made available for public inspection and review.

The City shall receive SRF Loan disbursements and certify to the West Virginia Department of Environmental Protection and West Virginia Water Development Authority that it can provide the "financial, institutional, legal and managerial capabilities necessary to complete the Project. The City shall establish and maintain a financial management system to account for all costs incurred related to the Project.

D. The parties covenant and agree that the West Virginia Development Office shall have the right to exercise proper administrative control over the Project at all times; however this administrative authority shall in no way provide said Development Office with the ability or means to alter the Project plans and specifications once these plans have been approved and let to contract. Any incident of non-compliance with the contract between the Commission and the State of West Virginia is grounds for issuing a temporary "stop work order" on the Project by either party.

The parties covenant and agree that any contractor, subcontractor, consultant and/or vendor who contracts to perform any work on the Project, shall be advised of the West Virginia Development Office's limited role with regard to the Project. Notwithstanding any provision of any pre-printed industry standard form contract, all contracts let for work on the Project shall provide that under no circumstances shall the contract or any term or condition thereof or the scope or price of the work thereunder be modified, changed or altered except as by the prior EXPRESS WRITTEN AUTHORIZATION of the City, Commission and the contractor, which express

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authorization must bear the signature of the City Engineer, the Commission's representative and the Contractor. All contracts let for work on the Project shall further provide that if any additional or different work is performed or any additional or different materials are employed in the performance of the contract without the prior express written authorization as aforesaid, it shall be at the Contractor's own risk and expense and without liability for any cost or expense associated therewith, including but not limited to labor, services and material, on the part of the City or the Commission under any circumstances.

E. The parties covenant and agree that legal title to or ownership of all real and personal property, including but not limited to, easements acquired by virtue of the execution of or performance under this agreement, shall be vested in and in the name of the City. Further, upon completion of the Project, the City will be responsible for the administration, maintenance, and operation thereof. It shall thereafter be the City's obligation to obtain all of the necessary approvals for the operation of the Project.

F. The parties covenant and agree that all required permits, authorization and approvals shall become a part of this Agreement and incorporated herein by reference. It is further covenanted and agreed that City has been provided a copy of that certain agreement by and between the State of West Virginia and the Commission, dated October 25, 2000, and has had the opportunity to review the same, the terms of which are incorporated herein by reference and the parties herein shall comply with all said provisions.

G. The parties covenant and agree that the City shall be responsible for making

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application to the West Virginia Public Service Commission for a Certificate of Convenience and Necessity for the Project, if necessary, and that the Commission will participate in that action or transaction of this Project if necessary.

H. The parties covenant and agree that the City Engineer or his duly appointed designee, which in the discretion of the City Engineer may be the project consulting engineer, shall act as a liaison between the City and Commission and all contractors, subcontractors, consultants and/or vendors who perform any work on the Project. The liaison shall report to the parties as needed.

I. The parties covenant and agree that a selection Committee consisting of the Chairman of the City of Fairmont Sanitary Sewer Board, the Superintendent of the Fairmont Wastewater Treatment Plant, the City Engineer, the City Planner, and a designee of the Commission, shall be established for purposes of making recommendations to the Commission regarding the selection of a Project engineer and all professional services necessary for the project.

All engineering service contracts shall be selected and let in accordance with West Virginia Code § 5G-1-3.

All construction project contracts shall be let in accordance with the laws of the State of West Virginia and the construction contract(s) shall be executed by the City and Commission. It is further agreed that the City shall be a party to all construction contracts which are paid with funds from the SRF Loan.

The letting and operation of any contract, either professional or construction, will be in accordance with the City's and Commission's appropriate public notice and

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bidding requirements and in compliance with all federal, state, and local regulations. Non-compliance with any such regulation will be grounds for immediate cancellation of any contract or service.

The City and/or the Commission, as applicable, upon the recommendation of the Committee, shall execute professional service agreements for project engineering, legal appraisals, and other necessary professional aspects of the project.

J. Any change in Project scope following final engineering design approval by the parties, can only be made with the prior approval of the parties and the West Virginia Department of Environmental Protection and/or other regulatory agency of the State of West Virginia. All change orders must be submitted to the parties for evaluation and recommendation to the sponsors. Change orders shall be submitted to the West Virginia Department of Environmental Protection and/or other appropriate regulatory agency of the State of West Virginia for approval. All change orders must receive the prior approval of the WV Department of Environmental Protection and have complete price documentation, including a memorandum of negotiation (31.8.3.e.5).

All contracts shall be let with the provision that under no circumstances shall the contract or any term or condition thereof or the scope or price of the work thereunder be modified, changed or altered except as by the prior EXPRESS WRITTEN AUTHORIZATION of the City, the Commission and the contractor, which express written authorization in order to be binding must bear the signature of the City Engineer, the Commission's representative and the Contractor. Notwithstanding any provision of any pre-printed industry standard form contract to the contrary, if any

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additional or different work is performed or any addition or different materials are employed in the performance of any such contract without the prior express written authorization as of aforesaid, it shall be at the contractor's own risk and without liability for any cost or expense associated therewith, including but not limited to labor, services and materials, on the part of the City or the Commission under any circumstances.

It is agreed that the WV Department of Environmental Protection and the Water Development Authority shall disburse to the City the amount certified as costs incurred for the project on a monthly basis and that the City shall comply with all the terms and conditions of both the Loan Agreement and the Ordinance and Supplemental Resolution authorizing the bonds.

K. The parties covenant and agree that upon completion, inspection and approval of any completed segment of the Project, said segment shall be transferred to the City for its administration, maintenance and operation.

L. The parties covenant and agree that a project complaint center shall be maintained at the Commission's offices for the duration of the construction project. Complaint forms shall be provided by the Commission's agent. The agent shall investigate all complaints with the least possible delay and provide the complainant a response within fifteen (15) working days of filing the complaint. Failure on the part of any contractor or other employed person to respond to a complaint will be grounds for voiding any contract or agreement.

M. The parties covenant and agree that a final inspection on all aspects of the Project shall be made by the City, the Commission, the engineer, and the State of West

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Virginia. A project "punch list" shall be prepared and responded to before there shall be final acceptance of the project.

N. The Commission covenants and agrees that it shall indemnify and save the City harmless against and from any loss or obligation by reason of this Agreement or the Project, including attorney fees incurred for defending any claim, arising from the following.

(a). Any negligence, or tortuous or willful act on the part of the Commission, its agents, or employees; and/or

(b). Any failure on the part of the Commission to perform or comply with any of the terms, covenants, or conditions contained in and required of the Commission by the terms of this Agreement.

The City covenants and agrees that is shall indemnify and save the Commission harmless against and from any loss or obligation by reason of this Agreement or the Project, including attorney fees incurred for defending any claim, arising from the following:

(a). Any negligence, or tortuous or willful act on the part of the City, its agents, or employees; and/or

(b). Any failure on the part of the City to perform or comply with any of the terms, covenants, or conditions contained in and required of the City by the terms of this Agreement.

O. Default in the performance of any covenant, agreement, obligation or condition herein shall entitle the non-defaulting party, at its option, to terminate this

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Agreement after giving written notice to the defaulting party of its intent to do so and the notice shall specify (a) the default; (b) the action required to cure the default; (c) the time period in which the default must be cured, which can not be less than 30 days form the date of the notice. If after notice of default, the party in default does not within the time period stated cure or remedy such default, this Agreement shall terminate at the option of the non-defaulting party.

In the event of termination of the Agreement as aforesaid, an interim Project audit shall be prepared by the Commission through the date of termination and the audit report shall be provided to the City.

If the Commission be in default and this Agreement terminates, the City may at its option, following an inspection, accept all work completed on the Project and may at its option, without obligation to do so, proceed with the disposition or completion of any uncompleted work. If the City opts to bear the burden of completion, the Commission shall immediately transfer all funds from any of the project funding sources to the City for administration.

If the Commission be in default and this Agreement terminates and the City opts not to bear the burden of completion, all work completed on the Project will become the property of the County and the disposition or completion of all uncompleted work on the project shall become the responsibility of the County.

If the City be in default and this Agreement terminates, all work completed on the Project will become the property of the City and the disposition or completion of uncompleted work on the Project shall become the responsibility of the City.

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Nothing in this section shall be deemed to affect, limit, impair any other rights of termination or any other rights allowed by law.

No waiver by any party hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition, or covenant contained herein.

6. **GENERAL PROVISIONS:** This agreement shall be in effect for a period of one fiscal year, commencing on June 23, 2003, subject to annual renewal for any period of time needed to complete all phases of the project, each of which annual renewal periods shall be limited to one fiscal year; provided that, in addition to the right of non-renewal, either party hereto shall have the right to terminate this agreement on any 12 month anniversary of the date of this agreement by giving to the other party 30 days written notice of such termination.

The provisions of this Agreement are in addition to and not in derogation of any power and authority vested in these public bodies under any constitutional, statutory, or other provisions which may now or hereafter be in effect, and under no circumstances whatever shall the provisions of Chapter 8, Article 23, of the West Virginia Code, as amended, be construed as in any way limiting the power and authority to take joint or cooperative action or enter into agreements or contracts granted in other Articles of that Chapter.

This Agreement shall become effective upon approval hereof by the Attorney General of the State of West Virginia or upon his failure to approve the same within thirty (30) days of this submission to him for review all pursuant to the provisions of

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Chapter 8, Article 23, Section 3, of said Code.

IN WITNESS WHEREOF, the public agencies hereinbefore named, as parties to this Agreement properly adopted by the governing bodies thereof, approve this Agreement and direct their President or Manager, respectively, to execute this Agreement on their behalf and cause it to be filed and recorded in such manner as provided by law.

THE COUNTY COMMISSION OF
MARION COUNTY, WEST VIRGINIA,
A STATUTORY CORPORATION

BY: _____
Its President

CITY OF FAIRMONT

BY: _____
Its City Manager

Approved by:

ATTORNEY GENERAL
STATE OF WEST VIRGINIA
Approved as to form the 23rd day of
June, 2003

BY: _____
Attorney General

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STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

June 23, 2003

Mr. Kevin V. Sansalone
Sansalone & Sansalone
221 Monroe Street
Fairmont, West Virginia 26554

Re: Intergovernmental Agreement between the Marion County Commission and the City of Fairmont

Dear Mr. Sansalone:

Pursuant to West Virginia Code § 8-23-3, the above-captioned document was submitted to this office for approval or disapproval under cover of June 19, 2003, received by us on June 23, 2003.

I am pleased to inform you that the subject documents, returned to you herewith, have been approved as to form by the Attorney General. Thank you for your assistance and cooperation.

Very truly yours,

Dawn E. Warfield

DAWN E. WARFIELD
DEPUTY ATTORNEY GENERAL

DEW/tl
Enclosures