CITY OF FAIRMONT
SEWER REVENUE BONDS, SERIES 2007 A
(WEST VIRGINIA SRF PROGRAM)

DATE OF CLOSING: OCTOBER 11, 2007

BONDS TRANSCRIPT

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CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

BOND TRANSCRIPT

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CITY OF FAIRMONT
SEWER REVENUE BONDS, SERIES 2007 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 A PORTION OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

THE CITY OF FAIRMONT HEREBY ORDAINS AS FOLLOWS:

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 upgrades and improvements within 20 designated areas of the Issuer's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation

of certain antiquated collection lines, 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 2007 A (West Virginia SRF Program), in the total aggregate principal amount of not more than $6,500,000 (the "Series 2007 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 2007 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 2007 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 2007 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 2007 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 22 years.

F. It is in the best interests of the Issuer that its Series 2007 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority, and the DEP (the "Loan 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 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) 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 "Series 1988 Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) will automatically upgrade to a first lien position.

The Series 2007 A Bonds will be issued on a parity with respect to liens, pledge, source of and security for payment with the Issuer's outstanding 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 "Series 2003 A Bonds"). The Series 2007 A Bonds and the Series 2003 A Bonds shall initially be junior and subordinate as to liens, pledge, source of and security for payment to the Series 1988 Bonds until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased, at which time the Series 2007 A Bonds and the Series 2003 A Bonds shall automatically upgrade to a parity first lien position. The Series 1988 Bonds and the Series 2003 A Bonds may be hereinafter collectively referred to from time to time as 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 the Prior Ordinances, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

H. Prior to the issuance of the Series 2007 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage test of the Prior Bonds is met and that the parity test of the Series 2003 A Bonds is met, and (ii) the written consent of the holders of the Series 2003 A Bonds to the issuance of the Series 2007 A Bonds on a parity with the Series 2003 A Bonds. The written consent of the holders of the Series 1988 Bonds to the issuance of the Series 2007 A Bonds on a junior and subordinate basis to the Series 1988 Bonds is not required.

I. 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.

J. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2007 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 2007 A Bonds or such final order will not be subject to appeal.

K. 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 2007 A Bonds for the purposes set forth herein.

L. 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 2007 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 2007 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 2007 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 and the City Manager 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 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 2007 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity with the Series 2007 A Bonds 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 2007 A Bonds for all or a portion of the proceeds of the Series 2007 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 Ordinances 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.

"Loan Agreement" means the Loan 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 2007 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2007 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2007 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 2007 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 Ordinances 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 2007 A Bonds in the Supplemental Resolution, with the written consent of the Authority and the DEP.

"Prior Bonds" means the Issuer's (i) 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 "Series 1988 Bonds"), and (ii) 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 "Series 2003 A Bonds").

"Prior Ordinances" means collectively, the ordinances 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 Board of Treasury Investments pursuant to Chapter 12, Article 6C 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 Accounts established for the Series 2007 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 2007 A Bonds.

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

"Series 1988 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.

"Series 1988 Bonds Reserve Account" means the Series 1988 Bonds Reserve Account established by the Prior Ordinances in connection with the Series 1988 Bonds.

"Series 2003 A Bonds" means 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.

"Series 2003 A Bonds Reserve Account" means the Series 2003 A Bonds Reserve Account established by the Prior Ordinances in connection with the Series 2003 A Bonds.

"Series 2007 A Bonds" means the Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"Series 2007 A Bonds Construction Trust Fund" means the Series 2007 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2007 A Bonds Reserve Account" means the Series 2007 A Bonds Reserve Account established pursuant to Section 5.02 hereof.

"Series 2007 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 2007 A Bonds in the then current or any succeeding year.

"Series 2007 A Bonds Sinking Fund" means the Series 2007 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Prior Bonds and the Series 2007 A Bonds.

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

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

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2007 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2007 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 $7,462,240, 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 2007 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 $7,462,240, of which an amount not to exceed $6,500,000 will be obtained from proceeds of the Series 2007 A Bonds, $962,240 will be obtained pursuant to a Federal Assistance Grant from the Fiscal Year 2005 Appropriations Act.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2007 A Bonds, funding a reserve account for the Series 2007 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 2007 A Bonds of the Issuer. The Series 2007 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2007 A (West Virginia SRF Program)", in the principal amount of not more than $6,500,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2007 A Bonds remaining after funding of the Series 2007 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2007 A Bonds, if any, shall be deposited in or credited to the Series 2007 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 2007 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 Loan Agreement. The Series 2007 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 2007 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 2007 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 2007 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2007 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 2007 A Bonds shall be executed in the name of the Issuer by the Mayor and the City Manager, 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 2007 A Bonds shall cease to be such officer of the Issuer before the Series 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 A Bonds.

The registered Series 2007 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 2007 A Bonds or transferring the registered Series 2007 A Bonds are exercised, all Series 2007 A Bonds shall

be delivered in accordance with the provisions of this Bond Legislation. All Series 2007 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 2007 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 2007 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2007 A Bonds or, in the case of any proposed redemption of Series 2007 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 2007 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 2007 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 2007 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2007 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 2007 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, on a parity with the Series 2003 A Bonds, until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds will automatically upgrade to a first lien position. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2007 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 2007 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2007 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 2007 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 2007 A Bonds to the original purchasers;

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

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2007 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2007 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2007 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWER REVENUE BOND, SERIES 2007 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That on this _____ day of _____, 2007, 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, with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and SRF Administrative fee (as defined in the hereinafter described 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.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement (the "Loan 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"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2007, and a Supplemental Resolution duly adopted by the Issuer on _____, 2007 (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 AND THE SERIES 2003 A BONDS (HEREINAFTER DEFINED) ARE 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 "SERIES 1988 BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED OR THE SERIES 1988 BONDS HAVE BEEN PAID IN FULL OR OTHERWISE LEGALLY DEFEASED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2007 A BONDS AND THE SERIES 2003 A BONDS WILL AUTOMATICALLY UPGRADE TO A FIRST LIEN POSITION. THE SERIES 2007 A BONDS SHALL BE ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO 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 "SERIES 2003 A 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 Series 1988 Bonds until automatically upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2007 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 2007 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 for so long as the Series 1988 Bonds are outstanding, to leave a balance each year equal to at least 125% of (i) the maximum annual debt service on the Series 1988 Bonds and any bonds issued on a parity therewith; and (ii) the amount due under the Investment Purchase Agreement for the Series 1988 Bonds in each fiscal year. When the Series 1988 Bonds are no longer outstanding, the Issuer has covenanted in the Bond Legislation and in the ordinance authorizing the issuance of the Series 2003 A Bonds, 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 required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including 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 2007 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2007 A Bonds, including 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 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds. 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.

[The Remainder of This Page is Intentionally Left Blank]

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 as of the date set forth in the first paragraph hereof.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2007 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: _____, 2007.

THE 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 Loan Agreement. The Series 2007 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor and City Manager are specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan 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 Ordinances) 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 Ordinances);

(2) Operation and Maintenance Fund (established by the Prior Ordinances);

(3) Depreciation Fund (established by the Prior Ordinances); and

(4) Series 2007 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by Prior Ordinance) 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 1988 Bonds Sinking Fund (established by the Prior Ordinances);

(2) Series 1988 Bonds Reserve Account (established by the Prior Ordinances);

(3) Series 2003 A Bonds Sinking Fund (established by the Prior Ordinances);

(4) Series 2003 A Bonds Reserve Account (established by the Prior Ordinances);

(5) Series 2007 A Bonds Sinking Fund; and

(6) Series 2007 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 Ordinances 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 Ordinances. 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 Ordinances to pay interest on the Series 1988 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 Ordinances to pay the principal of the Series 1988 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 Ordinances to be deposited therein.

(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 Ordinances 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 interest on the Series 2007 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2007 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2007 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(7) 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 2003 A Bonds Sinking Fund, the amounts required by the Prior Ordinances to pay the principal of the Series 2003 A Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2007 A Bonds, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2007 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 2007 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.

(8) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) for deposit in the Series 2003 A Bonds Reserve Account, the amounts required by the Prior Ordinances to be deposited therein; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2007 A Bonds, if not fully funded upon issuance of the Series 2007 A Bonds, for deposit in the Series 2007 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2007 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2007 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 2007 A Bonds Reserve Requirement.

At such time as the Series 1988 Bonds Reserve Account has been fully funded or when the Series 1988 Bonds are no longer outstanding, and the Series 2007 A Bonds and the Series 2003 A Bonds hold a first lien position on a parity with the Series 1988 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: (i) for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinances to pay interest on the Series 1988 Bonds; and (ii) commencing 3 months prior to the first date of payment of interest on the Series 2007 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2007 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2007 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 2003 A Bonds Sinking Fund and the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinances 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 2007 A Bonds, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2007 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 2007 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 and the Series 2003 A Bonds Reserve Account, the amounts required by the Prior Ordinances to be deposited therein; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2007 A Bonds, if not fully funded upon issuance of the Series 2007 A Bonds, for deposit in the Series 2007 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2007 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2007 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 2007 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 Ordinances 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 2007 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2007 A Bonds as the same shall become due. Monies in the Series 2007 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2007 A Bonds as the same shall come due, when other monies in the Series 2007 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2007 A Bonds Sinking Fund and the Series 2007 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 2007 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 2007 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2007 A Bonds Reserve Account which result in a reduction in the balance of the Series 2007 A Bonds Reserve Account to below the Series 2007 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 2007 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 2007 A Bonds Sinking Fund or into the Series 2007 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2007 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 Series 1988 Bonds and thereafter, with respect to the Series 2007 A Bonds and the Series 2003 A Bonds, until such time as the Series 2007 A Bonds and the Series 2003 A Bonds are upgraded to a first lien position; at that time, all previously mentioned payments shall thereafter be made on a parity and pro rata basis with respect to the Series 2007 A Bonds, the Series 2003 A Bonds, and the Series 1988 Bonds, if then outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2007 A Bonds Sinking Fund and the Series 2007 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 2007 A Bonds Sinking Fund and the Series 2007 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 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2007 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 2007 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 Loan Agreement.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan 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 Ordinances, 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 2007 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 2007 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2007 A Bonds, there shall first be deposited with the Commission in the Series 2007 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 2007 A Bonds, there shall be deposited with the Commission in the Series 2007 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2007 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2007 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2007 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 2007 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 2007 A Bonds shall be expended as directed by the DEP.

Section 6.02. Disbursements From the Series 2007 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 2007 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 2007 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 Loan 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2007 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 2007 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, on a parity with the lien on such Net Revenues with the Series 2003 A Bonds, until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds will automatically upgrade to a first lien position. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2007 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 Loan 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 Final Order of the Public Service Commission of West Virginia, entered on August 31, 2006, in the following consolidated cases: Case No. 06-0348-S-CN and Case No. 06-0417-S-MA, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2007 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 Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2007 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan 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 Loan 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 Ordinances. Additionally, so long as the Series 2007 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 2007 A Bonds, immediately be remitted to the Commission for deposit in the Series 2007 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 2007 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 2007 A Bonds and the Series 2003 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2007 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 2007 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 2007 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2007 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 Ordinances 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 2007 A Bonds and Series 2003 A Bonds are on a parity with the Series 1988 Bonds, or until such time as the Series 1988 Bonds have been paid in full or legally defeased. While the Series 1988 Bonds are outstanding, the Issuer shall not issue any additional bonds without the written consent of the Authority and the DEP. When the Series 2007 A Bonds and the Series 2003 A Bonds have been elevated to a first lien position, 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 2007 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 Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2007 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 any outstanding Bonds of the Issuer, or both such purposes.

So long as the Series 1988 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 any 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 Series 1988 Bonds;

(2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinances then Outstanding (including the Series 2003 A Bonds and Series 2007 A Bonds); and

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

When the Series 1988 Bonds are no longer outstanding and so long as the Series 2007 A Bonds and 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 2007 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 2007 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 of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the 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 2007 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2007 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 2007 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2007 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan 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 Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction 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 2007 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 and under the Prior Ordinances. 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 provide for the reasonable expenses of operation, repair and maintenance of the System, and for so long as the Series 1988 Bonds are outstanding, to leave a balance each year equal to at least 125% of (i) the maximum annual debt service on the Series 1988 Bonds and any bonds issued on a parity therewith; and (ii) the amount due under the Investment Purchase Agreement for the Series 1988 Bonds in each fiscal year. When the Series 1988 Bonds are no longer outstanding, and so long as the Series 2003 A Bonds or the Series 2007 A Bonds are outstanding, the Issuer hereby covenants and agrees 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 required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including 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 2007 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2007 A Bonds, including 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 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth 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 Loan 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 Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate 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 Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer 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 Loan 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 2007 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 Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $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 Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State 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 2007 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan 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 2007 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 2007 A Bonds during the term thereof is, under the terms of the Series 2007 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 2007 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 2007 A Bonds during the term thereof is, under the terms of the Series 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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 2007 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; NON ARBITRAGE

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 2007 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 2007 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2007 A Bonds which would cause the Series 2007 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2007 A Bonds) so that the interest on the Series 2007 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by

nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2007 A Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2007 A Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer covenants to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and shall be used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2007 A Bonds from gross income for federal income tax purposes.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in

preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2007 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2007 A Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2007 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2007 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 2007 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2007 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 Ordinances.

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 2007 A Bonds and Series 2003 A Bonds shall initially be junior and subordinate to the Holders of the Series 1988 Bonds until such time when the Series 1988 Bonds Reserve Account is fully funded or the Series 1988 Bonds have been paid in full or legally defeased, and the Series 2007 A Bonds and Series 2003 A Bonds are upgraded to a first lien position.

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 2007 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 2007 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 2007 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 2007 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2007 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 2007 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2007 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 2007 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 2007 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 2007 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 2007 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 Ordinances, 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 Ordinances, the Prior Ordinances 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 2007 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:	-	March 27, 2007
Passed on Second Reading:	-	April 10, 2007
Passed on Final Reading Following Public Hearing:	-	April 24, 2007

Mayor

APPROVED AS TO FORM:

City Attorney

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on the 24th day of April, 2007.

Dated: October 11, 2007.

[SEAL]

Janet L. Keller

City Clerk.

268460.00004

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 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 2007 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Fairmont (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective April 24, 2007 (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 A PORTION OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA

SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer (the "Bonds" or the "Series 2007 A Bonds"), in an aggregate principal amount not to exceed $6,500,000, and has authorized the execution and delivery of the loan agreement relating to the Series 2007 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 "Loan 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 Loan 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 Loan Agreement has been presented to the Issuer at this meeting;

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan 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 2007 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $5,577,760. The Series 2007 A Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2029, and shall bear interest at the rate of 2% per annum. The principal of and interest on the Series 2007 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2009, to and including March 1, 2029, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2007 A Bonds. The Series 2007 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2007 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Series 2007 A Bonds set forth in the "Schedule Y" attached to the Loan 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 except Section 2.01 of the Bond Ordinance is amended and re-written as follows:

> There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $6,578,640, 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 2007 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 $6,578,640, of which an amount not to exceed $5,577,760 will be obtained from proceeds of the Series 2007 A Bonds, $962,240 will be obtained pursuant to a Federal Assistance Grant from the Fiscal Year 2005 Appropriations Act and $38,640 from the Issuer.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor and the 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 Loan 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 The Huntington National Bank, Fairmont, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2007 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2007 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2007 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2007 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2007 A Bonds shall be deposited in or credited to the Series 2007 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 October 11, 2007, to the Authority pursuant to the Loan 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 2007 A Bonds Sinking Fund and the Series 2007 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 25th day of September, 2007.

CITY OF FAIRMONT

By: _____
Its: Mayor

By: _____
Its: City Manager

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Fairmont on the 25th day of September, 2007.

Dated: October 11, 2007.

[SEAL]

Janet I. Kellen

City Clerk

268460.00004

CH907884.1

SRF-LP-1
(11/01/04)

LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA 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 direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (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 make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

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

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

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to 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 a Loan with attachments and exhibits and an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and 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 Loan or of any State and federal grants or other sources of financing for the Project.

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract 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 Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate 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 Loan 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 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 Loan;
Issuance of Local Bonds

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

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

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

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

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim 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 Loan Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan 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 loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the 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 Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as 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 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 notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether 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 Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the 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 make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System 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 Loan 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 Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at

the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect 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 Loan 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 Loan Agreement.

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

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

6.4 The Local Government hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Local Government fails to make any such rebates as required, then the Local Government shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

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

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the 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 Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

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

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

instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.4 No waiver by any party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

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

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

CITY OF FAIRMONT

(SEAL)

By: Scott Sen
Its: Mayor
Date: 9/25/07

Attest:

Janet L. Keller
Its: Recorder

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

By: [illegible]
Its: Director
Date: 9/28/07

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: [illegible]
Its: Director
Date: September 20, 2007

Attest:

Barbara B Meadows
Its: Secretary-Treasurer

000832/00372
11/01/04

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 Loan 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 Loan 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, groundbreaking 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)) - Effective October 1, 2003, the Local Government that receives $500,000 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.

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 Loan Closing]

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

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

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 loan agreement dated _____, ____, including all schedules and exhibits attached thereto (the "Loan 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 Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest 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 Loan 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 Loan 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 Loan Agreement.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and 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 Loan 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	$ 5,577,760
Purchase Price of Local Bonds	$ 5,577,760

The Local Bonds shall bear no interest from the date of delivery to and including February 28, 2009. Commencing June 1, 2009, interest on the Local Bonds is payable quarterly, at a rate of 2% per annum. Commencing June 1, 2009, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. 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 and interest, if any, 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:

See next page.

This Bond and the Series 2003 A Bonds (hereinafter defined) are 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 principal amount of $3,680,320 until such time as the Series 1988 Bonds reserve account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds will automatically upgrade to a first lien position. The Series 2007 A Bonds shall be issued on a parity with respect to liens, pledge and source of and security for payment, and in all respects, to the issuer's Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original principal amount of $485,543.

SCHEDULE Y

$5,577,760

City of Fairmont

20 Years, 2% Interest Rate, 1% Administrative Fee

Closing Date: October 11, 2007

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2007	-	-	-	-
03/01/2008	-	-	-	-
06/01/2008	-	-	-	-
09/01/2008	-	-	-	-
12/01/2008	-	-	-	-
03/01/2009	-	-	-	-
06/01/2009	56,877.00	2.000%	27,888.80	84,765.80
09/01/2009	57,161.00	2.000%	27,604.42	84,765.42
12/01/2009	57,447.00	2.000%	27,318.61	84,765.61
03/01/2010	57,734.00	2.000%	27,031.38	84,765.38
06/01/2010	58,023.00	2.000%	26,742.71	84,765.71
09/01/2010	58,313.00	2.000%	26,452.59	84,765.59
12/01/2010	58,604.00	2.000%	26,161.03	84,765.03
03/01/2011	58,897.00	2.000%	25,868.01	84,765.01
06/01/2011	59,192.00	2.000%	25,573.52	84,765.52
09/01/2011	59,488.00	2.000%	25,277.56	84,765.56
12/01/2011	59,785.00	2.000%	24,980.12	84,765.12
03/01/2012	60,084.00	2.000%	24,681.20	84,765.20
06/01/2012	60,385.00	2.000%	24,380.78	84,765.78
09/01/2012	60,687.00	2.000%	24,078.85	84,765.85
12/01/2012	60,990.00	2.000%	23,775.42	84,765.42
03/01/2013	61,295.00	2.000%	23,470.47	84,765.47
06/01/2013	61,601.00	2.000%	23,163.99	84,764.99
09/01/2013	61,909.00	2.000%	22,855.99	84,764.99
12/01/2013	62,219.00	2.000%	22,546.44	84,765.44
03/01/2014	62,530.00	2.000%	22,235.35	84,765.35
06/01/2014	62,843.00	2.000%	21,922.70	84,765.70
09/01/2014	63,157.00	2.000%	21,608.48	84,765.48
12/01/2014	63,473.00	2.000%	21,292.70	84,765.70
03/01/2015	63,790.00	2.000%	20,975.33	84,765.33
06/01/2015	64,109.00	2.000%	20,656.38	84,765.38
09/01/2015	64,430.00	2.000%	20,335.84	84,765.84
12/01/2015	64,752.00	2.000%	20,013.69	84,765.69
03/01/2016	65,075.00	2.000%	19,689.93	84,764.93
06/01/2016	65,401.00	2.000%	19,364.55	84,765.55
09/01/2016	65,728.00	2.000%	19,037.55	84,765.55
12/01/2016	66,056.00	2.000%	18,708.91	84,764.91
03/01/2017	66,387.00	2.000%	18,378.63	84,765.63
06/01/2017	66,719.00	2.000%	18,046.69	84,765.69
09/01/2017	67,052.00	2.000%	17,713.10	84,765.10
12/01/2017	67,388.00	2.000%	17,377.84	84,765.84
03/01/2018	67,724.00	2.000%	17,040.90	84,764.90
06/01/2018	68,063.00	2.000%	16,702.28	84,765.28
09/01/2018	68,403.00	2.000%	16,361.96	84,764.96

$5,577,760
City of Fairmont
20 Years, 2% Interest Rate, 1% Administrative Fee
Closing Date: October 11, 2007

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2018	68,745.00	2.000%	16,019.95	84,764.95
03/01/2019	69,089.00	2.000%	15,676.22	84,765.22
06/01/2019	69,435.00	2.000%	15,330.78	84,765.78
09/01/2019	69,782.00	2.000%	14,983.60	84,765.60
12/01/2019	70,131.00	2.000%	14,634.69	84,765.69
03/01/2020	70,481.00	2.000%	14,284.04	84,765.04
06/01/2020	70,834.00	2.000%	13,931.63	84,765.63
09/01/2020	71,188.00	2.000%	13,577.46	84,765.46
12/01/2020	71,544.00	2.000%	13,221.52	84,765.52
03/01/2021	71,902.00	2.000%	12,863.80	84,765.80
06/01/2021	72,261.00	2.000%	12,504.29	84,765.29
09/01/2021	72,622.00	2.000%	12,142.99	84,764.99
12/01/2021	72,986.00	2.000%	11,779.88	84,765.88
03/01/2022	73,350.00	2.000%	11,414.95	84,764.95
06/01/2022	73,717.00	2.000%	11,048.20	84,765.20
09/01/2022	74,086.00	2.000%	10,679.61	84,765.61
12/01/2022	74,456.00	2.000%	10,309.18	84,765.18
03/01/2023	74,828.00	2.000%	9,936.90	84,764.90
06/01/2023	75,203.00	2.000%	9,562.76	84,765.76
09/01/2023	75,579.00	2.000%	9,186.75	84,765.75
12/01/2023	75,957.00	2.000%	8,808.85	84,765.85
03/01/2024	76,336.00	2.000%	8,429.07	84,765.07
06/01/2024	76,718.00	2.000%	8,047.39	84,765.39
09/01/2024	77,102.00	2.000%	7,663.80	84,765.80
12/01/2024	77,487.00	2.000%	7,278.29	84,765.29
03/01/2025	77,875.00	2.000%	6,890.85	84,765.85
06/01/2025	78,264.00	2.000%	6,501.48	84,765.48
09/01/2025	78,655.00	2.000%	6,110.16	84,765.16
12/01/2025	79,048.00	2.000%	5,716.88	84,764.88
03/01/2026	79,444.00	2.000%	5,321.64	84,765.64
06/01/2026	79,841.00	2.000%	4,924.42	84,765.42
09/01/2026	80,240.00	2.000%	4,525.22	84,765.22
12/01/2026	80,641.00	2.000%	4,124.02	84,765.02
03/01/2027	81,045.00	2.000%	3,720.81	84,765.81
06/01/2027	81,450.00	2.000%	3,315.59	84,765.59
09/01/2027	81,857.00	2.000%	2,908.34	84,765.34
12/01/2027	82,266.00	2.000%	2,499.05	84,765.05
03/01/2028	82,678.00	2.000%	2,087.72	84,765.72
06/01/2028	83,091.00	2.000%	1,674.33	84,765.33
09/01/2028	83,507.00	2.000%	1,258.88	84,765.88
12/01/2028	83,924.00	2.000%	841.34	84,765.34
03/01/2029	84,344.00	2.000%	421.72	84,765.72
Total	**$5,577,760.00**	-	**$1,203,473.75**	**$6,781,233.75** *

***Plus $7,521.72 one-percent Administrative Fee paid quarterly. Total fee over life of loan is $601,737.60.**

File | City of Fairmont Loans.sf | SRF 9-20-07 | 9/20/2007 | 5:07 PM

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
8/31/2006

Entered: August 11, 2006

CASE NO. 06-0348-S-CN

CITY OF FAIRMONT SANITARY BOARD
Application for a certificate of convenience and necessity for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation of certain antiquated collection lines.

CASE NO. 06-0417-S-MA

CITY OF FAIRMONT,
a municipal corporation,
Investigation and suspension of increase in sewer rates and charges as a result of petitions filed in accordance with West Virginia Code §24-2-4b.

RECOMMENDED DECISION

Case No. 06-0348-S-CN

On March 20, 2006, the City of Fairmont Sanitary Board (Board) filed an application, duly verified, for a certificate to construct certain additions and improvements to its sanitary sewer system at Fairmont, Marion County, West Virginia. The Board's proposed upgrades and improvements are to reduce inflow and infiltration and remove, replace and relocate sewage collection lines to comply with its current NPDES permit. The project, to consist of twenty (20) sub-projects, will permit the Board to continue to serve its 10,311 customers, including five (5) bulk treatment customers.

The $6,700,000 project is to be financed, without interim financing, with a twenty (20) year $5,577,760.00 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at

seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act.

Rates, through the City's municipal appeal proceeding, were proposed to increase by 24.72%, resulting in an additional $651,557 in revenues over current levels. The average monthly bill for 4,500 gallons will increase from $14.90 to $18.59 for residential and commercial customers. The proposed rate increase was not to impact the rates currently charged to the Board's customers who are located within the Meredith Springs/Dakota Sewer Line Extension.

By Notice of Filing Order entered on March 20, 2006, the City of Fairmont Sanitary Board was ordered to give notice of the filing of the 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, making due return to the Commission of proper certification of publication immediately thereafter. The Notice provided that anyone desiring to protest or intervene should file a written protest or notice of intervention within thirty (30) days following the date of publication, unless otherwise modified by Commission Order. The Notice of Filing warned that failure to timely protest or intervene could affect one's right to protest aspects of the certificate case, including any associated rate increases or to participate in future proceedings. The Notice went on to state that all protests or requests to intervene should briefly state the reason for the protest or intervention. Further, requests to intervene had to comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. Finally, the Order stated that, if no protests were received within the 30-day period, the Commission could waive formal hearing and grant the application based on the evidence submitted with the application and the Commission's review thereof.

On April 3, 2006, the City of Fairmont Sanitary Board's Petition to Waive Customer Notification Requirement was filed. Specifically, the Board requested waiver of that portion of the customer notification requirement, pursuant to Rule 10.3.d of the Commission's Rules of Practice and Procedure, which requires that, whenever a utility seeks a rate increase in a certificate application, the utility, within thirty (30) days of the date of the Commission's Notice of Filing Order, must have completed the mailing of a separate notice to each of its customers by one (1) or a combination of three (3) methods. The Board represented that no rate increase is sought as part of the certificate application. The Board contended that, by complying with the provisions of West Virginia Code §24-2-4b and Rule 150-2-22.1.c.1.3 of the Commission's Rules of Practice and Procedure regarding the rate ordinance, the Board had notified its customers of the proposed rate increase.

On April 6, 2006, Staff filed a letter indicating its agreement with the Board's request to have the further notice requirement waived.

On April 24, 2006, Staff Attorney Carrie Freeman filed the Initial Joint Staff Memorandum to which was attached the April 20, 2006 Initial Memorandum prepared by James C. Weimer, P.E., Engineer II, Engineering Division, and Scott McNeely, Utilities Analyst II, Water and Wastewater Division. Staff reported that the project, at a total project cost of

$6,700,000, is fully funded and will require a rate increase to support the new debt. Staff recommended that the certificate case be consolidated with the City's pending municipal appeal case since the certificate case's outcome is dependent upon the final rate recommended in the municipal appeal. Staff recommended that the certificate case be referred to the Division of Administrative Law Judges for disposition.

On April 25, 2006, Staff's Motion to Consolidate was filed. Staff requested that, in the interest of judicial economy, the Commission consolidate the instant case, Case No. 06-0348-S-CN, with Case No. 06-0417-S-MA. Staff represented that Case No. 06-0348-S-CN required a rate increase which resulted in the municipal appeal case, Case No. 06-0417-S-MA. Staff recommended that the deadlines for the Final Joint Staff Memorandum in Case No. 06-0348-S-CN, currently June 19, 2006, and the Final Staff Report in Case No. 06-0417-S-MA, currently June 27, 2006, be consolidated to the same date of June 27, 2006.

By Commission Order dated May 3, 2006, the proceeding was referred to the Division of Administrative Law Judges with a decision due date of on or before August 2, 2006, if there have been no public protests to the application within thirty (30) days after the required notice has been provided. If a public protest is received within thirty (30) days after the required notice has been provided, the decision due date for the Division of Administrative Law Judges is on or before October 16, 2006.

On May 8, 2006, the Board submitted the affidavit of publication from the Times-West Virginian, a newspaper published and generally circulated in Marion County, demonstrating that the Notice of Filing for the application was published in that newspaper on March 31, 2006. The 30-day protest period expired on May 1, 2006, with no protests having been filed in response thereto either as of that date or as of the date of this Recommended Decision.

On May 8, 2006, the Board also filed the domestic return receipts evidencing notification to the Board's five (5) bulk rate customers of the application's filing as required by Rule 10.3.d of the Commission's Rules of Practice and Procedure.

Case No. 06-0417-S-MA

On March 14, 2006, the City of Fairmont (City) adopted an ordinance to increase the rates and charges of sewer customers of the City to become effective May 13, 2006.

On March 31, 2006, the Commission received a letter of protest from the Town of Monongah (Town), a resale customer of the City. The Town objected to the proposed rate increase on the basis of discrimination and requested suspension of any sewer increases and Commission review of the ordinance pursuant to Rule 44 of the Commission's Rules for the Construction and Filing of Tariffs under West Virginia Code §24-2-4b.

On April 4, 2006, the Commission invoked its jurisdiction over the City's sewer rates, suspended the proposed rates and charges until September 10, 2006, and referred the proceeding to the Division of

Administrative Law Judges, requiring a decision to be rendered on or before August 11, 2006. The Commission required Staff to submit its report on or before June 27, 2006.

On April 19, 2006, Staff Attorney C. Terry Owen filed the Initial Joint Staff Memorandum, to which was attached the April 14, 2006 Initial Internal Memorandum prepared by Scott McNeely, Utilities Analyst II, Water and Wastewater Division; Karen L. Buckley, Utilities Analyst II, Water and Wastewater Division; and James Spurlock, Technical Analyst I, Engineering Division. Mr. Owen represented that the City's ordinance increases rates and charges for sewer service by approximately twenty-five percent (25%) and will increase annual revenue by approximately $651,557.00. The average residential customer's monthly bill will increase by $3.69, from $14.90 to $18.59. On March 20, 2006, the City also filed an application for a certificate of convenience and necessity to upgrade and improve its collection system to comply with the Federal Clean Water Act. Staff reported that the certificate application was the main reason for the rate ordinance. The City's sewer operating revenue for the fiscal year ending June 30, 2005, was $2,872,193. Staff will perform a class cost of service study of the City's sewer operations based on fiscal year 2004-2005.

On April 21, 2006, Deputy Chief Administrative Law Judge Ronnie Z. McCann issued an Order appointing Deborah Yost VanDervort as the Administrative Law Judge to review this matter, conduct a hearing and render a recommended decision.

By Procedural Order dated April 21, 2006, this proceeding was set for hearing on July 6, 2006, at 10:00 a.m., at the Fairmont City-County Complex, Council Chambers, J. Harper Meredith Building, Room 303, 200 Jackson Street, Fairmont, West Virginia. The City of Fairmont was ordered to publish a Notice of Hearing and provide publication affidavits.

On April 25, 2006, Staff's Motion to Consolidate was filed. Staff requested that, in the interest of judicial economy, the Commission consolidate the instant case, Case No. 06-0417-S-MA, with Case No. 06-0348-S-CN. Staff represented that Case No. 06-0348-S-CN required a rate increase which resulted in the municipal appeal case, Case No. 06-0417-S-MA. Staff recommended that the deadlines for the Final Joint Staff Memorandum in Case No. 06-0348-S-CN, currently June 19, 2006, and the Final Staff Report in Case No. 06-0417-S-MA, currently June 27, 2006, be consolidated to the same date of June 27, 2006.

On May 25, 2006, the Town of Monongah's Motion to Intervene was filed.

Consolidated Cases

By Commission Order entered on June 14, 2006, the Administrative Law Judge's decision due date in Case No. 06-0348-S-CN was extended until August 11, 2006, to coincide with Case No. 06-0417-S-MA.

By Procedural Order dated June 16, 2006, Case No. 06-0348-S-CN and Case No. 06-0417-S-MA were consolidated. The deadline for the Final Joint Staff Memorandum in Case No. 06-0348-S-CN was revised to June 27, 2006, the same date as the due date for the Final Staff Report in Case No. 06-0417-S-MA and the procedural schedule in Case No. 06-0417-S-MA was applied to Case No. 06-0348-S-CN. Additionally, the Town of Monongah's Motion to Intervene in Case No. 06-0417-S-MA was granted.

On June 23, 2006, the Board filed a Request for Consideration of Spending Additions.

On June 27, 2006, Staff Attorneys Freeman and Owen filed the Further Joint Staff Memorandum and wrote that Staff would be unable to meet the June 27, 2006 deadline for the Final Joint Staff Memorandum in the consolidated cases. Legal Staff anticipated that the Technical Staff memorandum would be filed June 29, 2006, and Legal Staff would then file its memorandum as timely as possible.

By Procedural Order dated June 29, 2006, Staff was required to immediately file the Final Joint Staff Memorandum in Case No. 06-0348-S-CN and the Final Staff Report in Case No. 06-0417-S-MA.

On June 29, 2006, Ms. Freeman and Mr. Owen filed the Final Joint Staff Memorandum to which was attached the June 29, 2006 Final Internal Memorandum prepared by Mr. Weimer and Mr. McNeely in Case No. 06-0348-S-CN and the June 29, 2006 Staff Report prepared in Case No. 06-0417-S-MA.

On July 6, 2006, the hearing took place as scheduled. C. Terry Owen, Esquire, and Carrie Freeman, Esquire, represented Commission Staff; Kevin V. Sansalone, Esquire, represented the City of Fairmont; and Thomas R. Michael, Esquire, represented the Town of Monongah. Three (3) exhibits were entered into evidence: Board One (Affidavit of Publication); Staff One (Final Joint Staff Memorandum); and Staff Two (Final Staff Report). Although Staff One and Staff Two were not formally received into evidence at the hearing, both Staff One and Staff Two will be received into evidence through this Recommended Decision. No members of the public attended the hearing to make comment.

On July 7, 2006, Mr. Owen and Ms. Freeman filed the Second Final Joint Staff Memorandum to which was attached the July 6, 2006 Post-Hearing Memorandum prepared by Mr. McNeely, Ms. Buckley and Mr. Weimer. Staff acknowledged that an error existed in its Cost of Service Study. Staff reported that it had adjusted its Staff-Recommended 2 Tariff to reflect that the resale customers will receive no increase. The remaining customer classes will receive an additional increase of approximately four-tenths of one percent (0.04%). The total revenue generated by the class cost of service study will remain at $4,265,961, as outlined on page 56 of Staff's Exhibit 2. Staff attached several modified pages to the exhibit and indicated that it had no other changes to its original recommendations. The Second Final Joint Staff Memorandum and attachment are included as part of the record as Staff Post-Hearing Exhibit 1.

On July 7, 2006, counsel for the Town of Monongah filed a letter indicating that the Town did not object to the filing of the Second Final

Joint Staff Memorandum and Post-Hearing Memorandum and attached exhibits.

On July 14, 2006, the transcript of the July 6, 2006 hearing in this matter was filed.

On July 21, 2006, Staff filed the Joint Stipulation and Proposed Settlement Agreement which was signed by all parties to both proceedings.

EVIDENCE

Prefiled Exhibits

In the Final Internal Memorandum, Mr. Weimer reported that the City serves approximately 9,586 customers in Marion and Taylor Counties, of which 8688 are residential, 875 are commercial and 17 are industrial. The Fairmont water plant is a very large user. The five (5) resale customers are the Whitehall Public Service District, the Kingmill Valley Public Service District, the Greater Paw Paw Public Service District, the Town of Barrackville and the Town of Monongah. (Staff One, p. 3). The project is part of a long-term control plan to limit and, eventually, eliminate all combined sewer overflows. Mr. Weimer indicated that a modified WVNPDES Permit No. 023353 issued on December 21, 2004, did not include the project additions. An application for a new permit modification would be required. The total installed project cost per existing customer is $700 per customer and the cost per annual equivalent domestic unit (EDU) for the 27,500 EDCs billed monthly is approximately $243. Mr. Weimer opined that these costs are very reasonable. The total Operation and Maintenance (O&M) cost additions for the entire system after project completion are estimated at $9,273, an increase of less than one-half percent (½%). (Staff One, p. 4). Mr. Weimer opined that the total engineering cost is high and recommended that the utility employ a completely independent project inspector rather than rely on the engineer's inspector. Staff recommended that the decision to exclude the Hickman Run section, where the line is under some structures, be reviewed as that area appears to have the potential for long-term problems for the City. Staff also expressed concern with the cost of the equalization basin due to the significant increase in concrete cost over the last twenty-four (24) months. (Staff One, p. 5).

Mr. McNeely reported that the project is estimated to cost $6,700,000 and is proposed to be financed with a West Virginia Water Development Authority (WDA) loan in the amount of $5,577,760 at two percent (2%) interest for twenty (20) years and a one percent (1%) administrative fee; a $160,000 Capital Lease for ten (10) years at seven percent (7%) interest; and a Federal Assistance Grant in the amount of $962,240. (Staff One, pp. 5-6). The annual debt service on the loan will be approximately $338,604 and the annual administrative fee will be approximately $32,605. The principal and interest payments on the capital lease equate to an annual debt of $22,293. The WDA loan will require a debt service reserve equal to ten percent (10%) of the annual debt payments. (Staff One, p. 6).

The proposed project will not add any additional customers. An increase of $9,273 to the annual O&M expenses will be made to system O&M

costs beyond those which have already been included in the rates and charges established by the municipal appeal case. (Staff One, p. 6).

As a result of the Class Cost of Service Study, commercial and industrial customers will pay a separate rate from the residential customers and the City's water plant will have a bulk rate in the tariff for discharge water. After project completion, the minimum residential bill will be $28.70 for a bimonthly bill based on 5,000 gallons of usage and the average residential bill for 9,000 gallons bi-monthly will be $51.66, an increase of 74% over the current rates. The Staff-recommended rates will result in the City having total revenues of $4,513,047, and total expenses of $2,284,808. (Staff One, p. 6). The Staff-recommended rates will provide a surplus of approximately $716,001 and a debt coverage ratio of 200.78%. (Staff One, pp. 6-7). Staff calculated the leak adjustment rate to be $0.23 per M gallons. (Staff One, p. 7).

Staff concluded that the project is necessary to improve system operations, reduce inflow and infiltration and meet the City's long-term control plan. The project is convenient because it will eliminate some negative environmental impacts on the Monongahela River at a minimal cost to the City's existing customers. (Staff One, p. 7).

Staff recommended that: the City be granted a certificate of convenience and necessity to construct the proposed project, contingent upon the Applicant's receipt of all necessary federal, state and local permits and approvals for the proposed construction, with copies of the permits and approvals to be forwarded to the Commission immediately upon the City's receipt of such documents; the following project funding be approved: a $5,577,760 WDA loan at two percent (2%) for twenty (20) years with a one percent (1%) administrative fee, a $160,000 Capitol Lease at seven percent (7%) for 10 years, and a $962,240 Federal Assistance Grant; if there is any change in the financing, plans or scope of the project that affects rates, the City be required to notify the Commission and request a reopening of the certificate case for adjustments and approval; if there is a change in project costs that does not affect rates, the City be required to file an affidavit signed by its CPA or bond counsel verifying that fact; the City be required to file bids with the Commission as soon as the bids are tabulated; the City be required to notify the Commission when its Engineer has performed the substantial completion inspection; and Staff's Recommended rates be approved to become effective upon receipt of a final order. (Staff One, pp. 7-8).

The Staff Report, also dated June 29, 2006, described the customer base, physical condition of the plant and the overflow problems. Staff believes the staff/customer ratio is too low for an older sewer system which needs a great deal of attention. Five (5) to six (6) additional employees are needed to have at least one (1) employee for every 300 to 350 customers. (Staff Two, Transmittal Letter, p. 2). The sewer system operates thirty two (32) lift stations which are equipped with older pumps, motors and controls. Many of the older motors are open types which can not survive flooding. Replacement parts are difficult, if not impossible, to locate. Valves may need to be replaced. Controls are also older and repair parts are limited. No lift stations have updated hardware. Staff agrees with system management that these stations should be outfitted with dry run submersible pumps; programmable logic

controllers for motor control; variable speed drives with motors capable of 125% of rated speed for high flow conditions; and Supervisory and Control Data Acquisition (SCADA) equipment to allow full plant control and monitoring of all station parameters. Staff also recommends that all motor control and SCADA hardware should be mounted in a secure above-ground and environmentally-controlled building. (Staff Two, Transmittal Letter, p. 3).

Staff recommends that a minimum of $250,000 be invested over the next eight (8) years to upgrade and properly maintain all lift stations with the initial fund allocated to the larger stations. (Staff Two, Transmittal Letter, p. 3). Staff strongly recommended that as many pumps and motor combinations as possible be standardized to limit future repair and replacement costs and to allow for minimum spares inventory cost. Staff also supports the system management request for one new serviceman to improve daily maintenance and assist with the upgrading of the lift stations. Staff also recommends the purchase of a new tractor-type inspection camera and two (2) additional employees to begin a full system evaluation and repair effort. (Staff Two, Transmittal Letter, p. 4). Staff also fully supports the system management request for a Vactor truck for sewer cleaning operations, two (2) new maintenance vehicles, a new dump truck and an annual $10,000 to cover maintenance, repair and operation costs for all new acquisitions. (Staff Two, Transmittal Letter, pp. 4-5).

Secretarial support and hardware/software equipment are also needed for data recording, maintenance scheduling and inventory control. Staff also recommends that $10,000 be allocated annually for small tool and equipment purchases. (Staff Two, Transmittal Letter, p. 5). Staff also recommends a new engineering employee and the equipment to support that employee to work on the long-term control plan. (Staff Two, Transmittal Letter, p. 6). The treatment plant also needs a new pump; polymer mix tanks and feed pumps need to be replaced; the filter presses and sludge pumps need upgrades; the chlorine hoist needs to be repaired; several screen rakes and grit buckets need to be replaced; the rotating biological contactors need to be placed back in service; computers, equipment and software for equipment maintenance are needed; and extensive upgrades to the main plant lift station are needed. (Staff Two, Transmittal Letter, pp. 6-8).

The Fairmont collection system contains approximately 175 miles of various sizes of force main and gravity lines. A large portion of the system is over 70 years old and made up of clay pipe. Forty-eight percent (48%) of annual plant flows were estimated to be Inflow and Infiltration flows and more than one-half of that is infiltration only, which represents constant leakage. When the infiltration and inflow flows from all of the resale customers are considered, total treated flows due to infiltration and inflow amount to nearly sixty percent (60%) of annual flows. Staff recommends that, beyond the immediate project related to the long-term control plan, the City aggressively pursue line replacements. (Staff Two, Transmittal Letter, p. 8).

Staff recommended an adjustment for the purpose of providing employee pay raises and training and that the City update and improve inventory stock and storage operations. (Staff Two, Transmittal Letter,

p. 9). Staff also recommends that the City, which currently employs approximately twenty four (24) sewer employees, add four (4) full-time employees and one part-time employee. (Staff Two, Transmittal Letter, p. 12).

The City's outstanding long-term debt as of June 30, 2005, consists of: $5,295,000 in 1988 Series Sewerage System Refunding Capital Appreciation Bonds; $473,402 in 2003 Series A Sewer Revenue bonds; and an $87,528 Capital Lease. (Staff Two, Transmittal Letter, p. 12). The City also obtained two (2) separate bank loans for a Ram Jet and vehicles after the test year. The certificate project will require the City to obtain a WDA bond and another Capital Lease. The bond resolution requires the City to fund monthly reserve accounts at an amount of ten percent (10%) of the debt service payment. The monthly renewal and replacement reserve is paid at 2.5% of operating revenues. The annual debt service coverage is required to be funded at 125%. The new bond issue within the certificate filing, along with the 1988 issue, require a debt reserve, but the 2003 Series A bond, which has been fully funded, does not require such a reserve. The Staff Engineer proposed that the City obtain an additional loan for certain items in the amount of $902,500. The City has provided a commitment letter for these improvements from Comvest, for a term of ten (10) years at 5.15%, with annual debt payments of $120,235. (Staff Two, Transmittal Letter, p. 13).

Staff changed the City's rate structure and combined the Dakota/Meredith Springs customers with the City's core customer base. Staff also designed a separate rate for the City's commercial and industrial customers. Staff also formulated a rate for the City's water plant for water discharge. (Staff Two, Transmittal Letter, p. 14).

The proposed project will increase O&M expenses by $9,273 and will require annual debt payments of approximately $360,897. (Staff Two, Transmittal Letter, p. 14).

Staff recommended that the Staff-Recommended 1 Rates go into effect immediately following a final order and that the Staff-Recommended 2 Rates go into effect following substantial completion of the project. (Staff Two, Transmittal Letter, p. 14).

Staff recommended: Approval of Staff's Recommended 1 Rates and Charges to become effective upon a final order; approval of Staff's Recommended 2 Rates and Charges to become effective upon substantial completion of the project; approval of Staff's going level adjustments; approval of the Staff Engineer's recommendations; approval of the recommended $716,000 surplus; that the City purchase the recommended new equipment and implement the programs to improve plant operations, CSO monitoring and maintenance activities; that the City begin a program to identify collection system Inflow and Infiltration; that the City purchase and install the telemetry and SCADA equipment; that the City purchase the dump and Vactor trucks; that the City strictly enforce a grease trap inspection program for all commercial food operations and develop a plan for general public education on the damaging effects of grease in the sewers; that the City hire the new system field employees as soon as practicable; that the City continue and expand its routine

line replacements; that the City continue pursuing large line separation projects; that the City include with its Annual Report a section outlining expenditures for each of the specifically identified categories noted in the system evaluation recommendations; and that the City be required to file semi-annual reports for three (3) successive years outlining the completed repairs/improvements and the associated spending for the work. (Staff Two, Transmittal Letter, pp. 16-17).

Hearing

Commission Staff called James C. Weimer as its first witness. Mr. Weimer testified that the Board has 9,500 customers and the present plan is adequate to serve those customers. (Tr. p. 10). Mr. Weimer recommended that the Board obtain additional staff. The Board's sewer plant is approaching thirty (30) years of service. The Board does not have spare pumps for its lift stations. Many of the larger lift stations are missing pumps and motors, have older electronics and need a lot of clean-up and paint work. The lift stations need a substantial amount of work. There are no replacement parts. (Tr. p. 11).

Mr. Weimer recommended that the Board begin changing all of the motors to submersible motors. Only one (1) lift station has operating hardware, which is approximately seven (7) or eight (8) years old and non-functioning. If the Board is to be able to maintain the requirements of a long-term control plan, the Board will need supervisory control and data acquisition capabilities at all the lift stations through central plant monitoring. (Tr. p. 12). Mr. Weimer recommends upgrading the lift stations and that the motors and pumps be replaced with more efficient models. In order to minimize the amount of spare parts inventory which must be maintained, the Board should try to use as many similar motors and pumps as possible. Mr. Weimer also recommends that the Board do clean-up and repair work and improve the daily maintenance of the lift stations. The lift stations have been maintained by the Board as well as can be expected given the City's financial situation. The lift stations need more money and time invested in them to maintain a professional standard. Mr. Weimer recommends that the Board add 3.5 new employees. Two (2) of these would do lift station work. (Tr. p. 13).

The Board has problems with basement flooding of customers' homes. (Tr. pp. 13-14). Mr. Weimer believes that flooding is an issue in any combined system. The Board will try to eliminate basement flooding through the separation of the storm and sanitary sewers, a long-term control plan of the Board's. (Tr. p. 14).

Mr. Weimer recommends that the Board purchase several new vehicles. (Tr. p. 14). He also recommended that the system supervisor be outfitted with a portable computer and be assisted by a secretary or clerk to permit him to spend more time with the Board's programs for upgrades and maintenance. Immediate improvements need to be made to the treatment plant. (Tr. p. 15). Mr. Weimer listed a number of corrections which the Board needs to make. (Tr. 15-16). The Board has an inflow and infiltration problem because it is a combined system. Mr. Weimer recommended a total annual increase of $820,000. (Tr. p. 16). Mr. Weimer believes his recommendations are not only necessary, but critical,

because many corrections need to be performed immediately to keep the system operating at a high level of service for the Board's customers. (Tr. pp. 16-17). Mr. Weimer believes the Commission should grant the Board the certificate of convenience and necessity for which it applied. (Tr. p. 17).

On cross-examination by Mr. Sansalone, Mr. Weimer agreed that, for the purposes of the Class Cost of Service Study, the City was considered to have five (5) resale customers. Mr. Weimer stated that the flows from the various customers are looked at as the basis for determining what their class cost is. Mr. Weimer opined that the only way to allocate cost properly is to look at the total flows. (Tr. p. 18). Cost is allocated on the basis of flows, not on the basis of the number of customers. (Tr. p. 19). Mr. Weimer lists the inflow and infiltration (I/I) for resale customers as 11.75% of annual plant flow. Storm water is just inflow. (Tr. p. 20). No costs associated with storm water are allocated to bulk customers. (Tr. Pp. 20-21). Flows are allocated based on what percentage of the pipe is utilized by resale customers. Since any storm water from the resale customers goes through a meter, it is effectively all billed. Part of the cost of storm water is allocated to resale customers based on the pipe they use. (Tr. p. 21). Resale customers pay one hundred percent (100%) for the storm water that comes through the resale meter. However, because the resale customers also use the Fairmont system, some of the storm water on that system is allocated to the resale customers. The certificate project is trying to eliminate some of the inflow problem. (Tr. p. 22). The resale customers have been allocated 11.75% of the City system's I/I based on the inch feet of pipe used by them. (Tr. p. 23). The system is 70-plus years old and significant improvements are overdue. Mr. Weimer recommends that the certificate be approved. (Tr. p. 24).

On cross-examination by Mr. Michael, Mr. Weimer agreed that two (2) allocations are made to the resale customers. First, the flow that is delivered by the resale customers to Fairmont's meter is allocated. (Tr. pp. 24-25). Second, 11.75% of the storm water is allocated. Infiltration is allocated only to the Fairmont customers. (Tr. p. 25).

Commission Staff next called Scott McNeely as its witness. Mr. McNeely agreed that the City of Fairmont's ordinance proposed to increase rates by twenty-five percent (25%). (Tr. p. 30). The rate increase is to take effect in two (2) steps. The first would go into effect immediately upon a final order of the Commission. The second would go into effect upon substantial completion of the project. (Tr. p. 31). Mr. McNeely incorporated into his financial recommendations the allocation factors and functionalization that were provided to him by Mr. Weimer. The Staff-recommended rates would provide adequate debt service coverage for the City. Currently, the City debt service reserve requirements are not fully funded. Increased labor costs were also taken into consideration. (Tr. p. 32). The recommended rates and charges will provide sufficient cash flow to adequately fund all the reserves. The Staff-recommended rates will generate a surplus of approximately $716,000. This amount will be sufficient to pay for all of Staff's recommendations for improvements and additional employees. (Tr. p. 33). The City has averaged an annual expenditure of approximately $250,000 for plant additions and upkeep during the past five years. Staff also

combined the Fairmont and Dakota/Meredith Springs residential customers under one (1) tariff. The second set of Staff rates takes into consideration all of the costs, increased O&M and debt service associated with the certificate case. (Tr. p. 34). Residential customers are billed on a bi-monthly basis, while commercial, industrial and resale customers are billed on a monthly basis. (Tr. pp. 34-35). Mr. McNeely opined that the certificate of convenience and necessity in the instant proceeding should be granted. The public convenience and necessity requires the project. (Tr. p. 35).

Additional testimony took place at the hearing. However, in light of Staff's Post-Hearing Exhibit 1, which corrected Staff's original erroneous Class Cost of Service Study, and the post-hearing Joint Stipulation and Proposed Settlement, it is unnecessary to discuss that testimony in this Recommended Decision.

FINDINGS OF FACT

1. The City of Fairmont filed an application for a certificate of convenience and necessity for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation of certain antiquated collection lines. (See, filing dated March 20, 2006).

2. The estimated project cost of $6,700,000 is to be funded by a twenty (20) year $5,577,760.00 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act. (See, filing dated March 20, 2006).

3. Resale customers of the City include the Whitehall Public Service District, the Kingmill Valley Public Service District, the Greater Paw Paw Public Service District, the Town of Barrackville and the Town of Monongah. (See, filing dated March 20, 2006).

4. The City gave notice of the filing of the application for a certificate of convenience and necessity, in accordance with the Commission's requirements, by publishing a Notice of Filing on March 31, 2006, in the Times-West Virginian, and no protests were filed in response thereto. (See, Affidavit of Publication filed May 8, 2006; case file generally).

5. The City adopted an ordinance that increased its sewer rates to become effective on or after May 13, 2006. (See, Ordinance adopted March 14, 2006).

6. A letter of protest to the rate ordinance was filed by a resale customer. (See, filing dated March 31, 2006).

7. The Public Service Commission invoked its jurisdiction in this matter under West Virginia Code §24-2-4b, made the City a Respondent to

this proceeding and, pending investigation, hearing and decision thereon, suspended and deferred the use of said increase rates and charges until 12:01 a.m., September 10, 2006, unless otherwise ordered by the Commission. (See, Commission Order entered April 4, 2006).

8. Case Nos. 06-0348-S-CN and 06-0417-S-MA were consolidated. (See, Commission Order dated June 16, 2006).

9. Case No. 06-0417-S-MA was set for hearing on July 6, 2006, at 10:00 a.m., at the Fairmont City-County Complex, Council Chambers, J. Harper Meredith Building, Room 303, 200 Jackson Street, Fairmont, West Virginia. By Procedural Order dated June 16, 2006, the procedural schedule in Case No. 06-0417-S-MA was applied to Case No. 06-0348-S-CN. (See, Procedural Order dated April 21, 2006, and Procedural Order dated June 16, 2006).

10. The City filed an affidavit of publication reflecting that the Notice of Hearing for the 10:00 a.m. hearing had been published on June 20, 2006, in the Times-West Virginian. (See, Board Exhibit 1).

11. At hearing, Commission Staff acknowledged that an error existed in its Class Cost of Service Study. (See, Tr. pp. 92-96).

12. As a result of the error in the Class Cost of Service Study, Commission Staff submitted a Second Final Joint Staff Memorandum which reallocates costs from the resale customer class to the remaining customer classes, resulting in a further increase to those classes of approximately four-tenths of one percent (0.04%). Commission Staff does not now recommend that the resale rate increase. (See, Staff Post-Hearing Exhibit filed July 7, 2006).

13. All the parties to this proceeding were signatory to a Joint Stipulation and Proposed Settlement Agreement which agreement provided that the certificate of convenience and necessity should be granted in accordance with the Staff's recommendations as set forth in the Final Joint Staff Memorandum dated June 29, 2006, and the City's rates and charges for furnishing sewer service should be approved as recommended by the Commission Staff in its post-hearing Second Final Joint Staff Memorandum dated July 7, 2006. (See, Joint Stipulation and Proposed Settlement Agreement filed July 21, 2006).

14. The City's existing rates and charges are generating an annual cash flow deficit of ($373,252) and an inadequate debt service coverage of 91.41%. The City's bond ordinances require a minimum debt service coverage of 125%. Because of the cash flow deficit, the City lacks the cash necessary to make the improvements and repairs needed to its improvements included in the certificate application. (See, Staff Two, Letter of Transmittal, pp. 3-11 and 13, and Statement H; Tr. pp. 16-17 and 31-32).

15. The Staff Engineer has recommended several additional improvements which will require the City to obtain additional financing. The City has obtained a commitment letter for the total recommended spending of $902,500. The Comvest loan will be for ten (10) years at 5.15% interest with annual debt payments of $120,235. (See, Staff Two).

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16. The proposed project will improve system operations, reduce infiltration and inflow and meet the requirements of the City's long-term control plan. The project will eliminate some negative environmental impacts on the Monongahela River for area residents at a minimal cost to the existing customers of the City Sanitary Board. (See, Staff One, p. 7).

17. The amount of revenue generated by the Staff-recommended pre-project rates will result in a debt service coverage factor of 236.28% and a cash surplus of $716,002, which is sufficient to cover not only normal O&M expense, capital additions and debt service, but also the additional necessary improvements recommended by the Staff Engineer. (See, Staff Two, Statement H).

18. The amount of revenue generated by the Staff-recommended post-project rates will result in a debt service coverage factor of 200.78% and a cash surplus of $716,001, which is sufficient to cover all normal operations and Staff's engineering recommendations, along with the additional O&M expense and debt service for the project which is the subject of Case No. 06-0348-S-CN. (See, Staff Two, Statement H; Staff Post-hearing Exhibit 1).

19. The proposed financing for the project, including the additional funding needed for the Staff Engineer's recommendations, is adequate to cover all of the project costs and cover the Staff Engineer's additional recommendations. (See, Staff One, pp. 6-7; Staff Two, pp. 12-13).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to the City of Fairmont Sanitary Board for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation of certain antiquated collection lines.

2. It is reasonable to approve the financing for the project, which consists of a twenty (20) year $5,577,760.00 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act.

3. It is reasonable to approve the ten (10) year $902,500 Comvest loan at 5.15% interest to comply with the Staff Engineer's recommendations.

4. It is reasonable to adopt the Joint Stipulation and Proposed Settlement Agreement filed on July 21, 2006, in Case Nos. 06-0417-S-MA and 06-0348-S-CN as a resolution of the issues of the certificate proceeding and the rate issues developed in the municipal appeal proceeding.

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5. Under the particular facts and circumstances of these cases, and considering not only the recommendations of Commission Staff, but also the Joint Stipulation and Proposed Settlement Agreement filed on July 21, 2006, in Case Nos. 06-0417-S-MA and 06-0348-S-CN, it is reasonable to disapprove the increased sewer rates and charges contained in the most recent water rate ordinance adopted by the City of Fairmont on March 14, 2006, and to substitute therefore and approve the Staff-Recommended 1 rates, attached hereto as Appendix A, for all sewer services rendered by the City on and after 12:01 a.m., September 10, 2006.

6. Under the facts and circumstances of these cases, and considering not only the recommendations of Commission Staff, but also the Joint Stipulation and Proposed Settlement Agreement filed on July 21, 2006, in Case Nos. 06-06-0417-S-MA and 06-0348-S-CN, it is also reasonable to approve the Staff-recommended 2 rates, as are more particularly set forth in Appendix B attached hereto, to become effective for all services rendered by the City on and after the date of substantial completion of the upgrade and construction project, which is the subject of Case No. 06-0348-S-CN.

ORDER

IT IS, THEREFORE, ORDERED that the application filed herein on March 20, 2006, by the City of Fairmont Sanitary Board for a certificate of convenience and necessity for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system, be, and hereby is, granted, contingent upon receipt of all outstanding federal, state and/or local permits and approvals.

IT IS FURTHER ORDERED that the financing for the project, consisting of a twenty (20) year $5,577,760 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the City of Fairmont submit a certificate of substantial completion of the project from its engineer as soon as it becomes available.

IT IS FURTHER ORDERED that the City of Fairmont file a copy of the engineer's certified tabulation of bids for the project within ten (10) days of the opening date.

IT IS FURTHER ORDERED that the City of Fairmont file a copy of its revised WVNPDES permit and any other outstanding federal, state and/or local permits/approvals as soon as they are received.

IT IS FURTHER ORDERED that, if there are any changes in the plans and/or scope of the project or if a change in financing affects rates, the City of Fairmont shall obtain Commission approval of such changes prior to commencing construction.

IT IS FURTHER ORDERED that, if there are any changes in the project costs that do not affect rates, the City of Fairmont shall file herein an affidavit duly executed by its accountant verifying that the City's rates and charges are not affected.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, the City of Fairmont comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that the municipal rate ordinance adopted by the City of Fairmont on March 14, 2006, be, and hereby is, disapproved and the Staff-recommended rates and charges attached hereto as Appendix A, be, and hereby are, approved for all sewer services rendered on and after 12:01 a.m., September 10, 2006, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED that the rates and charges attached as Appendix B be, and hereby are, approved for use by the City of Fairmont for all sewer services rendered on and after the date of substantial completion of the project certificated herein.

IT IS FURTHER ORDERED that the City of Fairmont file an original and at least five (5) copies of a revised tariff reflecting the rates set forth in Appendix A within thirty (30) days of the date this Order becomes final. The City shall file an original and at least five (5) copies of a revised tariff for the Appendix B rates within thirty (30) days of the date of substantial completion of the project.

IT IS FURTHER ORDERED that the ten (10) year $902,500 Comvest loan at 5.15% interest to fund the Staff Engineer's recommendations be, and it hereby is, approved.

IT IS FURTHER ORDERED that the City of Fairmont comply with the Staff Engineer's recommendations set out on pages 3-11, 16 and 17 of Staff Two, filed herein on June 29, 2006.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

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.

Deborah Yost VanDervort

Deborah Yost VanDervort
Administrative Law Judge

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FAIRMONT SANITARY BOARD
CASE NO. 06-0417-S-MA

APPROVED RATES - 1

APPLICABILITY
Applicable within the entire territory served.

AVAILABILITY
Available for general domestic, commercial and industrial sewer service.

RATES (residential customers)

First 50,000 gallons of water used per month	$5.08	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.88	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.60	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.32	per 1,000 gallons
Over 125,000 gallons of water used per month	$4.06	per 1,000 gallons

RATES (commercial and industrial customers)

First 50,000 gallons of water used per month	$4.64	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.46	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.20	per 1,000 gallons
Next 25,000 gallons of water used per month	$3.95	per 1,000 gallons
Over 125,000 gallons of water used per month	$3.71	per 1,000 gallons

MINIMUM CHARGE - (residential customers)
No bill will be rendered for less than $25.40 bi-monthly, which is the equivalent of 5,000 gallons of usage with a 5/8" meter.

MINIMUM CHARGE - (commercial and industrial customers)
No bill will be rendered for less than $11.60 per month, which is the equivalent of 2,500 gallons of usage with a 5/8" meter.

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE
The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $250.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement, a disconnection fee of $25.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement, is reconnected, a reconnection fee of $25.00 shall be charged.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

BIMONTHLY OR QUARTERLY BILLING

The above rates and charges may be adjusted to a bimonthly or quarterly basis, providing no lower charges.

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.

BULK SERVICE:

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for bulk rate, resale, public authority or satellite customers.

RATE (resale customers)

All wastewater will be treated at the approved rate of $0.9451 per 1,000 gallons.

RATE (public authority)

All wastewater will be treated at the approved rate of $1.5731 per 1,000 gallons.

LEAK ADJUSTMENT

$0.23 per 1,000 gallons of water is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

CHARGE FOR NON-CONNECTED INDUSTRIAL SERVICE

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for non-connected industrial service.

RATE

The charge for the treatment of industrial waste shall be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

- Ci = charge to industrial users per year
- Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
- Vi = volume of wastewater from industrial users, in gallons per year
- Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
- Bi = weight of BOD from industrial users, in pounds per year
- So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
- Si = weight of total solids from industrial users, in pounds per year

When an industrial user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Sanitary Sewer Board, should not be introduced into the sewer system need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, industrial sewage shall be monitored on a regular basis and, at the conclusion of each fiscal year, based on the aforesaid investigation and audit of the Sanitary Sewer Board records, new cost figures shall be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the industrial user. Based on these audited figures, additional billings covering the past fiscal year shall be made for payment by each industrial user, or

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

refund given by the Sanitary Sewer Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment shall be made as aforesaid.

FAIRMONT SANITARY BOARD
CASE NO. 06-0417-S-MA

APPROVED RATES - 2

APPLICABILITY
Applicable in the entire territory or area served.

AVAILABILITY
Available for general domestic, commercial and industrial sewer service.

RATES (residential customers)

First	50,000 gallons of water used per month	$5.76	per 1,000 gallons
Next	25,000 gallons of water used per month	$5.53	per 1,000 gallons
Next	25,000 gallons of water used per month	$5.22	per 1,000 gallons
Next	25,000 gallons of water used per month	$4.91	per 1,000 gallons
Over	125,000 gallons of water used per month	$4.61	per 1,000 gallons

RATES (commercial and industrial customers)

First	50,000 gallons of water used per month	$5.26	per 1,000 gallons
Next	25,000 gallons of water used per month	$5.06	per 1,000 gallons
Next	25,000 gallons of water used per month	$4.77	per 1,000 gallons
Next	25,000 gallons of water used per month	$4.49	per 1,000 gallons
Over	125,000 gallons of water used per month	$4.22	per 1,000 gallons

MINIMUM CHARGE - (residential customers)
No bill will be rendered for less than $28.80 bi-monthly, which is the equivalent of 5,000 gallons of usage with a 5/8" meter.

MINIMUM CHARGE - (commercial and industrial customers)
No bill will be rendered for less than $13.15 per month, which is the equivalent of 2,500 gallons of usage with a 5/8" meter.

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE
The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $250.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement, a disconnection fee of $25.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement, is reconnected, a reconnection fee of $25.00 shall be charged.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

BIMONTHLY OR QUARTERLY BILLING

The above rates and charges may be adjusted to a bimonthly or quarterly basis, providing no lower charges.

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.

BULK SERVICE:

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for bulk rate, resale, public authority or satellite customers.

RATE (resale customers)

All wastewater will be treated at the approved rate of $0.9451 per 1,000 gallons.

RATE (public authority)

All wastewater will be treated at the approved rate of $1.7445 per 1,000 gallons.

LEAK ADJUSTMENT

$0.23 per 1,000 gallons of water is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

CHARGE FOR NON-CONNECTED INDUSTRIAL SERVICE

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for non-connected industrial service.

RATE

The charge for the treatment of industrial waste shall be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to industrial users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from industrial users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
Bi = weight of BOD from industrial users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si = weight of total solids from industrial users, in pounds per year

When an industrial user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Sanitary Sewer Board, should not be introduced into the sewer system need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, industrial sewage shall be monitored on a regular basis and, at the conclusion of each fiscal year, based on the aforesaid investigation and audit of the Sanitary Sewer Board records, new cost figures shall be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the industrial

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

user. Based on these audited figures, additional billings covering the past fiscal year shall be made for payment by each industrial user, or refund given by the Sanitary Sewer Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment shall be made as aforesaid.

AFFIDAVIT OF PUBLICATION

006033

State of West Virginia
County of Marion, to wit:

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.

RECEIVED
2006 MAY -8 AM 9:11
W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

that the annexed notice of Application was duly published in said newspaper once day for 1 successive day (Class I), commencing with the issue of the 31 day of March, 2006, and ending with the issue of the 31 day of March, 2006, and was posted at the front door of the Marion County Courthouse on the 31 day of March, 2006; that said annexed notice was published on the following dates: March 31, 2006

and the cost of publishing said annexed notice as aforesaid was $ 396.68

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 3 day of April, 2006,

My commission expires

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Toni A. Rice
300 Quincy Street
Fairmont, WV 26554
My Commission Expires Apr. 21, 2009

Toni A. Rice
Notary Public of Marion County, West Virginia

The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West Virginia.

WHEREAS, the City of Fairmont estimates that the construction will cost approximately $2,000,000.00. It is proposed that the construction will be financed as follows:

WV Water Department Authority Loan @ 2% interest for 20 years $1,500,000.00

Capitol Lease 7% interest @ 10 years $500,000.00

Federal Assistance Grant from FY 2005 Appropriations Act $62,500.00

WHEREAS, the District anticipates charging the following rates for its sanitary sewers:

CITY OF FAIRMONT
SANITARY SEWER
BOARD
PROPOSED RATES
(Ordinance No. 308)
Adopted March 14, 2005

SECTION 1: Sanitary Sewer Schedule No. 1

APPLICABILITY

Applicable in the entire territory served except the area served by the Meadow Spring Dakota Estates

AVAILABILITY

Available for general domestic, commercial and industrial service

RATES

Rates are based upon the metered amount for water supplied, as shown by the meter reading of the City of Fairmont Water Department, rounded to the nearest 1,000 gallons.

Rate per month $3.00 per 1,000 gallons used

All over 2,000,000 gallons used per month $2.50 per 1,000 gallons

MINIMUM CHARGE

Upon the effective date of the rates hereinabove set forth, the minimum sewer charge for sanitary sewer service shall be ten dollars ($10.00) per month.

DELAYED PAYMENT PENALTY

The above rates are net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the current amount unpaid. This delayed payment penalty is not interest and is only 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) Collection of the amounts provided for in the collection of delinquent water utility service charges shall be the manner in which delinquent sanitary sewer service charges shall be collected, with discontinuance of water service for non-payment of sewer charges.

All sanitary sewer service bills shall be rendered at the same time as water utility service bills.

No customer shall be permitted to pay for only water utility service in order to avoid termination of sewer coverage.

No person, firm or corporation shall receive sewer service without paying the lawful charges therefor, and it shall be the duty of the Finance Director to institute appropriate criminal proceedings before Municipal Court or civil actions.

SERVICE CONNECTION CHARGE

A fee of two hundred and fifty dollars ($250.00) shall be charged new customers connecting to the sewage system.

RECONNECTION SERVICE CHARGE

In the event water service is terminated due to non-payment, the sanitary sewer bill, twenty-five dollars ($25.00) RECONNECTION fee shall be paid in addition to the delinquent sanitary sewer charge prior to restoration of water service.

Customers outside Fairmont Wash Department shall be exempt from such reconnection fee.

SIMULTANEOUS BILLING

The above rates and charges may be adjusted for monthly or quarterly basis providing for lower charges.

ALTERNATIVE MEASUREMENT OF SEWAGE

Customers having water sources other than the City of Fairmont Water Department shall be subject to a surcharge for sewage disposal if the sewer system shall be found

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CHARLESTON

Entered: By the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, the City of Charleston, on the 20th day of March, 2005.

CASE NO. 05-0603-PWD-PC-NOI

CITY OF FAIRMONT SANITARY BOARD

Fairmont, West Virginia

Application and Certificate of Convenience and Necessity for the construction and operation of additional facilities, certain upgrades, and improvements, with twenty-five (20) designated areas of the City of Fairmont Sanitary Sewer System, to eliminate and reduce inflow and infiltration, to replacement and abandonment of certain antiquated collection lines.

NOTICE OF FILING

WHEREAS, on March 2, 2005, the City of Fairmont Sanitary Board, filed application, duly verified, for a certificate to construct certain additions and improvements to its sanitary sewer system in Marion County, West Virginia.

0603PBSec032005 WPD

led at the point of sale or upon
cost of the system, or the
ewer fee. Sanitary Sewer When an industrial user is
Board to purchase an in-to be served, a preliminary
stall sheets detailed study of its waste, and the
measure the volume of cost of transport and treat
waste water discharged into ment thereof shall be
the sanitary sewer system made. Waste containing
the customer shall add materials which in the judg-
vance to the Sanitary Sewer ment of the Sanitary Sewer
or board, on demand. The Board should not be unrea-
Sanitary Sewer Board shall duced into the sewer sys-
imated cost of purchasing, tem and treated or handled by
and installing the meter and the results of the preliminary
upon installation of such meter study shall be used to
waste discharge meter, the determine the feasibility of
rates of such customer the proposed sewer service
shall be based upon the amount charge at the rate
volume of waste discharge based upon the formula set
into the system rather than upon above hereafter
the volume of water industrial sewage shall be
purchased by the customer monitored or regularly
is and at the conclusion of
SECTION II. INDUSTRIAL SERVICE SCHEDULE NO. 2
ND 2 and audit of the Sanitary
Sewer Board receipts shall
APPLICABILITY rates shall be calcu-
applicable in the entire ter based on use on the above
ritory or areas served formula The cost of estab
lishing the monitoring facili
AVAILABILITY ties shall be paid by the
available to non-connected industrial users Based on
industrial service These audited figures add
ALLOWANCE ional billing covering the
past fiscal year shall be
the charge for the treat made payment by each
ment of industrial waste industrial user or proto
shall be calculated in the given by the Sanitary Sewer
basis of the following for Board The
Charge to industrial user which any adjustment
user per year bill every shall be made as aforesaid
average unit cost of
transport and treatment
chargeable to volume
dollars per gallon
V = Volume of waste water
tons per year
B = average unit cost of
treatment charge
chemical oxygen demand
(COD) in dollars per
pound treatment of waste water
shall be $ 1.18 per 1,000
weight of BOD from industrial users in pounds
treatment (including sludge
treatment chargeable to
dollars per

INCREASE proceedings All protests or re-
quests to intervene should
briefly state the reason for
the protest or intervention
Protests to intervene must
comply with the Commis-
sion's Rules of Practice and
Procedure All protests and
interventions should be ad-
dressed to Sandra Squire,
Executive Secretary, P. O.
Box 812, Charleston, West
Virginia 25323 IT IS FURTHER ORDERED that the protests
are received within said
thirty (30) day period, the
Commission may waive for-
mal hearing and grant the
application based on the
evidence submitted with
said application and its re-
view thereof

FOR THE COMMISSION,

Sandra Squire
Executive Secretary

Times: March 31, 2006

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince, Chairman
Hurricane
Dwight Calhoun, Vice Chairman
Petersburg
C. R. "Rennie" Hill, III
Beckley
Timothy Stranko
Morgantown

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Katy Mallory, PE
Executive Secretary

Katy.Mallory@verizon.net

RECEIVED
JAN 09 2004

January 7, 2004

David C. Sago, Utility Manager
City of Fairmont Sanitary Sewer Board
P.O. Box 1428
Fairmont, West Virginia 26555

Re: City of Fairmont Sanitary Sewer Board
Sewer Project 2003S-775

Dear Mr. Sago:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Fairmont Sanitary Sewer Board's (the "City") preliminary application regarding its proposed project to upgrade and improve the existing sanitary sewer collection system (the "Project").

Based on the findings of the Sewer Technical Review Committee, the Infrastructure 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 as the City may need to address certain issues raised in said comments as it proceeds with the Project.

The Infrastructure Council recommends the City pursue a Water Development Authority (WDA) and/or Clean Water State Revolving Fund (CWSRF) loan of up to $6,540,000 to fund this project. Please contact the Water Development Authority Office at 558-3612 and the Department of Environmental Protection office at 558-0641 for specific information on the steps the City needs to follow to apply for these funds. **Please note this letter <u>does not</u> constitute funding approval from these agencies.**

The Infrastructure Council also determined the City may be eligible for an Infrastructure Fund loan of up to $6,540,000, if declined funding by both the WDA and the CWSRF, pending the City's readiness to proceed and availability of funds in the Infrastructure Fund. **This letter is not a commitment letter of Infrastructure Funds.** The Project will be placed on the Infrastructure Council's pending list of projects.

If you have any questions regarding this matter, please contact Katy Mallory at 558-4607.

Sincerely,

Mark Prince

Enclosure
cc: Mike Johnson, DEP (w/o enclosure)
Bernie Yonkosky, WDA (w/o enclosure)
Region VI Planning & Development Council
Greenhorne & O'Mara, Inc.

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On this 11th day of October, 2007, 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 2007 A (West Virginia SRF Program), of the Issuer, in the principal amount of $5,577,760, numbered AR-1, issued as a single, fully registered Bond, and dated October 11, 2007 (the "Series 2007 A Bonds").

2. At the time of such receipt, the Series 2007 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 2007 A Bonds, of the sum of $747,669, being a portion of the principal amount of the Series 2007 A Bonds. The balance of the principal amount of the Series 2007 A Bonds will be advanced by the Authority on behalf of the West Virginia Department of Environmental Protection to the Issuer as acquisition and construction of the Project progresses.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Its: Authorized Representative

CITY OF FAIRMONT

By: _____
Its: Mayor

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 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 11th day of October, 2007, 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 2007 A (West Virginia SRF Program), in the principal amount of $5,577,760, dated October 11, 2007 (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 April 24, 2007, and a Supplemental Resolution duly adopted by the Issuer on September 25 2007 (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 loan agreement for the Series 2007 A Bonds, dated September 20, 2007, 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 $747,669, 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

268460.00004

CH907875.1

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWER REVENUE BOND, SERIES 2007 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $5,577,760

KNOW ALL MEN BY THESE PRESENTS: That on this 11th day of October, 2007, 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 FIVE MILLION FIVE HUNDRED SEVENTY-SEVEN THOUSAND SEVEN HUNDRED SIXTY DOLLARS ($5,577,760), 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 June 1, 2009, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and SRF Administrative fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2009, as set forth on Exhibit B attached hereto.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement (the "Loan Agreement") by and among the Issuer, the Authority and the DEP, dated September 20, 2007.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on April 24, 2007, and a Supplemental Resolution duly adopted by the Issuer on September 25, 2007 (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 AND THE SERIES 2003 A BONDS (HEREINAFTER DEFINED) ARE 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 "SERIES 1988 BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED OR THE SERIES 1988 BONDS HAVE BEEN PAID IN FULL OR OTHERWISE LEGALLY DEFEASED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2007 A BONDS AND THE SERIES 2003 A BONDS WILL AUTOMATICALLY UPGRADE TO A FIRST LIEN POSITION. THE SERIES 2007 A BONDS SHALL BE ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO 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 "SERIES 2003 A 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 Series 1988 Bonds until automatically upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2007 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 2007 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 for so long as the Series 1988 Bonds are outstanding, to leave a balance each year equal to at least 125% of (i) the maximum annual debt service on the Series 1988 Bonds and any bonds issued on a parity therewith; and (ii) the amount due under the Investment Purchase Agreement for the Series 1988 Bonds in each fiscal year. When the Series 1988 Bonds are no longer outstanding, the Issuer has covenanted in the Bond Legislation and in the ordinance authorizing the issuance of the Series 2003 A Bonds, 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 required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including 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 2007 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2007 A Bonds, including 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 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds. 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.

[The Remainder of This Page is Intentionally Left Blank]

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 as of the date set forth in the first paragraph hereof.

[SEAL]

SPECIMEN

Mayor

SPECIMEN

City Manager

ATTEST:

SPECIMEN

City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2007 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: October 11, 2007.

THE HUNTINGTON NATIONAL BANK
as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$747,669	October 11, 2007	(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

$5,577,760
City of Fairmont
20 Years, 2% Interest Rate, 1% Administrative Fee
Closing Date: October 11, 2007

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2007	-	-	-	-
03/01/2008	-	-	-	-
06/01/2008	-	-	-	-
09/01/2008	-	-	-	-
12/01/2008	-	-	-	-
03/01/2009	-	-	-	-
06/01/2009	56,877.00	2.000%	27,888.80	84,765.80
09/01/2009	57,161.00	2.000%	27,604.42	84,765.42
12/01/2009	57,447.00	2.000%	27,318.61	84,765.61
03/01/2010	57,734.00	2.000%	27,031.38	84,765.38
06/01/2010	58,023.00	2.000%	26,742.71	84,765.71
09/01/2010	58,313.00	2.000%	26,452.59	84,765.59
12/01/2010	58,604.00	2.000%	26,161.03	84,765.03
03/01/2011	58,897.00	2.000%	25,868.01	84,765.01
06/01/2011	59,192.00	2.000%	25,573.52	84,765.52
09/01/2011	59,488.00	2.000%	25,277.56	84,765.56
12/01/2011	59,785.00	2.000%	24,980.12	84,765.12
03/01/2012	60,084.00	2.000%	24,681.20	84,765.20
06/01/2012	60,385.00	2.000%	24,380.78	84,765.78
09/01/2012	60,687.00	2.000%	24,078.85	84,765.85
12/01/2012	60,990.00	2.000%	23,775.42	84,765.42
03/01/2013	61,295.00	2.000%	23,470.47	84,765.47
06/01/2013	61,601.00	2.000%	23,163.99	84,764.99
09/01/2013	61,909.00	2.000%	22,855.99	84,764.99
12/01/2013	62,219.00	2.000%	22,546.44	84,765.44
03/01/2014	62,530.00	2.000%	22,235.35	84,765.35
06/01/2014	62,843.00	2.000%	21,922.70	84,765.70
09/01/2014	63,157.00	2.000%	21,608.48	84,765.48
12/01/2014	63,473.00	2.000%	21,292.70	84,765.70
03/01/2015	63,790.00	2.000%	20,975.33	84,765.33
06/01/2015	64,109.00	2.000%	20,656.38	84,765.38
09/01/2015	64,430.00	2.000%	20,335.84	84,765.84
12/01/2015	64,752.00	2.000%	20,013.69	84,765.69
03/01/2016	65,075.00	2.000%	19,689.93	84,764.93
06/01/2016	65,401.00	2.000%	19,364.55	84,765.55
09/01/2016	65,728.00	2.000%	19,037.55	84,765.55
12/01/2016	66,056.00	2.000%	18,708.91	84,764.91
03/01/2017	66,387.00	2.000%	18,378.63	84,765.63
06/01/2017	66,719.00	2.000%	18,046.69	84,765.69
09/01/2017	67,052.00	2.000%	17,713.10	84,765.10
12/01/2017	67,388.00	2.000%	17,377.84	84,765.84
03/01/2018	67,724.00	2.000%	17,040.90	84,764.90
06/01/2018	68,063.00	2.000%	16,702.28	84,765.28
09/01/2018	68,403.00	2.000%	16,361.96	84,764.96

$5,577,760
City of Fairmont
20 Years, 2% Interest Rate, 1% Administrative Fee
Closing Date: October 11, 2007

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2018	68,745.00	2.000%	16,019.95	84,764.95
03/01/2019	69,089.00	2.000%	15,676.22	84,765.22
06/01/2019	69,435.00	2.000%	15,330.78	84,765.78
09/01/2019	69,782.00	2.000%	14,983.60	84,765.60
12/01/2019	70,131.00	2.000%	14,634.69	84,765.69
03/01/2020	70,481.00	2.000%	14,284.04	84,765.04
06/01/2020	70,834.00	2.000%	13,931.63	84,765.63
09/01/2020	71,188.00	2.000%	13,577.46	84,765.46
12/01/2020	71,544.00	2.000%	13,221.52	84,765.52
03/01/2021	71,902.00	2.000%	12,863.80	84,765.80
06/01/2021	72,261.00	2.000%	12,504.29	84,765.29
09/01/2021	72,622.00	2.000%	12,142.99	84,764.99
12/01/2021	72,986.00	2.000%	11,779.88	84,765.88
03/01/2022	73,350.00	2.000%	11,414.95	84,764.95
06/01/2022	73,717.00	2.000%	11,048.20	84,765.20
09/01/2022	74,086.00	2.000%	10,679.61	84,765.61
12/01/2022	74,456.00	2.000%	10,309.18	84,765.18
03/01/2023	74,828.00	2.000%	9,936.90	84,764.90
06/01/2023	75,203.00	2.000%	9,562.76	84,765.76
09/01/2023	75,579.00	2.000%	9,186.75	84,765.75
12/01/2023	75,957.00	2.000%	8,808.85	84,765.85
03/01/2024	76,336.00	2.000%	8,429.07	84,765.07
06/01/2024	76,718.00	2.000%	8,047.39	84,765.39
09/01/2024	77,102.00	2.000%	7,663.80	84,765.80
12/01/2024	77,487.00	2.000%	7,278.29	84,765.29
03/01/2025	77,875.00	2.000%	6,890.85	84,765.85
06/01/2025	78,264.00	2.000%	6,501.48	84,765.48
09/01/2025	78,655.00	2.000%	6,110.16	84,765.16
12/01/2025	79,048.00	2.000%	5,716.88	84,764.88
03/01/2026	79,444.00	2.000%	5,321.64	84,765.64
06/01/2026	79,841.00	2.000%	4,924.42	84,765.42
09/01/2026	80,240.00	2.000%	4,525.22	84,765.22
12/01/2026	80,641.00	2.000%	4,124.02	84,765.02
03/01/2027	81,045.00	2.000%	3,720.81	84,765.81
06/01/2027	81,450.00	2.000%	3,315.59	84,765.59
09/01/2027	81,857.00	2.000%	2,908.34	84,765.34
12/01/2027	82,266.00	2.000%	2,499.05	84,765.05
03/01/2028	82,678.00	2.000%	2,087.72	84,765.72
06/01/2028	83,091.00	2.000%	1,674.33	84,765.33
09/01/2028	83,507.00	2.000%	1,258.88	84,765.88
12/01/2028	83,924.00	2.000%	841.34	84,765.34
03/01/2029	84,344.00	2.000%	421.72	84,765.72
Total	**$5,577,760.00**	-	**$1,203,473.75**	**$6,781,233.75** *

***Plus $7,521.72 one-percent Administrative Fee paid quarterly. Total fee over life of loan is $601,737.60.**

File | City of Fairmont Loans.sf | SRF 9-20-07 | 9/20/2007 | 5:07 PM

$5,577,760
City of Fairmont
20 Years, 2% Interest Rate, 1% Administrative Fee
Closing Date: October 11, 2007

Debt Service Schedule

Yield Statistics

Accrued Interest from 10/11/2007 to 10/11/2007	(154,937.78)
Bond Year Dollars	$67,920.57
Average Life	12.177 Years
Average Coupon	1.7718842%
Net Interest Cost (NIC)	1.7718842%
True Interest Cost (TIC)	2.0093040%
Bond Yield for Arbitrage Purposes	2.0093040%
All Inclusive Cost (AIC)	2.8798544%

IRS Form 8038

Net Interest Cost	2.0000003%
Weighted Average Maturity	12.177 Years

(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:

_____

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

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

October 11, 2007

City of Fairmont
Sewer Revenue Bonds, Series 2007 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 $5,577,760 Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated September 20, 2007, including all schedules and exhibits attached thereto (the "Loan 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 Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal and interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2009, to and including March 1, 2029 all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan 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 (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

TERRALEX
The Worldwide Network of Independent Law Firms

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

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on April 24, 2007, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan 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 Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer 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 Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System 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 "Series 1988 Bonds"), until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or legally defeased, at which time the Bonds and the Series 2003 A Bonds (hereinafter defined) will automatically upgrade to a first lien position on a parity with the Series 1988 Bonds, all in accordance with the terms of the Bonds and the Bond Legislation. The Bonds are issued on a parity with respect to liens, pledge, source of and security for payment with the Issuer's outstanding Sewer Revenue Bonds, Series 2003A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the

"Series 2003 A Bonds"). The Issuer has obtained the written consent of the holders of the Series 2003 A Bonds to the issuance of the Bonds on a parity with the Series 2003 A Bonds. The written consent of the holders of the Series 1988 Bonds is not required.

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

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.

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

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

Very truly yours,

Steptoe & Johnson PLLC

STEPTOE & JOHNSON PLLC

268460.00004

CH907861.2

CITY OF FAIRMONT

CITY/COUNTY COMPLEX
P.O. Box 1428
200 Jackson Street
Fairmont, West Virginia 26555-1428
(304) 366-6211
(304) 366-0228 FAX
www.cityoffairmontwv.com

October 11, 2007

City of Fairmont
Sewer Revenue Bonds, Series 2007 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
Morgantown, West Virginia

Ladies and Gentlemen:

I am City Attorney for 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, a loan agreement for the Bonds, dated October 11, 2007, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), a Bond Ordinance duly enacted by the Issuer on April 24, 2007, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation") 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 Loan 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, City Manager, City Clerk and members of the Council of the Issuer 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 Loan Agreement has been duly authorized and upon execution and delivery by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, will constitute a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. In reliance upon the actions and representations of Steptoe & Johnson, PLLC, it appears that the Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

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

5. The Issuer has or prior to commencing construction will have received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Department of Environmental Protection, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia.

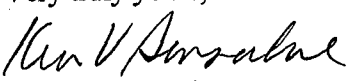
The Issuer has received the Final Order of the Public Service Commission of West Virginia, entered on August 31, 2006, in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA, among other things, granting to the Issuer a certificate of convenience and necessity for the Project, approving the financing for the Project, and setting the sewer rates and charges for the System. The time for appeal of such Final Order has expired prior to the date hereof without any appeal. Such Final Order remains in full force and effect.

6. 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 Bonds, the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues for the payment of the Bonds.

7. In reliance upon the actions and representations of Greenhorn & O'Mara, Inc., consulting engineers for the project, and to the best of my knowledge 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 Bond Legislation and the Loan 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,



Kevin V. Sansalone

CITY OF FAIRMONT

CITY/COUNTY COMPLEX
P.O. Box 1428
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October 11, 2007

Rosalie Brodersen
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Re: City of Fairmont (Sanitary Board)
Sewer Rehabilitation Project
SRF – DEP No. C-544393

Dear Ms. Brodersen:

Final Title Opinion

I am the City Attorney for the City of Fairmont. The City of Fairmont Sanitary Board proposes to construct certain improvements to the City's existing sewerage system including but not limited to upgrades and improvements within 20 specific designated areas to reduce inflow and infiltration and to provide replacement and relocation of certain antiquated collection lines (the "Project"), and provides this preliminary title opinion to satisfy the requirements of a State of West Virginia Water Pollution Control Revolving Fund Program loan in an amount not to exceed $6,500,000.00. In that regard, please be advised as follows:

1. That the City of Fairmont is a duly created and existing municipal corporation possessed with all the powers and authority granted to municipal corporations under the laws of the State of West Virginia and its Sanitary Board, duly created pursuant to the provisions of West Virginia Code §16-13-1 and Ordinance No. 239, as amended, has the full power and authority to construct, operate and maintain its sewer system and to undertake the Project as described in the August 31, 2006, final order of the Public Service Commission of West Virginia issued in PSC WV Case No. 06-0348-S-CN, which granted a certificate of convenience and necessity and established the necessary rates for the Project.

2. That the City of Fairmont Sanitary Board has obtained approval for all necessary permits and approvals for the construction of the Project.

3. That I have investigated and ascertained the location of and am familiar with the legal descriptions 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, the consulting engineers for the Project.

4. That I have examined the records maintained in the Office of the Clerk of the County Commission of Marion County, West Virginia, the County in which the Project is located, and, in my opinion, the City of Fairmont and its Sanitary Board have acquired legal title or such other estate or interest in 100% of the necessary parcels of land and easements or rights of way sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facilities to be constructed.

5. That the City of Fairmont is vested with and has exercised the right of eminent domain to acquired right of entry and will ultimately legal title to certain necessary sites, including certain easements and/or right of ways, required for the project, which were otherwise unavailable.

6. That all documents and orders of the Circuit Court of Marion County, West Virginia, which have been acquired by the City of Fairmont are in recordable form and have been placed of record in the aforesaid Clerk's Office in order to protect the legal title to and interest of the City of Fairmont Sanitary Board.

If you have any questions regarding this final title opinion or desire any changes, additions or another form of opinion, please advise.

Very truly yours,

Kevin V. Sansalone

KVS/sf
CC: Steve Cain, PE, Greenhorne & O'Mara

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDER
16. SPECIMEN BOND
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, hereby certify this 11th day of October, 2007 in connection with the Issuer's Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated the date hereof (the "Bonds" or the "Series 2007 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 April 24, 2007, and the Supplemental Resolution duly adopted September 25, 2007 (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: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges, and the issuance of the Bonds 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.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement. 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 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) 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 "Series 1988 Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) will automatically upgrade to a first lien position.

The Series 2007 A Bonds will be issued on a parity with respect to liens, pledge, source of and security for payment with the Issuer's outstanding 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 "Series 2003 A Bonds"). The Series 2007 A Bonds and the Series 2003 A Bonds shall initially be junior and subordinate as to liens, pledge, source of and security for payment to the Series 1988 Bonds until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have

been paid in full or otherwise legally defeased, at which time the Series 2007 A Bonds and the Series 2003 A Bonds shall automatically upgrade to a parity first lien position. The Series 1988 Bonds and the Series 2003 A Bonds may be hereinafter collectively referred to from time to time as 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 the Prior Ordinances, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage test of the Prior Bonds is met and that the parity test of the Series 2003 A Bonds is met, and (ii) the written consent of the holders of the Series 2003 A Bonds to the issuance of the Series 2007 A Bonds on a parity with the Series 2003 A Bonds.

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

Loan Agreement

Public Service Commission Orders

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

Public Service Commission Order Establishing Sewer Rates

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

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Rules of Procedure, First Draw Resolution and the Supplemental Resolution

NPDES Permit

Copies of the Ordinances and Supplemental Resolutions of the Prior Bonds

Consent of West Virginia Water Development Authority

United States Environmental Protection Agency Grant Agreement

Evidence of Insurance

Closing Memorandum

Intergovernmental Agreements for Sewer Treatment Services

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
S. Scott Sears	- Mayor	January 9, 2007	January 13, 2009
John J. Dahlia	- Councilmember	January 1, 2007	December 31,2010
Deborah D. Seifrit	- Councilmember	January 1, 2007	December 31,2010
Phyllis J. Mills	- Councilmember	January 1, 2007	December 31,2008
Charles E. Warner, Jr.	- Councilmember	January 1, 2007	December 31,2010
Robin W. Smith	- Councilmember	January 1, 2007	December 31,2010
Matthew S. Delligatti	- Councilmember	January 1, 2007	December 31,2010
Burley Tennant	- Councilmember	January 1, 2007	December 31,2010
De'Andrea Bussey	- Councilmember	January 1, 2005	December 31,2008
Ronald J. Straight	- Councilmember	January 1, 2005	December 31,2008

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

Chairman	-	S. Scott Sears
Member	-	J. Peale Davidson
Member	-	William D. 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 and acting City Attorney is Kevin Sansalone in Fairmont, West Virginia.

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

8. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction 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 Loan Agreement is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the dates of

the Loan Agreement which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

11. RATES: The Issuer's sewer rates and charges were established pursuant to a Final Order entered by the Public Service Commission of West Virginia in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA. The time for appeal of such Final Order 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 Loan 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 $747,669 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 24th day of April, 2007, at 7:00 p.m., at the City Council Chambers located at the Fairmont Public Safety Building, 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 August 31, 2006, in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA, among other things, granting to the Issuer a certificate of convenience and necessity for the Project, approving the financing for the Project, and setting the sewer rates and charges for the System. The time for appeal of the Final Order has expired prior to the date hereof without any appeal.

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 Federal Assistance Grant from the Fiscal Year 2005 Appropriations Act in the amount of $962,240 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.

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.

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of the CITY OF FAIRMONT on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE	OFFICIAL TITLE
_____	Mayor
_____	City Manager
Janet L. Keller	City Clerk
_____	Counsel to the Issuer

08.16.07
268460.00004

WITNESS our signatures and the official seal of the CITY OF FAIRMONT on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE	OFFICIAL TITLE
_____	Mayor
_____	City Manager
_____	City Clerk
Ken V Gonzalez	Counsel to the Issuer

08.16.07
268460.00004

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 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 on this 11th day of October, 2007 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 April 24, 2007, as supplemented, and the Loan Agreement, by and among the Issuer, the West Virginia Department of Environmental Protection ("DEP") and the West Virginia Water Development Authority (the "Authority"), dated September 20, 2007 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying 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 22 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 B, attached hereto as Exhibit A and Kevin Sansalone, City Attorney, 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 accountants, Bennett & Dobbins PLLC, 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 Loan Agreement; (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 B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

[Remainder of Page Intentionally Blank]

WITNESS my signature and seal on the day and year first written above.

GREENHORNE & O'MARA, INC.

(SEAL)

STEVEN ALLEN CAIN
REGISTERED
15264
STATE OF
WEST VIRGINIA
PROFESSIONAL ENGINEER

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

268460.00004

CITY OF FAIRMONT
SEWER REVENUE BONDS
SCHEDULE B

A. Cost of Project	TOTAL	CWSRF	SAP (55%)	OWNER
1. Construction	5,255,717.00	4,254,837.00	962,240.00	38,640.00
Construction Contingency (5%)	262,786.00	262,786.00	0.00	0.00
2. SSES				
Smoke/ Dye Test / Manhole Reports	189,384.00	189,384.00	0.00	0.00
Video Monitoring	35,000.00	35,000.00	0.00	0.00
Flow Monitoring	60,000.00	60,000.00	0.00	0.00
3. Technical Services (G&O)				
a. Design	289,468.00	289,468.00	0.00	0.00
b. Inspection	230,058.00	230,058.00	0.00	0.00
c. Special Services				
i. Aerial mapping	120,730.00	120,730.00	0.00	0.00
ii. Design Survey	30,000.00	30,000.00	0.00	0.00
iii. Stake Out	18,000.00	18,000.00	0.00	0.00
iv. Direct Cost	26,997.00	26,997.00	0.00	0.00
4. Legal & Fiscal				
a. Legal	20,000.00	20,000.00	0.00	0.00
b. Accounting	10,000.00	10,000.00	0.00	0.00
5. Administration	0.00	0.00	0.00	0.00
6. Sites & Other Lands	0.00	0.00	0.00	0.00
7. Repayment of Existing Debt Reserve	0.00	0.00	0.00	0.00
8. Project Contingency	0.00	0.00	0.00	0.00
9. TOTAL of Lines 1 Through 8	6,548,140.00	5,547,260.00	962,240.00	38,640.00
B. COST OF FINANCING				
10. Funded Reserve	0.00	0.00	0.00	0.00
11. Registrar Fee	500.00	500.00	0.00	0.00
12. Bond Counsel (Steptoe & Johnson)	30,000.00	30,000.00	0.00	0.00
13. Cost of Issuance (Lines 10 through 12)	30,500.00	30,500.00	0.00	0.00
14. TOTAL PROJECT COST (Line 9 plus line 13)	6,578,640.00	5,577,760.00	0.00	0.00
C. SOURCES OF OTHER FUNDS				
15. Federal Grants	962,240.00	0.00	962,240.00	0.00
16. State Grant	0.00	0.00	0.00	0.00
17. Any Other Source (Owner Contribution)	38,640.00	0.00	0.00	38,640.00
18. TOTAL GRANT FUNDING (Lines 15 through 17)	962,240.00	0.00	962,240.00	0.00
19. Size of Bond Issue (Line 14 minus Line 18)	5,577,760.00	0.00	962,240.00	38,640.00

City of Fairmont

DATE: 9/7/07

Greenhorne & O'Mara, Inc.

DATE: 9-7-07

Bennett & Dobbins PLLC

CERTIFIED PUBLIC ACCOUNTANTS

317 Cleveland Avenue
Fairmont, WV 26554-1604
Telephone: (304) 366-4295 Fax: (304) 366-4311

GARY K. BENNETT, MBA-CPA
ZACHARY D. DOBBINS, CPA

October 11, 2007

City of Fairmont
Sewer Revenue Bonds, Series 2007 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 of the sanitary sewer system (the "System") of the City of Fairmont (the "Issuer") as set forth in the Final Order of the Public Service Commission of West Virginia entered on August 31, 2006, in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Greenhorne & O'Mara, Inc., it is our 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 2007 A (West Virginia SRF Program) (the "Bonds"), dated the date hereof, issued in the original aggregate principal amount of $5,577,760 to the West Virginia Water Development Authority, 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, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds"), and 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 "Series 2003 A Bonds") (collectively, the "Prior Bonds"); and (ii) the amount due under the Investment Purchase Agreement, in each Fiscal Year, as defined in the ordinance authorizing the Series 1988 Bonds.

It is our further opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Bonds will not be less than 125% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the Bonds and the Series 2003 A Bonds.

Very truly yours,

Bennett & Dobbins PLLC

Bennett & Dobbins PLLC

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

CERTIFICATE AS TO ARBITRAGE

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 the $5,577,760 Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, dated the date hereof (the "Bonds"), hereby certifies on the 11th day of October, 2007 as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances, and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance duly enacted by the Issuer on April 24, 2007, as supplemented (the "Bond Ordinance" or "Ordinance"), authorizing the Bonds.

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on October 11, 2007, the date on which the Bonds are to be physically delivered in exchange for an initial advance of $747,669, being more than a de minimus portion of the principal amount of the Bonds, and, to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Bonds were sold on October 11, 2007, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated September

20, 2007, by and among the Issuer, the Authority, and the West Virginia Department of Environmental Protection (the "DEP"), for an aggregate purchase price of $5,577,760 (100% of par), at which time, the Issuer received $747,669, being the first advance of the principal amount of the Bonds from the Authority. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Series 2007 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Bond Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

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

8. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend in excess of 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment, or has already done so. Acquisition and construction of the Project and 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 2007 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 November 1, 2008, except as otherwise required for rebate to the United States under Section 148(f) of the Code. Acquisition and construction of the Project is expected to be completed by May 1, 2009.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at $6,578,640. Sources and uses of funds for the Project are as follows:

SOURCES

Gross Proceeds of the Bonds	$5,577,760
Federal Assistance Grant from FY 2005 Appropriations Act	962,240
City of Fairmont	38,640
Total Sources	$6,578,640

USES

Costs of Acquisition and Construction of the Project	$6,548,140
Costs of Issuance	30,500
Total Uses	$6,578,640

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

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

(1) Revenue Fund;

(2) Depreciation Fund;

(3) Operation and Maintenance Fund;

(4) Series 2007 A Bonds Construction Trust Fund;

(5) Series 2007 A Bonds Sinking Fund; and

(6) Series 2007 A Bonds Reserve Account.

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

(1) Series 2007 A Bonds proceeds in the amount of $-0- will be deposited in the Series 2007 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Bonds during acquisition and construction of the Project and for not more than six months thereafter.

(2) Series 2007 A Bonds proceeds in the amount of $-0- will be deposited in the Series 2007 A Bonds Reserve Account.

(3) The balance of the proceeds of the Series 2007 A Bonds will be deposited in the Series 2007 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 2007 A Bonds and related costs.

Amounts in the Series 2007 A Bonds Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years, except as otherwise set forth herein. All of such moneys are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treasury Regulation § 1.150 - 2(f)(2), none of the proceeds of the Series 2007 A Bonds will be used to reimburse the Issuer for costs of the Project previously incurred and paid by the Issuer with its own or other funds.

12. Moneys held in the Series 2007 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2007 A Bonds Sinking Fund and Series 2007 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2007 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.

13. Except for the Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Depreciation Fund will be used or needed for payments upon the Bonds. Except as provided herein, no funds which

have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan producing a yield in excess of the yield on the Bonds have been or will be pledged to payment of the Bonds. Less than 10% of the moneys received from the sale of the Bonds, if any, will be deposited in the Series 2007 A Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 2007 A Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Bonds and will not exceed 125% of average annual principal of and interest on the Bonds. Amounts in the Series 2007 A Bonds Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 2007 A Bonds Reserve Account is required by the Authority, is vital to its purchase of the Bonds, and is reasonably required to assure payments of debt service on the Bonds.

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

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds 5% of the net sale proceeds of the Bonds.

15. 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.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

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

18. With the exception of the amount, if any, deposited in the Series 2007 A Bonds Sinking Fund for payment of interest on the Bonds and the amount deposited in the Series 2007 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 18 months from the date of issuance thereof.

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

20. The Series 2007 A Bonds Sinking Fund (other than the Series 2007 A Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Bonds each year. The Series 2007 A Bonds Sinking Fund (other than the Series 2007 A Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Bonds, or 1 year's interest earnings on the Series 2007 A Bonds Sinking Fund (other than the Series 2007 A Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2007 A Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 2007 A Bonds Reserve Account therein), will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 2007 A Bonds Sinking Fund (other than in the Series 2007 A Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

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

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

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

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

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

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

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

28. [RESERVED]

29. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Series 2007 A Bonds if such amendment is necessary to assure compliance with Section 148(f) of the Code or as may otherwise be necessary to assure the exclusion of interest on the Series 2007 A Bonds from gross income for federal income tax purposes.

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

31. The Issuer has either (a) funded the Series 2007 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 2007 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2007 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2007 A Bonds Reserve Account and the Series 2007 A Bonds Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

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

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

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

35. The Issuer will rebate to the United States the amount, if any, required by the Code and will take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount and any and all penalties and other amounts from lawfully available sources, and obtain a waiver

from the Internal Revenue Service, if necessary, in order to maintain the exclusion, of interest on the Bonds from gross income for federal income tax purposes.

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

WITNESS my signature on the date first written above

CITY OF FAIRMONT

Mayor

268460.00004

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 be 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 pur- [illegible] of the Council, prepare and keep up to date an index of

(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 [illegible] 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 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 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 resolutions 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 arrangements as it deems desirable with respect to reproduction and distribution of any current changes 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 in 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 needs 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 meetings.

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 variances 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 members 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.) GPD. 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 next succeeding that in which the emergency appropriation was made.

(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 improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of [illegible] beyond the end of the fiscal year, provided

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 [illegible] the comprehensive plan the Council shall

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 _____.

_____
Notary Public

(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. Petitions 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 repeal. If the Council fails to adopt a proposed initiative ordinance without any change in

(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 ordinance 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 requirements 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, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made there-

(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.

(c) Personnel System. An employee holding a City position at the time this Charter takes

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

RESOLUTION

RESOLUTION AMENDING THE RULES OF ORDER AND PROCEDURE OF THE CITY COUNCIL OF THE CITY OF FAIRMONT IN ORDER TO PROVIDE APPROPRIATE NOTICE OF CITY COUNCIL MEETINGS AND NOTICE OF THE MATTERS TO BE CONSIDERED BY COUNCIL AT SUCH MEETINGS SO AS TO COMPLY WITH APPLICABLE PROVISIONS OF THE WEST VIRGINIA OPEN GOVERNMENTAL PROCEEDING ACT

WHEREAS, the City Council of the City of Fairmont has heretofore adopted Rules of Order and Procedure dated March, 1995;

WHEREAS, Section 1.3 (Regular Meetings), Section 1.4 (Special Meetings), Section 3.4 (Preparation of Agenda) and Section 3.6 (Copies of Agenda) of the aforementioned Rules of Order and Procedure set forth provisions relating to the providing of notice of Council's meetings and notice of the business which may be transacted at such meetings;

WHEREAS, said provisions of the aforementioned Rules of Order and Procedure need to be updated in order to comply with the provisions of Chapter 6, Article 9A of the West Virginia Code of 1931, as amended (hereinafter, the "Open Governmental Proceedings Act" or the "Act") as such Act has been interpreted by the West Virginia Ethics Commission (the "Commission"); and

WHEREAS, the City Council for the City of Fairmont hereby adopts this resolution in order to effect the changes to its Rules of Order and Procedure which appear necessary to comply with the recommendations of the Commission.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRMONT HEREBY RESOLVES THAT: SECTION 1.3, 1.4, 3.4 AND 3.6 OF THE RULES OF ORDER AND PROCEDURE OF THE CITY OF FAIRMONT BE AND ARE AMENDED AS FOLLOWS: (New matter underlined; matter to be deleted bracketed):

<u>Section 1.3 Regular Meetings (City Charter Sec. 2.11(a))</u>. 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, <u>by any means reasonably calculated to provide notice</u>, 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 scheduled 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)] seventy-two (72) 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.

Section 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 date, 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)] seventy-two (72) 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.

Section 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 Manger shall deliver to each member of the Council, the City Clerk and the City Attorney a copy of the agenda at least [sixteen (16)] seventy-two (72) business hours prior to the Council meeting, or as far in advance of the meeting as time for preparation will permit.

Section 3.6 Copies of the 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] For each regular or special meeting of the Council, the City Clerk shall, at least seventy-two (72) hours in advance of each regular or special meeting, post at a conspicuous place in the City Hall and mail or otherwise distribute, by any means reasonably calculated to provide notice, to all newspapers published and of general circulation and to other available news media customarily covering news of the City, an agenda for the business to be conducted at each such meeting. The agenda listing the matters requiring official action that may be addressed at the meeting may be amended up to forty-eight (48) hours prior to the meeting. A sufficient number of copies of the agenda shall also be available to the public at Council's meetings.

This Resolution shall be effective upon passage.

Passed this the 26th day of June, 2007

S. Scott Sa
MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, S. Scott Sears, a duly elected member of the Council of the City of Fairmont, have been elected by the members of Council of said City to serve as MAYOR of the City of Fairmont for a term commencing on January 9, 2007, and expiring January 13, 2009, do solemnly swear that I will faithfully fulfill the duties of the Office of MAYOR of the City of Fairmont, to the best of my skill and judgment, so help me God.

S. Scott Sears
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 9th day of January, 2007.

Janet L. Kellen
CITY CLERK

OATH OF OFFICE

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

I, John J. Dahlia, a resident of 1116 Morgantown Avenue, in the City of Fairmont, having been duly elected on November 7, 2006, as the Councilmember from the First District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2007 and expiring on the 31st day of December, 2010, 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.

John J. Dahlia
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 9th day of January, 2007.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Deborah D. Seifrit, a resident of 322 Brown Street, in the City of Fairmont, having been duly elected on November 7, 2006, as the Councilmember from the Third District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2007 and expiring on the 31st day of December, 2010, 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.

Deborah D. Seifrit
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 9th day of January, 2007.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Phyllis J. Mills, a resident of 213 Highland Avenue, in the City of Fairmont, having been duly elected on November 7, 2006, as the Councilmember from the Fourth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2007 and expiring on the 31st day of December, 2008, 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.

Phyllis J. Mills
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the _____ day of Jan 9th, 20 07.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Charles E. "Chuck" Warner, Jr., a resident of 307 First Street, in the City of Fairmont, having been duly elected on November 7, 2006, as the Councilmember from the Fifth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2007 and expiring on the 31st day of December, 2010, 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.

Charles E. Warner Jr.
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 9th day of January, 2007.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Robin W. Smith, a resident of 64 Jo Harry Drive, in the City of Fairmont, having been duly elected on November 7, 2006, as the Councilmember from the Eighth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2007 and expiring on the 31st day of December, 2010, 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 9th day of January, 20 07.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Matthew S. Delligatti, a resident of 1619 Westbrook Drive, in the City of Fairmont, having been duly elected on November 7, 2006, as the Councilmember from the Ninth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2007 and expiring on the 31st day of December, 2010, 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 9th day of January, 2007.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Burley "Butch" Tennant, a resident of 1873 Morgantown Avenue, in the City of Fairmont, having been duly elected on November 2, 2004, as the Councilmember from the Second District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2005 and expiring on the 31st day of December, 2008, 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.

B. D. Tennant Jr.
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 11th day of January, 2005.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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 2, 2004, as the Councilmember from the Sixth District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2005 and expiring on the 31st day of December, 2008, 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.

De'Andrea Bussey
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 11th day of January, 2005.

Janet L. Kellen
CITY CLERK

OATH OF OFFICE

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

I, S. Scott Sears, a resident of 818 Eighth Street, in the City of Fairmont, having been duly elected on November 2, 2004, as the Councilmember from the Seventh District of the City of Fairmont, Marion County, for a term commencing on the 1st day of January, 2005 and expiring on the 31st day of December, 2008, 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.

S. Scott Sears
MEMBER

Taken, subscribed and sworn to before me, in said City, County and State of this the 11th day of January, 2005.

Janet L. Keller
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 City Councilmembers:

Anthony S. "Tony" Talerico
Burley "Butch" Tennant
Nick L. Fantasia
Marlene C. Mitchell
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 3rd day of May, 2006.

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 M. 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. Mitten
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

OATH OF OFFICE

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

I, J. Peale Davidson, having been duly re-appointed by the City Council of the City of Fairmont on December 14, 2004, as a member of the Fairmont Sanitary Sewer Board, for a term commencing on January 1, 2005 and expiring on January 1, 2008, 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.

MEMBER

Taken, subscribed and sworn to before me by J. Peale Davidson, this the 10th day of April, 2007.

CITY CLERK

OATH OF OFFICE

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

I, William D. Roberts, having been duly re-appointed by the City Council of the City of Fairmont on December 13, 2005, as a member of the Fairmont Sanitary Sewer Board, for a term commencing on January 1, 2006 and expiring on January 1, 2009, 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.

William D. Roberts
MEMBER

Taken, subscribed and sworn to before me by William D. Roberts, this the 10th day of April, 2007.

Janet L. Keller
CITY CLERK

OATH OF OFFICE

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

I, Bruce McDaniel, City Manager of the City of Fairmont, serving for an indefinite term as Chairman of the Fairmont Sanitary Sewer Board, 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.

MEMBER

Taken, subscribed and sworn to before me by Bruce McDaniel, this the 10th day of April, 2007.

CITY CLERK

Sanitary Sewer Board

City of Fairmont

P.O. Box 1428
Fairmont, WV 26555-1428

Phone: (3 4) 366-0540
Fax: (3 4) 366-6242

THE CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

PETITION OF THE SANITARY SEWER BOARD

The Sanitary Sewer Board of The City of Fairmont (the "City") hereby petitions the Council of the C: , to enact an ordinance directing that sewer revenue bonds of the City be issued pursuant to the provisions of Chapte , Article 13 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed $6,500,0 1 for the purpose of financing a portion of the cost of acquisition and construction of certain additions, bette nts and improvements to the existing sewerage system of the City, together with all necessary appurtenances, and t costs of issuance and related costs.

Directed this 21st day of February, 2007.

SANITARY SEWER BOARD OF THE CITY OF FAIRMO

By: _____
Its: Chairman

CERTIFICATION

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

I, Janet L. Keller, 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 City Council minutes from the meetings held on February 14, 2006, March 14, 2006, March 27, 2007, April 10, 2007, and April 24, 2007.

Given under my hand and seal this the 12th day of September, 2007.

Janet L. Keller
CITY CLERK

February 14, 2006

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 14th day of February, 2006, at the J. Harper Meredith Building in 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	Marlene Mitchell
Fifth District	Fran Warner
Eighth District	Thomas Mainella
Ninth District	Ronald J. Straight

Absent:

Sixth District	De'Andrea Bussey
Seventh District	S. Scott Sears

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller

IN RE: EXCUSE COUNCILMEMBER BUSSEY

The Mayor reported that Councilmember Bussey was out of town and asked to be excused from tonight's meeting.

Motion:

Councilmember Straight moved to excuse Councilmember Bussey from this meeting. The motion was seconded by Councilmember Talerico.

The Mayor declared Councilmember Bussey excused from tonight's meeting by voice vote of Council.

The Mayor noted that he had not heard from Councilmember Sears. He then asked if anyone had an update from Councilmember Sears.

IN RE: OPENING CEREMONIES

Rev. D.D. Meighen of Central 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 January 24, 2006. He asked if there were any corrections, deletions, or amendments.

Councilmember Straight 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

There were no public hearings for this meeting.

ANNOUNCEMENTS

There were no announcements at this meeting.

CITIZENS PETITIONS

IN RE: GROCERY STORE REQUESTED FOR EAST FAIRMONT

MIKE FOY, 344 Lincoln Street, addressed Council regarding the request for a grocery store at East Fairmont. He stated that he received several phone calls from the residents on East Side asking about a grocery store and thought he would bring the matter to Council.

The Mayor replied that he thought the problem was going to be resolved. He reported that he had been in contact with the developer who is involved in the new bank project at the Warehouse Plaza and there are investors who are putting together a plan to do a relocation of some retail and creation of about 50,000 to 100,000 square foot grocery store.

CITY MANAGER'S REPORT

IN RE: FY ENDING JUNE 30, 2007 BUDGET PRESENTED TO COUNCIL

The City Manager presented Council with the fiscal year ending June 30, 2007 budgets for General Fund, Coal Severance, Parking Fund, Water Fund and Capital Improvements. He then asked Council for a date for the first budget work session.

It was a consensus of Council to have the first budget work session on Tuesday, February 21, at 5:30 p.m.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT APPROVING THAT CERTAIN AMENDED AGREEMENT BY AND BETWEEN THE CITY OF FAIRMONT AND CITY OF MANNINGTON FOR PURPOSES OF SELLING, FURNISHING AND DELIVERING POTABLE WATER TO THE CITY OF MANNINGTON

Mayor Fantasia entertained a motion for the introduction of an ordinance approving the amended agreement between the City of Fairmont and the City of Mannington.

Motion:

Councilmember Warner 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 date for February 28, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART FIVE, GENERAL OFFENSES CODE OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 521 LIQUOR CONTROL, THEREOF, TO PROHIBIT THE POSSESSION, CONSUMPTION, OR PURCHASE OF ANY NONINTOXICATING BEER, WINE OR ALCOHOL BY A PERSON UNDER THE AGE OF TWENTY-ONE, AND TO PROVIDE A PENALTY THEREFOR, TO BE CODIFIED AS 521.14 UNLAWFUL ACTS BY PERSONS UNDER THE AGE OF TWENTY-ONE

Mayor Fantasia entertained a motion for the introduction of an ordinance prohibiting the possession of alcohol by any person under the age of twenty-one.

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 Mainella.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing date for February 28, 2006.

IN RE: SUSPEND RULES AND AMEND AGENDA

The Mayor moved to suspend the rules and amend the agenda to include the first reading of the private club ordinance with the first reading of the non-intoxicating beer ordinance. The motion was seconded by Councilmember Talerico.

Roll call was taken by the Clerk.

The Mayor declared the rules suspended and the agenda amended by unanimous vote of those Councilmembers present.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART SEVEN, BUSINESS AND TAXATION CODE, OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 751 NON-INTOXICATING BEER, SECTION 06 PREREQUISITES TO ISSUANCE, THEREOF, TO PROVIDE AS AN ADDITIONAL PREREQUISITE TO LICENSING THAT THE PROPOSED BUSINESS LOCATION HAS NOT WITHIN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION BEEN THE LOCATION OF THREE (3) OR MORE SEPARATE VIOLATIONS OF ANY STATE, FEDERAL OR LOCAL ALCOHOL BEVERAGE CONTROL LAW, STATUTE OR ORDINANCE OR ANY RULE OR REGULATION

Mayor Fantasia entertained a motion for the introduction of an ordinance to provide for a prerequisite to licensing for non-intoxicating beer.

Motion:

Councilmember Warner moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Straight 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 February 28, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART SEVEN, BUSINESS AND TAXATION CODE, OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 753, PRIVATE CLUBS, SECTION 02 APPLICATION, THEREOF, TO PROVIDE AS A PREREQUISITE TO LICENSING THAT THE PROPOSED BUSINESS LOCATION HAS NOT WITHIN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION BEEN THE LOCATION OF THREE (3) OR MORE SEPARATE VIOLATIONS OF ANY STATE, FEDERAL OR LOCAL ALCOHOL BEVERAGE CONTROL LAW, STATUTE OR ORDINANCE OR ANY RULE OR REGULATION

Mayor Fantasia entertained a motion for the introduction of an ordinance to provide for a prerequisite to licensing for private clubs.

Motion:

Councilmember Warner moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Straight 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 February 28, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART NINE, STREETS, UTILITIES AND PUBLIC SERVICES CODE, OF THE CITY OF FAIRMONT CODE, AND MORE PARTICULARLY CHAPTER THREE, UTILITIES, TO PROVIDE FOR AND ESTABLISH RATES, FEES AND CHARGES FOR THE STORMWATER SYSTEM AND STORMWATER WORKS PROVIDED BY THE CITY OF FAIRMONT STORMWATER UTILITY AND TO FURTHER PROVIDE FOR THE ENFORCEMENT AND COLLECTION THEREOF, WHICH ORDINANCE IS TO BE CODIFIED AS ARTICLE 945, STORMWATER RATES AND CHARGES, OF SAID CODE

Mayor Fantasia entertained a motion for the introduction of an ordinance establishing the rates to be charged for the Stormwater Utility System.

Motion:

Councilmember Tennant moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Mainella 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 March 14, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 672, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES", AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATES, FEES AND CHARGES FOR THE USE OF THE CITY'S SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS/DAKOTA EXTENSION

Mayor Fantasia entertained a motion for the introduction of an ordinance providing for an increase in sewer rates.

Motion:

Councilmember Tennant 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 Talerico.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing date for March 14, 2006.

IN RE: ADOPTION, A RESOLUTION TO SUPPORT THE CONCEPT THAT DECEMBER 6 BE DESIGNATED ANNUALLY AS "MINER'S DAY" IN THE STATE OF WEST VIRGINIA

Mayor Fantasia entertained a motion for the adoption of a resolution supporting the concept that December 6 be designated annually as "Miner's Day" in the State of West Virginia.

Motion:

Councilmember Mainella moved for the adoption of the proposed resolution. The motion was seconded by Councilmember Tennant.

The Clerk read the proposed resolution in its entirety for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of those Councilmembers present.

ADJOURNMENT

Mayor Fantasia entertained a motion for adjournment.

Motion:

Councilmember Mainella moved to adjourn the meeting. The motion was seconded by Councilmember Talerico.

The Mayor declared the meeting adjourned by voice vote of Council at 7:20 p.m.

March 14, 2006

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 14th day of March, 2006, at the J. Harper Meredith Building in 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	Marlene Mitchell
Fifth District	Fran Warner
Sixth District	De'Andrea Bussey
Seventh District	S. Scott Sears
Eighth District	Thomas Mainella

Absent:

Ninth District	Ronald J. Straight

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
Finance Director	Eileen Layman
Utility Manager	David Sago

IN RE: EXCUSE COUNCILMEMBER STRAIGHT

Councilmember Sears reported that Councilmember Straight was absent due to an illness and asked to be excused from tonight's meeting. He then moved to excuse Councilmember Straight. The motion was seconded by Councilmember Bussey.

The Mayor declared Councilmember Straight excused from tonight's meeting by voice vote of Council.

IN RE: OPENING CEREMONIES

Rev. Jeremiah Jasper 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 February 28, 2006. He asked if there were any corrections, deletions, or amendments.

Councilmember Warner 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 AMENDING AND SUPPLEMENTING PART NINE, STREETS, UTILITIES AND PUBLIC SERVICES CODE, OF THE CITY OF FAIRMONT CODE, AND MORE PARTICULARLY CHAPTER THREE, UTILITIES, TO PROVIDE FOR AND ESTABLISH RATES, FEES AND CHARGES FOR THE STORMWATER SYSTEM AND STORMWATER WORKS PROVIDED BY THE CITY OF FAIRMONT STORMWATER UTILITY AND TO FURTHER PROVIDE FOR THE ENFORCEMENT AND COLLECTION THEREOF, WHICH ORDINANCE IS TO BE CODIFIED AS ARTICLE 945, STORMWATER RATES AND CHARGES, OF SAID CODE

Pursuant to a Notice duly published in the Times-West Virginian on February 20, 2006 and February 27, 2006, a public hearing was convened to obtain citizen input on an ordinance providing for and establishing Stormwater Utility rates.

The Mayor asked if anyone desired to speak to the proposed ordinance.

DAVID SAGO, Utility Manager, spoke in favor of the proposed ordinance. He explained that this was the third in a series of ordinances to establish our Stormwater Utility under the Sanitary Sewer Board and to start managing our stormwater in the City of Fairmont and comply with all State and Federal regulations. He then asked Council to support this ordinance.

There being no others to speak, the public hearing was called to a close at 7:04 p.m.

IN RE: AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 672, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES", AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATES, FEES AND CHARGES FOR THE USE OF THE CITY'S SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS/DAKOTA EXTENSION

Pursuant to a Notice duly published in the Times-West Virginian on February 20, 2006 and February 27, 2006, a public hearing was convened to obtain citizen input on an ordinance providing for an increase in sewer rates.

The Mayor asked if anyone desired to speak to the proposed ordinance.

DAVID SAGO, Utility Manager, spoke in favor of the proposed ordinance. He explained that this was a very important ordinance to continue to be very pro-active and manage our MPDS permit under the Sanitary Sewer Board. He noted this ordinance is basically for the sewer project, to manage our CSO overflows which are mandated throughout long-term control plan and our MPDS permit by the EPA to do so. He then asked Council to support this ordinance so we can continue to meet our MPDS permit and move the project forward.

There being no others to speak, the public hearing was called to a close at 7:05 p.m.

IN RE: CITY OF FAIRMONT'S FISCAL YEAR 2006-2007 CITY BUDGETS: GENERAL FUND, WATER FUND, PARKING FUND, COAL SEVERANCE, AND OUTSIDE AGENCIES

Pursuant to a Notice duly published in the Times-West Virginian on February 20, 2006 and February 27, 2006, a public hearing was convened to obtain citizen input regarding the 2006-2007 City Budgets.

The Mayor asked if anyone desired to speak to the proposed budget.

EILEEN LAYMAN, Finance Director, stated that the budget presented tonight in resolution format is the one that was presented to Council in two consecutive work sessions. She noted that no changes were made to the budget from the work session.

There being no others to speak, the public hearing was called to a close at 7:06 p.m.

ANNOUNCEMENTS

There were no announcements at this meeting.

CITIZENS PETITIONS

IN RE: MARION COUNTY DVD

TINA SHAW, President of the Marion County Chamber of Commerce, presented each Councilmember of a copy of the recently completed Marion County DVD. She reported that this was a Marion County relocation and image DVD and is a product to market and sell Marion County.

IN RE: CHAMBER OF COMMERCE TO SUPPORT MUNICIPAL LEVY

TINA SHAW, President of the Marion County Chamber of Commerce, presented Council with a copy of a resolution that the Chamber adopted in support of the Municipal Levy to be placed on the May 9th primary ballot.

IN RE: MARION COUNTY HOME AND GARDEN EXPO

TINA SHAW reported that this weekend is the Marion County Chamber Home and Garden Expo at the Marion County Armory. She noted that it will start Saturday from 9:00 a.m. to 5:00 p.m. and Sunday from 12:00 p.m. to 4:00 p.m.

CITY MANAGER'S REPORT

IN RE: I-79 CORRIDOR MEETING

The City Manager reported that the summit that was being called in Harrison County between governing bodies along I-79 corridor has been cancelled and will be rescheduled at a later date.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING PART NINE, STREETS, UTILITIES AND PUBLIC SERVICES CODE, OF THE CITY OF FAIRMONT CODE, AND MORE PARTICULARLY CHAPTER THREE, UTILITIES, TO PROVIDE FOR AND ESTABLISH RATES, FEES AND CHARGES FOR THE STORMWATER SYSTEM AND STORMWATER WORKS PROVIDED BY THE CITY OF FAIRMONT STORMWATER UTILITY AND TO FURTHER PROVIDE FOR THE ENFORCEMENT AND COLLECTION THEREOF, WHICH ORDINANCE IS TO BE CODIFIED AS ARTICLE 945, STORMWATER RATES AND CHARGES, OF SAID CODE

Mayor Fantasia entertained a motion for the adoption of an ordinance providing for and establishing Stormwater Utility rates.

Motion:

Councilmember Bussey moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Sears.

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. 1338 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 672, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES", AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATES, FEES AND CHARGES FOR THE USE OF THE CITY'S SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS/DAKOTA EXTENSION

Mayor Fantasia entertained a motion for the adoption of an ordinance increasing sewer rates.

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.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1339 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART SEVEN, BUSINESS AND TAXATION CODE, OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 751 NON-INTOXICATING BEER, SECTION 06 PREREQUISITES TO ISSUANCE, THEREOF, TO PROVIDE AS AN ADDITIONAL PREREQUISITE TO LICENSING THAT THE PROPOSED BUSINESS LOCATION HAS NOT WITHIN THE TWELVE CONSECUTIVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION BEEN THE LOCATION OF THREE (3) OR MORE SEPARATE VIOLATIONS OF ANY OF THE PROVISIONS OF WEST VIRGINIA CODE §60-8-20(c), §60-7-12(a)(3), §60-7-12(a)(6), §11-16-18(a)(3), OR §60-3A-25(a)(2) OR ANY RULE OR REGULATION PROMULGATED THEREUNDER BY THE WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

Mayor Fantasia entertained a motion for the introduction of an ordinance regarding an additional prerequisite to licensing for non-intoxicating beer regarding underage drinking.

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 Warner.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for March 28, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART SEVEN, BUSINESS AND TAXATION CODE, OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 753 PRIVATE CLUBS, SECTION 02 APPLICATION, THEREOF, TO PROVIDE AS A PREREQUISITE TO LICENSING THAT THE PROPOSED BUSINESS LOCATION HAS NOT WITHIN THE TWELVE CONSECUTIVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION BEEN THE LOCATION OF THREE (3) OR MORE SEPARATE VIOLATIONS OF ANY OF THE PROVISIONS OF WEST VIRGINIA CODE §60-8-20(c), §60-7-12(a)(3), §60-7-12(a)(6), §11-16-18(a)(3), OR §60-3A-25(a)(2) OR ANY RULE OR REGULATION PROMULGATED THEREUNDER BY THE WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

Mayor Fantasia entertained a motion for the introduction of an ordinance regarding a prerequisite to licensing for private clubs regarding underage drinking.

Motion:

Councilmember Talerico moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Mainella 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 March 28, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART SEVEN, BUSINESS AND TAXATION CODE, OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 767 RETAIL SALE OF LIQUOR THEREOF TO PROVIDE AS A PREREQUISITE TO LICENSING THAT THE PROPOSED BUSINESS LOCATION HAS NOT WITHIN THE TWELVE CONSECUTIVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION BEEN THE LOCATION OF THREE (3) OR MORE SEPARATE VIOLATIONS OF ANY OF THE PROVISIONS OF WEST VIRGINIA CODE §60-8-20(c), §60-7-12(a)(3), §60-7-12(a)(6), or §11-16-18(a)(3) or §60-3A-25(a)(2) OR ANY RULE OR REGULATION PROMULGATED THEREUNDER BY THE WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

Mayor Fantasia entertained a motion for the introduction of an ordinance regarding a prerequisite to licensing for retail sale of liquor regarding underage drinking.

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 for March 28, 2006.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING PART SEVEN, BUSINESS AND TAXATION CODE, OF THE FAIRMONT CITY CODE, MORE PARTICULARLY, ARTICLE 765 WINE DISTRIBUTORS AND RETAILERS THEREOF TO PROVIDE AS A PREREQUISITE TO LICENSING THAT THE PROPOSED BUSINESS LOCATION HAS NOT WITHIN THE TWELVE CONSECUTIVE MONTHS IMMEDIATELY PRECEDING THE DATE OF APPLICATION BEEN THE LOCATION OF THREE (3) OR MORE SEPARATE VIOLATIONS OF ANY OF THE PROVISIONS OF WEST VIRGINIA CODE §60-8-20(c), §60-7-12(a)(3), §60-7-12(a)(6), OR §11-16-18(a)(3) OR §60-3A-25(a)(2) OR ANY RULE OR REGULATION PROMULGATED THEREUNDER BY THE WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

Mayor Fantasia entertained a motion for the introduction of an ordinance regarding a prerequisite to licensing for wine distributors and retailers regarding underage drinking.

Motion:

Councilmember Warner moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Bussey 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 March 28, 2006.

IN RE: ADOPTION, A RESOLUTION APPROVING CITY OF FAIRMONT'S FISCAL YEAR 2006-2007 CITY BUDGETS: GENERAL FUND, WATER FUND, PARKING FUND, COAL SEVERANCE AND OUTSIDE AGENCIES

Mayor Fantasia entertained a motion for the adoption of a resolution approving the 2006-2007 City Budgets.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Tennant seconded the motion.

The Clerk read the proposed resolution by synopsis for the first time.

Discussion:

Councilmember Mainella noted that he left the work session early when it was being discussed about the full-time City Attorney. He then asked how that was resolved.

The City Manager replied that it was funded in this budget.

Councilmember Mainella stated that he thought we were going to delay the adoption of the budget until we found out about the levy.

The Mayor said no, you adopt the budget but you adapt with the levy.

The City Manager said that you set the levy rates after the levy vote and if the levy passes, this is the budget and if it does not, you amend two line items.

Councilmember Mainella asked if it has to be passed first.

Mr. McDaniel explained that we have a special bill at the legislature allowing us to do that.

Councilmember Mainella asked if we still have to submit the budget to the State Tax Department by a certain day.

The Mayor noted that was correct.

Roll call was taken by the Clerk and the following votes were recorded:

Councilmember Warner	Yes	Councilmember Bussey	Yes
Councilmember Mainella	No	Councilmember Talerico	Yes
Councilmember Sears	Yes	Councilmember Mitchell	Yes
Councilmember Tennant	Yes	Mayor Fantasia	Yes

The Mayor declared the resolution adopted by majority vote of those Councilmembers present.

IN RE: ONE RE-APPOINTMENT, NORTH CENTRAL WEST VIRGINIA COMMUNITY ACTION BOARD, FOR AN INDEFINITE TERM

The Mayor entertained a motion for a re-appointment to North Central West Virginia Community Action Board for an indefinite term.

Motion:

Councilmember Bussey moved to re-appoint Rev. Jeremiah Jasper to the North Central West Virginia Community Action Board for an indefinite term. The motion was seconded by Councilmember Warner.

Roll call was taken by the Clerk.

The Mayor declared Rev. Jeremiah Jasper re-appointed to the North Central West Virginia Community Action Board for an indefinite term by unanimous vote of those Councilmembers present.

ADJOURNMENT

Mayor Fantasia entertained a motion for adjournment.

Motion:

Councilmember Mainella moved to adjourn the meeting. The motion was seconded by Councilmember Sears.

The Mayor declared the meeting adjourned by voice vote of Council at 7:25 p.m.

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
8/31/2006

Entered: August 11, 2006

CASE NO. 06-0348-S-CN

CITY OF FAIRMONT SANITARY BOARD
Application for a certificate of convenience and necessity for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation of certain antiquated collection lines.

CASE NO. 06-0417-S-MA

CITY OF FAIRMONT,
a municipal corporation,
Investigation and suspension of increase in sewer rates and charges as a result of petitions filed in accordance with West Virginia Code §24-2-4b.

RECOMMENDED DECISION

Case No. 06-0348-S-CN

On March 20, 2006, the City of Fairmont Sanitary Board (Board) filed an application, duly verified, for a certificate to construct certain additions and improvements to its sanitary sewer system at Fairmont, Marion County, West Virginia. The Board's proposed upgrades and improvements are to reduce inflow and infiltration and remove, replace and relocate sewage collection lines to comply with its current NPDES permit. The project, to consist of twenty (20) sub-projects, will permit the Board to continue to serve its 10,311 customers, including five (5) bulk treatment customers.

The $6,700,000 project is to be financed, without interim financing, with a twenty (20) year $5,577,760.00 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at

seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act.

Rates, through the City's municipal appeal proceeding, were proposed to increase by 24.72%, resulting in an additional $651,557 in revenues over current levels. The average monthly bill for 4,500 gallons will increase from $14.90 to $18.59 for residential and commercial customers. The proposed rate increase was not to impact the rates currently charged to the Board's customers who are located within the Meredith Springs/Dakota Sewer Line Extension.

By Notice of Filing Order entered on March 20, 2006, the City of Fairmont Sanitary Board was ordered to give notice of the filing of the 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, making due return to the Commission of proper certification of publication immediately thereafter. The Notice provided that anyone desiring to protest or intervene should file a written protest or notice of intervention within thirty (30) days following the date of publication, unless otherwise modified by Commission Order. The Notice of Filing warned that failure to timely protest or intervene could affect one's right to protest aspects of the certificate case, including any associated rate increases or to participate in future proceedings. The Notice went on to state that all protests or requests to intervene should briefly state the reason for the protest or intervention. Further, requests to intervene had to comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. Finally, the Order stated that, if no protests were received within the 30-day period, the Commission could waive formal hearing and grant the application based on the evidence submitted with the application and the Commission's review thereof.

On April 3, 2006, the City of Fairmont Sanitary Board's Petition to Waive Customer Notification Requirement was filed. Specifically, the Board requested waiver of that portion of the customer notification requirement, pursuant to Rule 10.3.d of the Commission's Rules of Practice and Procedure, which requires that, whenever a utility seeks a rate increase in a certificate application, the utility, within thirty (30) days of the date of the Commission's Notice of Filing Order, must have completed the mailing of a separate notice to each of its customers by one (1) or a combination of three (3) methods. The Board represented that no rate increase is sought as part of the certificate application. The Board contended that, by complying with the provisions of West Virginia Code §24-2-4b and Rule 150-2-22.1.c.1.3 of the Commission's Rules of Practice and Procedure regarding the rate ordinance, the Board had notified its customers of the proposed rate increase.

On April 6, 2006, Staff filed a letter indicating its agreement with the Board's request to have the further notice requirement waived.

On April 24, 2006, Staff Attorney Carrie Freeman filed the Initial Joint Staff Memorandum to which was attached the April 20, 2006 Initial Memorandum prepared by James C. Weimer, P.E., Engineer II, Engineering Division, and Scott McNeely, Utilities Analyst II, Water and Wastewater Division. Staff reported that the project, at a total project cost of

$6,700,000, is fully funded and will require a rate increase to support the new debt. Staff recommended that the certificate case be consolidated with the City's pending municipal appeal case since the certificate case's outcome is dependent upon the final rate recommended in the municipal appeal. Staff recommended that the certificate case be referred to the Division of Administrative Law Judges for disposition.

On April 25, 2006, Staff's Motion to Consolidate was filed. Staff requested that, in the interest of judicial economy, the Commission consolidate the instant case, Case No. 06-0348-S-CN, with Case No. 06-0417-S-MA. Staff represented that Case No. 06-0348-S-CN required a rate increase which resulted in the municipal appeal case, Case No. 06-0417-S-MA. Staff recommended that the deadlines for the Final Joint Staff Memorandum in Case No. 06-0348-S-CN, currently June 19, 2006, and the Final Staff Report in Case No. 06-0417-S-MA, currently June 27, 2006, be consolidated to the same date of June 27, 2006.

By Commission Order dated May 3, 2006, the proceeding was referred to the Division of Administrative Law Judges with a decision due date of on or before August 2, 2006, if there have been no public protests to the application within thirty (30) days after the required notice has been provided. If a public protest is received within thirty (30) days after the required notice has been provided, the decision due date for the Division of Administrative Law Judges is on or before October 16, 2006.

On May 8, 2006, the Board submitted the affidavit of publication from the Times-West Virginian, a newspaper published and generally circulated in Marion County, demonstrating that the Notice of Filing for the application was published in that newspaper on March 31, 2006. The 30-day protest period expired on May 1, 2006, with no protests having been filed in response thereto either as of that date or as of the date of this Recommended Decision.

On May 8, 2006, the Board also filed the domestic return receipts evidencing notification to the Board's five (5) bulk rate customers of the application's filing as required by Rule 10.3.d of the Commission's Rules of Practice and Procedure.

Case No. 06-0417-S-MA

On March 14, 2006, the City of Fairmont (City) adopted an ordinance to increase the rates and charges of sewer customers of the City to become effective May 13, 2006.

On March 31, 2006, the Commission received a letter of protest from the Town of Monongah (Town), a resale customer of the City. The Town objected to the proposed rate increase on the basis of discrimination and requested suspension of any sewer increases and Commission review of the ordinance pursuant to Rule 44 of the Commission's Rules for the Construction and Filing of Tariffs under West Virginia Code §24-2-4b.

On April 4, 2006, the Commission invoked its jurisdiction over the City's sewer rates, suspended the proposed rates and charges until September 10, 2006, and referred the proceeding to the Division of

Administrative Law Judges, requiring a decision to be rendered on or before August 11, 2006. The Commission required Staff to submit its report on or before June 27, 2006.

On April 19, 2006, Staff Attorney C. Terry Owen filed the Initial Joint Staff Memorandum, to which was attached the April 14, 2006 Initial Internal Memorandum prepared by Scott McNeely, Utilities Analyst II, Water and Wastewater Division; Karen L. Buckley, Utilities Analyst II, Water and Wastewater Division; and James Spurlock, Technical Analyst I, Engineering Division. Mr. Owen represented that the City's ordinance increases rates and charges for sewer service by approximately twenty-five percent (25%) and will increase annual revenue by approximately $651,557.00. The average residential customer's monthly bill will increase by $3.69, from $14.90 to $18.59. On March 20, 2006, the City also filed an application for a certificate of convenience and necessity to upgrade and improve its collection system to comply with the Federal Clean Water Act. Staff reported that the certificate application was the main reason for the rate ordinance. The City's sewer operating revenue for the fiscal year ending June 30, 2005, was $2,872,193. Staff will perform a class cost of service study of the City's sewer operations based on fiscal year 2004-2005.

On April 21, 2006, Deputy Chief Administrative Law Judge Ronnie Z. McCann issued an Order appointing Deborah Yost VanDervort as the Administrative Law Judge to review this matter, conduct a hearing and render a recommended decision.

By Procedural Order dated April 21, 2006, this proceeding was set for hearing on July 6, 2006, at 10:00 a.m., at the Fairmont City-County Complex, Council Chambers, J. Harper Meredith Building, Room 303, 200 Jackson Street, Fairmont, West Virginia. The City of Fairmont was ordered to publish a Notice of Hearing and provide publication affidavits.

On April 25, 2006, Staff's Motion to Consolidate was filed. Staff requested that, in the interest of judicial economy, the Commission consolidate the instant case, Case No. 06-0417-S-MA, with Case No. 06-0348-S-CN. Staff represented that Case No. 06-0348-S-CN required a rate increase which resulted in the municipal appeal case, Case No. 06-0417-S-MA. Staff recommended that the deadlines for the Final Joint Staff Memorandum in Case No. 06-0348-S-CN, currently June 19, 2006, and the Final Staff Report in Case No. 06-0417-S-MA, currently June 27, 2006, be consolidated to the same date of June 27, 2006.

On May 25, 2006, the Town of Monongah's Motion to Intervene was filed.

Consolidated Cases

By Commission Order entered on June 14, 2006, the Administrative Law Judge's decision due date in Case No. 06-0348-S-CN was extended until August 11, 2006, to coincide with Case No. 06-0417-S-MA.

By Procedural Order dated June 16, 2006, Case No. 06-0348-S-CN and Case No. 06-0417-S-MA were consolidated. The deadline for the Final Joint Staff Memorandum in Case No. 06-0348-S-CN was revised to June 27, 2006, the same date as the due date for the Final Staff Report in Case No. 06-0417-S-MA and the procedural schedule in Case No. 06-0417-S-MA was applied to Case No. 06-0348-S-CN. Additionally, the Town of Monongah's Motion to Intervene in Case No. 06-0417-S-MA was granted.

On June 23, 2006, the Board filed a Request for Consideration of Spending Additions.

On June 27, 2006, Staff Attorneys Freeman and Owen filed the Further Joint Staff Memorandum and wrote that Staff would be unable to meet the June 27, 2006 deadline for the Final Joint Staff Memorandum in the consolidated cases. Legal Staff anticipated that the Technical Staff memorandum would be filed June 29, 2006, and Legal Staff would then file its memorandum as timely as possible.

By Procedural Order dated June 29, 2006, Staff was required to immediately file the Final Joint Staff Memorandum in Case No. 06-0348-S-CN and the Final Staff Report in Case No. 06-0417-S-MA.

On June 29, 2006, Ms. Freeman and Mr. Owen filed the Final Joint Staff Memorandum to which was attached the June 29, 2006 Final Internal Memorandum prepared by Mr. Weimer and Mr. McNeely in Case No. 06-0348-S-CN and the June 29, 2006 Staff Report prepared in Case No. 06-0417-S-MA.

On July 6, 2006, the hearing took place as scheduled. C. Terry Owen, Esquire, and Carrie Freeman, Esquire, represented Commission Staff; Kevin V. Sansalone, Esquire, represented the City of Fairmont; and Thomas R. Michael, Esquire, represented the Town of Monongah. Three (3) exhibits were entered into evidence: Board One (Affidavit of Publication); Staff One (Final Joint Staff Memorandum); and Staff Two (Final Staff Report). Although Staff One and Staff Two were not formally received into evidence at the hearing, both Staff One and Staff Two will be received into evidence through this Recommended Decision. No members of the public attended the hearing to make comment.

On July 7, 2006, Mr. Owen and Ms. Freeman filed the Second Final Joint Staff Memorandum to which was attached the July 6, 2006 Post-Hearing Memorandum prepared by Mr. McNeely, Ms. Buckley and Mr. Weimer. Staff acknowledged that an error existed in its Cost of Service Study. Staff reported that it had adjusted its Staff-Recommended 2 Tariff to reflect that the resale customers will receive no increase. The remaining customer classes will receive an additional increase of approximately four-tenths of one percent (0.04%). The total revenue generated by the class cost of service study will remain at $4,265,961, as outlined on page 56 of Staff's Exhibit 2. Staff attached several modified pages to the exhibit and indicated that it had no other changes to its original recommendations. The Second Final Joint Staff Memorandum and attachment are included as part of the record as Staff Post-Hearing Exhibit 1.

On July 7, 2006, counsel for the Town of Monongah filed a letter indicating that the Town did not object to the filing of the Second Final

Joint Staff Memorandum and Post-Hearing Memorandum and attached exhibits.

On July 14, 2006, the transcript of the July 6, 2006 hearing in this matter was filed.

On July 21, 2006, Staff filed the Joint Stipulation and Proposed Settlement Agreement which was signed by all parties to both proceedings.

EVIDENCE

Prefiled Exhibits

In the Final Internal Memorandum, Mr. Weimer reported that the City serves approximately 9,586 customers in Marion and Taylor Counties, of which 8688 are residential, 875 are commercial and 17 are industrial. The Fairmont water plant is a very large user. The five (5) resale customers are the Whitehall Public Service District, the Kingmill Valley Public Service District, the Greater Paw Paw Public Service District, the Town of Barrackville and the Town of Monongah. (Staff One, p. 3). The project is part of a long-term control plan to limit and, eventually, eliminate all combined sewer overflows. Mr. Weimer indicated that a modified WVNPDES Permit No. 023353 issued on December 21, 2004, did not include the project additions. An application for a new permit modification would be required. The total installed project cost per existing customer is $700 per customer and the cost per annual equivalent domestic unit (EDU) for the 27,500 EDCs billed monthly is approximately $243. Mr. Weimer opined that these costs are very reasonable. The total Operation and Maintenance (O&M) cost additions for the entire system after project completion are estimated at $9,273, an increase of less than one-half percent (½%). (Staff One, p. 4). Mr. Weimer opined that the total engineering cost is high and recommended that the utility employ a completely independent project inspector rather than rely on the engineer's inspector. Staff recommended that the decision to exclude the Hickman Run section, where the line is under some structures, be reviewed as that area appears to have the potential for long-term problems for the City. Staff also expressed concern with the cost of the equalization basin due to the significant increase in concrete cost over the last twenty-four (24) months. (Staff One, p. 5).

Mr. McNeely reported that the project is estimated to cost $6,700,000 and is proposed to be financed with a West Virginia Water Development Authority (WDA) loan in the amount of $5,577,760 at two percent (2%) interest for twenty (20) years and a one percent (1%) administrative fee; a $160,000 Capital Lease for ten (10) years at seven percent (7%) interest; and a Federal Assistance Grant in the amount of $962,240. (Staff One, pp. 5-6). The annual debt service on the loan will be approximately $338,604 and the annual administrative fee will be approximately $32,605. The principal and interest payments on the capital lease equate to an annual debt of $22,293. The WDA loan will require a debt service reserve equal to ten percent (10%) of the annual debt payments. (Staff One, p. 6).

The proposed project will not add any additional customers. An increase of $9,273 to the annual O&M expenses will be made to system O&M

costs beyond those which have already been included in the rates and charges established by the municipal appeal case. (Staff One, p. 6).

As a result of the Class Cost of Service Study, commercial and industrial customers will pay a separate rate from the residential customers and the City's water plant will have a bulk rate in the tariff for discharge water. After project completion, the minimum residential bill will be $28.70 for a bimonthly bill based on 5,000 gallons of usage and the average residential bill for 9,000 gallons bi-monthly will be $51.66, an increase of 74% over the current rates. The Staff-recommended rates will result in the City having total revenues of $4,513,047, and total expenses of $2,284,808. (Staff One, p. 6). The Staff-recommended rates will provide a surplus of approximately $716,001 and a debt coverage ratio of 200.78%. (Staff One, pp. 6-7). Staff calculated the leak adjustment rate to be $0.23 per M gallons. (Staff One, p. 7).

Staff concluded that the project is necessary to improve system operations, reduce inflow and infiltration and meet the City's long-term control plan. The project is convenient because it will eliminate some negative environmental impacts on the Monongahela River at a minimal cost to the City's existing customers. (Staff One, p. 7).

Staff recommended that: the City be granted a certificate of convenience and necessity to construct the proposed project, contingent upon the Applicant's receipt of all necessary federal, state and local permits and approvals for the proposed construction, with copies of the permits and approvals to be forwarded to the Commission immediately upon the City's receipt of such documents; the following project funding be approved: a $5,577,760 WDA loan at two percent (2%) for twenty (20) years with a one percent (1%) administrative fee, a $160,000 Capitol Lease at seven percent (7%) for 10 years, and a $962,240 Federal Assistance Grant; if there is any change in the financing, plans or scope of the project that affects rates, the City be required to notify the Commission and request a reopening of the certificate case for adjustments and approval; if there is a change in project costs that does not affect rates, the City be required to file an affidavit signed by its CPA or bond counsel verifying that fact; the City be required to file bids with the Commission as soon as the bids are tabulated; the City be required to notify the Commission when its Engineer has performed the substantial completion inspection; and Staff's Recommended rates be approved to become effective upon receipt of a final order. (Staff One, pp. 7-8).

The Staff Report, also dated June 29, 2006, described the customer base, physical condition of the plant and the overflow problems. Staff believes the staff/customer ratio is too low for an older sewer system which needs a great deal of attention. Five (5) to six (6) additional employees are needed to have at least one (1) employee for every 300 to 350 customers. (Staff Two, Transmittal Letter, p. 2). The sewer system operates thirty two (32) lift stations which are equipped with older pumps, motors and controls. Many of the older motors are open types which can not survive flooding. Replacement parts are difficult, if not impossible, to locate. Valves may need to be replaced. Controls are also older and repair parts are limited. No lift stations have updated hardware. Staff agrees with system management that these stations should be outfitted with dry run submersible pumps; programmable logic

controllers for motor control; variable speed drives with motors capable of 125% of rated speed for high flow conditions; and Supervisory and Control Data Acquisition (SCADA) equipment to allow full plant control and monitoring of all station parameters. Staff also recommends that all motor control and SCADA hardware should be mounted in a secure above-ground and environmentally-controlled building. (Staff Two, Transmittal Letter, p. 3).

Staff recommends that a minimum of $250,000 be invested over the next eight (8) years to upgrade and properly maintain all lift stations with the initial fund allocated to the larger stations. (Staff Two, Transmittal Letter, p. 3). Staff strongly recommended that as many pumps and motor combinations as possible be standardized to limit future repair and replacement costs and to allow for minimum spares inventory cost. Staff also supports the system management request for one new serviceman to improve daily maintenance and assist with the upgrading of the lift stations. Staff also recommends the purchase of a new tractor-type inspection camera and two (2) additional employees to begin a full system evaluation and repair effort. (Staff Two, Transmittal Letter, p. 4). Staff also fully supports the system management request for a Vactor truck for sewer cleaning operations, two (2) new maintenance vehicles, a new dump truck and an annual $10,000 to cover maintenance, repair and operation costs for all new acquisitions. (Staff Two, Transmittal Letter, pp. 4-5).

Secretarial support and hardware/software equipment are also needed for data recording, maintenance scheduling and inventory control. Staff also recommends that $10,000 be allocated annually for small tool and equipment purchases. (Staff Two, Transmittal Letter, p. 5). Staff also recommends a new engineering employee and the equipment to support that employee to work on the long-term control plan. (Staff Two, Transmittal Letter, p. 6). The treatment plant also needs a new pump; polymer mix tanks and feed pumps need to be replaced; the filter presses and sludge pumps need upgrades; the chlorine hoist needs to be repaired; several screen rakes and grit buckets need to be replaced; the rotating biological contactors need to be placed back in service; computers, equipment and software for equipment maintenance are needed; and extensive upgrades to the main plant lift station are needed. (Staff Two, Transmittal Letter, pp. 6-8).

The Fairmont collection system contains approximately 175 miles of various sizes of force main and gravity lines. A large portion of the system is over 70 years old and made up of clay pipe. Forty-eight percent (48%) of annual plant flows were estimated to be Inflow and Infiltration flows and more than one-half of that is infiltration only, which represents constant leakage. When the infiltration and inflow flows from all of the resale customers are considered, total treated flows due to infiltration and inflow amount to nearly sixty percent (60%) of annual flows. Staff recommends that, beyond the immediate project related to the long-term control plan, the City aggressively pursue line replacements. (Staff Two, Transmittal Letter, p. 8).

Staff recommended an adjustment for the purpose of providing employee pay raises and training and that the City update and improve inventory stock and storage operations. (Staff Two, Transmittal Letter,

p. 9). Staff also recommends that the City, which currently employs approximately twenty four (24) sewer employees, add four (4) full-time employees and one part-time employee. (Staff Two, Transmittal Letter, p. 12).

The City's outstanding long-term debt as of June 30, 2005, consists of: $5,295,000 in 1988 Series Sewerage System Refunding Capital Appreciation Bonds; $473,402 in 2003 Series A Sewer Revenue bonds; and an $87,528 Capital Lease. (Staff Two, Transmittal Letter, p. 12). The City also obtained two (2) separate bank loans for a Ram Jet and vehicles after the test year. The certificate project will require the City to obtain a WDA bond and another Capital Lease. The bond resolution requires the City to fund monthly reserve accounts at an amount of ten percent (10%) of the debt service payment. The monthly renewal and replacement reserve is paid at 2.5% of operating revenues. The annual debt service coverage is required to be funded at 125%. The new bond issue within the certificate filing, along with the 1988 issue, require a debt reserve, but the 2003 Series A bond, which has been fully funded, does not require such a reserve. The Staff Engineer proposed that the City obtain an additional loan for certain items in the amount of $902,500. The City has provided a commitment letter for these improvements from Comvest, for a term of ten (10) years at 5.15%, with annual debt payments of $120,235. (Staff Two, Transmittal Letter, p. 13).

Staff changed the City's rate structure and combined the Dakota/Meredith Springs customers with the City's core customer base. Staff also designed a separate rate for the City's commercial and industrial customers. Staff also formulated a rate for the City's water plant for water discharge. (Staff Two, Transmittal Letter, p. 14).

The proposed project will increase O&M expenses by $9,273 and will require annual debt payments of approximately $360,897. (Staff Two, Transmittal Letter, p. 14).

Staff recommended that the Staff-Recommended 1 Rates go into effect immediately following a final order and that the Staff-Recommended 2 Rates go into effect following substantial completion of the project. (Staff Two, Transmittal Letter, p. 14).

Staff recommended: Approval of Staff's Recommended 1 Rates and Charges to become effective upon a final order; approval of Staff's Recommended 2 Rates and Charges to become effective upon substantial completion of the project; approval of Staff's going level adjustments; approval of the Staff Engineer's recommendations; approval of the recommended $716,000 surplus; that the City purchase the recommended new equipment and implement the programs to improve plant operations, CSO monitoring and maintenance activities; that the City begin a program to identify collection system Inflow and Infiltration; that the City purchase and install the telemetry and SCADA equipment; that the City purchase the dump and Vactor trucks; that the City strictly enforce a grease trap inspection program for all commercial food operations and develop a plan for general public education on the damaging effects of grease in the sewers; that the City hire the new system field employees as soon as practicable; that the City continue and expand its routine

line replacements; that the City continue pursuing large line separation projects; that the City include with its Annual Report a section outlining expenditures for each of the specifically identified categories noted in the system evaluation recommendations; and that the City be required to file semi-annual reports for three (3) successive years outlining the completed repairs/improvements and the associated spending for the work. (Staff Two, Transmittal Letter, pp. 16-17).

Hearing

Commission Staff called James C. Weimer as its first witness. Mr. Weimer testified that the Board has 9,500 customers and the present plan is adequate to serve those customers. (Tr. p. 10). Mr. Weimer recommended that the Board obtain additional staff. The Board's sewer plant is approaching thirty (30) years of service. The Board does not have spare pumps for its lift stations. Many of the larger lift stations are missing pumps and motors, have older electronics and need a lot of clean-up and paint work. The lift stations need a substantial amount of work. There are no replacement parts. (Tr. p. 11).

Mr. Weimer recommended that the Board begin changing all of the motors to submersible motors. Only one (1) lift station has operating hardware, which is approximately seven (7) or eight (8) years old and non-functioning. If the Board is to be able to maintain the requirements of a long-term control plan, the Board will need supervisory control and data acquisition capabilities at all the lift stations through central plant monitoring. (Tr. p. 12). Mr. Weimer recommends upgrading the lift stations and that the motors and pumps be replaced with more efficient models. In order to minimize the amount of spare parts inventory which must be maintained, the Board should try to use as many similar motors and pumps as possible. Mr. Weimer also recommends that the Board do clean-up and repair work and improve the daily maintenance of the lift stations. The lift stations have been maintained by the Board as well as can be expected given the City's financial situation. The lift stations need more money and time invested in them to maintain a professional standard. Mr. Weimer recommends that the Board add 3.5 new employees. Two (2) of these would do lift station work. (Tr. p. 13).

The Board has problems with basement flooding of customers' homes. (Tr. pp. 13-14). Mr. Weimer believes that flooding is an issue in any combined system. The Board will try to eliminate basement flooding through the separation of the storm and sanitary sewers, a long-term control plan of the Board's. (Tr. p. 14).

Mr. Weimer recommends that the Board purchase several new vehicles. (Tr. p. 14). He also recommended that the system supervisor be outfitted with a portable computer and be assisted by a secretary or clerk to permit him to spend more time with the Board's programs for upgrades and maintenance. Immediate improvements need to be made to the treatment plant. (Tr. p. 15). Mr. Weimer listed a number of corrections which the Board needs to make. (Tr. 15-16). The Board has an inflow and infiltration problem because it is a combined system. Mr. Weimer recommended a total annual increase of $820,000. (Tr. p. 16). Mr. Weimer believes his recommendations are not only necessary, but critical,

because many corrections need to be performed immediately to keep the system operating at a high level of service for the Board's customers. (Tr. pp. 16-17). Mr. Weimer believes the Commission should grant the Board the certificate of convenience and necessity for which it applied. (Tr. p. 17).

On cross-examination by Mr. Sansalone, Mr. Weimer agreed that, for the purposes of the Class Cost of Service Study, the City was considered to have five (5) resale customers. Mr. Weimer stated that the flows from the various customers are looked at as the basis for determining what their class cost is. Mr. Weimer opined that the only way to allocate cost properly is to look at the total flows. (Tr. p. 18). Cost is allocated on the basis of flows, not on the basis of the number of customers. (Tr. p. 19). Mr. Weimer lists the inflow and infiltration (I/I) for resale customers as 11.75% of annual plant flow. Storm water is just inflow. (Tr. p. 20). No costs associated with storm water are allocated to bulk customers. (Tr. Pp. 20-21). Flows are allocated based on what percentage of the pipe is utilized by resale customers. Since any storm water from the resale customers goes through a meter, it is effectively all billed. Part of the cost of storm water is allocated to resale customers based on the pipe they use. (Tr. p. 21). Resale customers pay one hundred percent (100%) for the storm water that comes through the resale meter. However, because the resale customers also use the Fairmont system, some of the storm water on that system is allocated to the resale customers. The certificate project is trying to eliminate some of the inflow problem. (Tr. p. 22). The resale customers have been allocated 11.75% of the City system's I/I based on the inch feet of pipe used by them. (Tr. p. 23). The system is 70-plus years old and significant improvements are overdue. Mr. Weimer recommends that the certificate be approved. (Tr. p. 24).

On cross-examination by Mr. Michael, Mr. Weimer agreed that two (2) allocations are made to the resale customers. First, the flow that is delivered by the resale customers to Fairmont's meter is allocated. (Tr. pp. 24-25). Second, 11.75% of the storm water is allocated. Infiltration is allocated only to the Fairmont customers. (Tr. p. 25).

Commission Staff next called Scott McNeely as its witness. Mr. McNeely agreed that the City of Fairmont's ordinance proposed to increase rates by twenty-five percent (25%). (Tr. p. 30). The rate increase is to take effect in two (2) steps. The first would go into effect immediately upon a final order of the Commission. The second would go into effect upon substantial completion of the project. (Tr. p. 31). Mr. McNeely incorporated into his financial recommendations the allocation factors and functionalization that were provided to him by Mr. Weimer. The Staff-recommended rates would provide adequate debt service coverage for the City. Currently, the City debt service reserve requirements are not fully funded. Increased labor costs were also taken into consideration. (Tr. p. 32). The recommended rates and charges will provide sufficient cash flow to adequately fund all the reserves. The Staff-recommended rates will generate a surplus of approximately $716,000. This amount will be sufficient to pay for all of Staff's recommendations for improvements and additional employees. (Tr. p. 33). The City has averaged an annual expenditure of approximately $250,000 for plant additions and upkeep during the past five years. Staff also

combined the Fairmont and Dakota/Meredith Springs residential customers under one (1) tariff. The second set of Staff rates takes into consideration all of the costs, increased O&M and debt service associated with the certificate case. (Tr. p. 34). Residential customers are billed on a bi-monthly basis, while commercial, industrial and resale customers are billed on a monthly basis. (Tr. pp. 34-35). Mr. McNeely opined that the certificate of convenience and necessity in the instant proceeding should be granted. The public convenience and necessity requires the project. (Tr. p. 35).

Additional testimony took place at the hearing. However, in light of Staff's Post-Hearing Exhibit 1, which corrected Staff's original erroneous Class Cost of Service Study, and the post-hearing Joint Stipulation and Proposed Settlement, it is unnecessary to discuss that testimony in this Recommended Decision.

FINDINGS OF FACT

1. The City of Fairmont filed an application for a certificate of convenience and necessity for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation of certain antiquated collection lines. (See, filing dated March 20, 2006).

2. The estimated project cost of $6,700,000 is to be funded by a twenty (20) year $5,577,760.00 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act. (See, filing dated March 20, 2006).

3. Resale customers of the City include the Whitehall Public Service District, the Kingmill Valley Public Service District, the Greater Paw Paw Public Service District, the Town of Barrackville and the Town of Monongah. (See, filing dated March 20, 2006).

4. The City gave notice of the filing of the application for a certificate of convenience and necessity, in accordance with the Commission's requirements, by publishing a Notice of Filing on March 31, 2006, in the Times-West Virginian, and no protests were filed in response thereto. (See, Affidavit of Publication filed May 8, 2006; case file generally).

5. The City adopted an ordinance that increased its sewer rates to become effective on or after May 13, 2006. (See, Ordinance adopted March 14, 2006).

6. A letter of protest to the rate ordinance was filed by a resale customer. (See, filing dated March 31, 2006).

7. The Public Service Commission invoked its jurisdiction in this matter under West Virginia Code §24-2-4b, made the City a Respondent to

this proceeding and, pending investigation, hearing and decision thereon, suspended and deferred the use of said increase rates and charges until 12:01 a.m., September 10, 2006, unless otherwise ordered by the Commission. (See, Commission Order entered April 4, 2006).

8. Case Nos. 06-0348-S-CN and 06-0417-S-MA were consolidated. (See, Commission Order dated June 16, 2006).

9. Case No. 06-0417-S-MA was set for hearing on July 6, 2006, at 10:00 a.m., at the Fairmont City-County Complex, Council Chambers, J. Harper Meredith Building, Room 303, 200 Jackson Street, Fairmont, West Virginia. By Procedural Order dated June 16, 2006, the procedural schedule in Case No. 06-0417-S-MA was applied to Case No. 06-0348-S-CN. (See, Procedural Order dated April 21, 2006, and Procedural Order dated June 16, 2006).

10. The City filed an affidavit of publication reflecting that the Notice of Hearing for the 10:00 a.m. hearing had been published on June 20, 2006, in the Times-West Virginian. (See, Board Exhibit 1).

11. At hearing, Commission Staff acknowledged that an error existed in its Class Cost of Service Study. (See, Tr. pp. 92-96).

12. As a result of the error in the Class Cost of Service Study, Commission Staff submitted a Second Final Joint Staff Memorandum which reallocates costs from the resale customer class to the remaining customer classes, resulting in a further increase to those classes of approximately four-tenths of one percent (0.04%). Commission Staff does not now recommend that the resale rate increase. (See, Staff Post-Hearing Exhibit filed July 7, 2006).

13. All the parties to this proceeding were signatory to a Joint Stipulation and Proposed Settlement Agreement which agreement provided that the certificate of convenience and necessity should be granted in accordance with the Staff's recommendations as set forth in the Final Joint Staff Memorandum dated June 29, 2006, and the City's rates and charges for furnishing sewer service should be approved as recommended by the Commission Staff in its post-hearing Second Final Joint Staff Memorandum dated July 7, 2006. (See, Joint Stipulation and Proposed Settlement Agreement filed July 21, 2006).

14. The City's existing rates and charges are generating an annual cash flow deficit of ($373,252) and an inadequate debt service coverage of 91.41%. The City's bond ordinances require a minimum debt service coverage of 125%. Because of the cash flow deficit, the City lacks the cash necessary to make the improvements and repairs needed to its improvements included in the certificate application. (See, Staff Two, Letter of Transmittal, pp. 3-11 and 13, and Statement H; Tr. pp. 16-17 and 31-32).

15. The Staff Engineer has recommended several additional improvements which will require the City to obtain additional financing. The City has obtained a commitment letter for the total recommended spending of $902,500. The Comvest loan will be for ten (10) years at 5.15% interest with annual debt payments of $120,235. (See, Staff Two).

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16. The proposed project will improve system operations, reduce infiltration and inflow and meet the requirements of the City's long-term control plan. The project will eliminate some negative environmental impacts on the Monongahela River for area residents at a minimal cost to the existing customers of the City Sanitary Board. (See, Staff One, p. 7).

17. The amount of revenue generated by the Staff-recommended pre-project rates will result in a debt service coverage factor of 236.28% and a cash surplus of $716,002, which is sufficient to cover not only normal O&M expense, capital additions and debt service, but also the additional necessary improvements recommended by the Staff Engineer. (See, Staff Two, Statement H).

18. The amount of revenue generated by the Staff-recommended post-project rates will result in a debt service coverage factor of 200.78% and a cash surplus of $716,001, which is sufficient to cover all normal operations and Staff's engineering recommendations, along with the additional O&M expense and debt service for the project which is the subject of Case No. 06-0348-S-CN. (See, Staff Two, Statement H; Staff Post-hearing Exhibit 1).

19. The proposed financing for the project, including the additional funding needed for the Staff Engineer's recommendations, is adequate to cover all of the project costs and cover the Staff Engineer's additional recommendations. (See, Staff One, pp. 6-7; Staff Two, pp. 12-13).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to the City of Fairmont Sanitary Board for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation of certain antiquated collection lines.

2. It is reasonable to approve the financing for the project, which consists of a twenty (20) year $5,577,760.00 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act.

3. It is reasonable to approve the ten (10) year $902,500 Comvest loan at 5.15% interest to comply with the Staff Engineer's recommendations.

4. It is reasonable to adopt the Joint Stipulation and Proposed Settlement Agreement filed on July 21, 2006, in Case Nos. 06-0417-S-MA and 06-0348-S-CN as a resolution of the issues of the certificate proceeding and the rate issues developed in the municipal appeal proceeding.

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5. Under the particular facts and circumstances of these cases, and considering not only the recommendations of Commission Staff, but also the Joint Stipulation and Proposed Settlement Agreement filed on July 21, 2006, in Case Nos. 06-0417-S-MA and 06-0348-S-CN, it is reasonable to disapprove the increased sewer rates and charges contained in the most recent water rate ordinance adopted by the City of Fairmont on March 14, 2006, and to substitute therefore and approve the Staff-Recommended 1 rates, attached hereto as Appendix A, for all sewer services rendered by the City on and after 12:01 a.m., September 10, 2006.

6. Under the facts and circumstances of these cases, and considering not only the recommendations of Commission Staff, but also the Joint Stipulation and Proposed Settlement Agreement filed on July 21, 2006, in Case Nos. 06-06-0417-S-MA and 06-0348-S-CN, it is also reasonable to approve the Staff-recommended 2 rates, as are more particularly set forth in Appendix B attached hereto, to become effective for all services rendered by the City on and after the date of substantial completion of the upgrade and construction project, which is the subject of Case No. 06-0348-S-CN.

ORDER

IT IS, THEREFORE, ORDERED that the application filed herein on March 20, 2006, by the City of Fairmont Sanitary Board for a certificate of convenience and necessity for the construction, operation and maintenance of certain upgrades and improvements within twenty (20) designated areas of the City of Fairmont Sanitary Board's existing collection system, be, and hereby is, granted, contingent upon receipt of all outstanding federal, state and/or local permits and approvals.

IT IS FURTHER ORDERED that the financing for the project, consisting of a twenty (20) year $5,577,760 loan from the West Virginia Water Development Authority at two percent (2%) interest and a one percent (1%) administrative fee; a ten (10) year $160,000 loan from Capitol Lease at seven percent (7%) interest; and a $962,240.00 Federal Assistance Grant from the FY 2005 Appropriations Act, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the City of Fairmont submit a certificate of substantial completion of the project from its engineer as soon as it becomes available.

IT IS FURTHER ORDERED that the City of Fairmont file a copy of the engineer's certified tabulation of bids for the project within ten (10) days of the opening date.

IT IS FURTHER ORDERED that the City of Fairmont file a copy of its revised WVNPDES permit and any other outstanding federal, state and/or local permits/approvals as soon as they are received.

IT IS FURTHER ORDERED that, if there are any changes in the plans and/or scope of the project or if a change in financing affects rates, the City of Fairmont shall obtain Commission approval of such changes prior to commencing construction.

IT IS FURTHER ORDERED that, if there are any changes in the project costs that do not affect rates, the City of Fairmont shall file herein an affidavit duly executed by its accountant verifying that the City's rates and charges are not affected.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, the City of Fairmont comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that the municipal rate ordinance adopted by the City of Fairmont on March 14, 2006, be, and hereby is, disapproved and the Staff-recommended rates and charges attached hereto as Appendix A, be, and hereby are, approved for all sewer services rendered on and after 12:01 a.m., September 10, 2006, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED that the rates and charges attached as Appendix B be, and hereby are, approved for use by the City of Fairmont for all sewer services rendered on and after the date of substantial completion of the project certificated herein.

IT IS FURTHER ORDERED that the City of Fairmont file an original and at least five (5) copies of a revised tariff reflecting the rates set forth in Appendix A within thirty (30) days of the date this Order becomes final. The City shall file an original and at least five (5) copies of a revised tariff for the Appendix B rates within thirty (30) days of the date of substantial completion of the project.

IT IS FURTHER ORDERED that the ten (10) year $902,500 Comvest loan at 5.15% interest to fund the Staff Engineer's recommendations be, and it hereby is, approved.

IT IS FURTHER ORDERED that the City of Fairmont comply with the Staff Engineer's recommendations set out on pages 3-11, 16 and 17 of Staff Two, filed herein on June 29, 2006.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

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.

Deborah Yost VanDervort

Deborah Yost VanDervort
Administrative Law Judge

DYV:s:mal
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FAIRMONT SANITARY BOARD
CASE NO. 06-0417-S-MA

APPROVED RATES - 1

APPLICABILITY
Applicable within the entire territory served.

AVAILABILITY
Available for general domestic, commercial and industrial sewer service.

RATES (residential customers)
First 50,000 gallons of water used per month $5.08 per 1,000 gallons
Next 25,000 gallons of water used per month $4.88 per 1,000 gallons
Next 25,000 gallons of water used per month $4.60 per 1,000 gallons
Next 25,000 gallons of water used per month $4.32 per 1,000 gallons
Over 125,000 gallons of water used per month $4.06 per 1,000 gallons

RATES (commercial and industrial customers)
First 50,000 gallons of water used per month $4.64 per 1,000 gallons
Next 25,000 gallons of water used per month $4.46 per 1,000 gallons
Next 25,000 gallons of water used per month $4.20 per 1,000 gallons
Next 25,000 gallons of water used per month $3.95 per 1,000 gallons
Over 125,000 gallons of water used per month $3.71 per 1,000 gallons

MINIMUM CHARGE - (residential customers)
No bill will be rendered for less than $25.40 bi-monthly, which is the equivalent of 5,000 gallons of usage with a 5/8" meter.

MINIMUM CHARGE - (commercial and industrial customers)
No bill will be rendered for less than $11.60 per month, which is the equivalent of 2,500 gallons of usage with a 5/8" meter.

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE
The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $250.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
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DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement, a disconnection fee of $25.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement, is reconnected, a reconnection fee of $25.00 shall be charged.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

BIMONTHLY OR QUARTERLY BILLING

The above rates and charges may be adjusted to a bimonthly or quarterly basis, providing no lower charges.

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.

BULK SERVICE:

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for bulk rate, resale, public authority or satellite customers.

RATE (resale customers)

All wastewater will be treated at the approved rate of $0.9451 per 1,000 gallons.

RATE (public authority)

All wastewater will be treated at the approved rate of $1.5731 per 1,000 gallons.

LEAK ADJUSTMENT

$0.23 per 1,000 gallons of water is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

CHARGE FOR NON-CONNECTED INDUSTRIAL SERVICE

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for non-connected industrial service.

RATE

The charge for the treatment of industrial waste shall be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

- Ci = charge to industrial users per year
- Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
- Vi = volume of wastewater from industrial users, in gallons per year
- Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
- Bi = weight of BOD from industrial users, in pounds per year
- So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
- Si = weight of total solids from industrial users, in pounds per year

When an industrial user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Sanitary Sewer Board, should not be introduced into the sewer system need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, industrial sewage shall be monitored on a regular basis and, at the conclusion of each fiscal year, based on the aforesaid investigation and audit of the Sanitary Sewer Board records, new cost figures shall be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the industrial user. Based on these audited figures, additional billings covering the past fiscal year shall be made for payment by each industrial user, or

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OF WEST VIRGINIA
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refund given by the Sanitary Sewer Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment shall be made as aforesaid.

FAIRMONT SANITARY BOARD
CASE NO. 06-0417-S-MA

APPROVED RATES - 2

APPLICABILITY
Applicable in the entire territory or area served.

AVAILABILITY
Available for general domestic, commercial and industrial sewer service.

RATES (residential customers)

First 50,000 gallons of water used per month	$5.76	per 1,000 gallons
Next 25,000 gallons of water used per month	$5.53	per 1,000 gallons
Next 25,000 gallons of water used per month	$5.22	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.91	per 1,000 gallons
Over 125,000 gallons of water used per month	$4.61	per 1,000 gallons

RATES (commercial and industrial customers)

First 50,000 gallons of water used per month	$5.26	per 1,000 gallons
Next 25,000 gallons of water used per month	$5.06	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.77	per 1,000 gallons
Next 25,000 gallons of water used per month	$4.49	per 1,000 gallons
Over 125,000 gallons of water used per month	$4.22	per 1,000 gallons

MINIMUM CHARGE - (residential customers)
No bill will be rendered for less than $28.80 bi-monthly, which is the equivalent of 5,000 gallons of usage with a 5/8" meter.

MINIMUM CHARGE - (commercial and industrial customers)
No bill will be rendered for less than $13.15 per month, which is the equivalent of 2,500 gallons of usage with a 5/8" meter.

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE
The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $250.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

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OF WEST VIRGINIA
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DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement, a disconnection fee of $25.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement, is reconnected, a reconnection fee of $25.00 shall be charged.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

BIMONTHLY OR QUARTERLY BILLING

The above rates and charges may be adjusted to a bimonthly or quarterly basis, providing no lower charges.

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.

BULK SERVICE:

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for bulk rate, resale, public authority or satellite customers.

RATE (resale customers)

All wastewater will be treated at the approved rate of $0.9451 per 1,000 gallons.

RATE (public authority)

All wastewater will be treated at the approved rate of $1.7445 per 1,000 gallons.

LEAK ADJUSTMENT

$0.23 per 1,000 gallons of water is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

CHARGE FOR NON-CONNECTED INDUSTRIAL SERVICE

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for non-connected industrial service.

RATE

The charge for the treatment of industrial waste shall be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to industrial users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from industrial users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
Bi = weight of BOD from industrial users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si = weight of total solids from industrial users, in pounds per year

When an industrial user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Sanitary Sewer Board, should not be introduced into the sewer system need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, industrial sewage shall be monitored on a regular basis and, at the conclusion of each fiscal year, based on the aforesaid investigation and audit of the Sanitary Sewer Board records, new cost figures shall be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the industrial

user. Based on these audited figures, additional billings covering the past fiscal year shall be made for payment by each industrial user, or refund given by the Sanitary Sewer Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment shall be made as aforesaid.

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P.S.C. W. Va. No. 13
Canceling P.S.C. W. Va. No. 12

CITY OF FAIRMONT, a municipal utility

OF

FAIRMONT, WEST VIRGINIA

Public Service Commission
of W. VA. Tariff Office
SEP 15 2006
Special Studies Section

RATES, RULES AND REGULATIONS FOR FURNISHING

SEWERAGE AND SEWAGE DISPOSAL SERVICE

at Fairmont and vicinity, Marion County, West Virginia

Filed with **THE PUBLIC SERVICE COMMISSION**
of
WEST VIRGINIA

Issued April 9, 2003

Effective for service rendered on and after September 10, 2006
or as otherwise provided herein

Issued by authority of an order of
The Public Service Commission of West Virginia
in Case No. 06-0417-S-MA and Case No. 06-0348-S-CN
final August 31, 2006 or as otherwise provided herein

Issued by CITY OF FAIRMONT, a municipal utility

By _____

Title
MAYOR

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RULES AND REGULATIONS

I. Rules and Regulations for the Government of Sewerage Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

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(C) APPLICABILITY

Applicable within the entire territory served

AVAILABILITY:

Available for general domestic, commercial and industrial sewer service

(C,I) RATES (residential customers)

First	50,000 gallons of water used per month	$5.08 per 1,000 gallons
Next	25,000 gallons of water used per month	$4.88 per 1,000 gallons
Next	25,000 gallons of water used per month	$4.60 per 1,000 gallons
Next	25,000 gallons of water used per month	$4.32 per 1,000 gallons
Over	125,000 gallons of water used per month	$4.06 per 1,000 gallons

RATES (commercial and industrial customers)

First	50,000 gallons of water used per month	$4.64 per 1,000 gallons
Next	25,000 gallons of water used per month	$4.46 per 1,000 gallons
Next	25,000 gallons of water used per month	$4.20 per 1,000 gallons
Next	25,000 gallons of water used per month	$3.95 per 1,000 gallons
Over	125,000 gallons of water used per month	$3.71 per 1,000 gallons

(C,I) MINIMUM CHARGE - (residential customers)

No bill will be rendered for less than $25.40 bi-monthly, which is the equivalent of 5,000 gallons of usage with a 5/8" meter.

MINIMUM CHARGE - (commercial and industrial customers)

No bill will be rendered for less than $11.60 per month, which is the equivalent of 2,500 gallons of usage with a 5/8" meter.

(C) DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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(C) Indicates change in text
(I) Indicates increase

(C) TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $250.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

(C) DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement, a disconnection fee of $25.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement, is reconnected, a reconnection fee of $25.00 shall be charged.

(N) RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

BIMONTHLY OR QUARTERLY BILLING

The above rates and charges may be adjusted to a bimonthly or quarterly basis, providing no lower charges.

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(C) Indicates change in text
(N) Indicates new

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.

BULK SERVICE

APPLICABILITY

Applicable in the entire territory or area served

AVAILABILITY

Available for bulk rate, resale, public authority or satellite customers

(C) RATE (resale customers)

All wastewater will be treated at the approved rate of $0.9451 per 1,000 gallons.

(I) RATE (public authority)

All wastewater will be treated at the approved rate of $1.5731 per 1,000 gallons.

(C,I) LEAK ADJUSTMENT

$0.23 per 1,000 gallons of water is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

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(C) Indicates change in text
(I) Indicates increase

(C) CHARGE FOR NON-CONNECTED INDUSTRIAL SERVICE

APPLICABILITY

Applicable in the entire territory or area served.

AVAILABILITY

Available for non-connected industrial service

RATE

The charge for the treatment of industrial waste shall be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to industrial users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from industrial users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
Bi = weight of BOD from industrial users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si = weight of total solids from industrial users, in pounds per year

When an industrial user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Sanitary Sewer Board, should not be introduced into the sewer system need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

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(C) Indicates change in text

(C) CHARGE FOR NON-CONNECTED INDUSTRIAL SERVICE (continued)

Thereafter, industrial sewage shall be monitored on a regular basis and, at the conclusion of each fiscal year, based on the aforesaid investigation and audit of the Sanitary Sewer Board records, new cost figures shall be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the industrial user. Based on these audited figures, additional billings covering the past fiscal year shall be made for payment by each industrial user, or refund given by the Sanitary Sewer Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment shall be made as aforesaid.

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COMMISSION
SECRETARY'S OFFICE

(C) Indicates change in text

ORDINANCE NO. 1339

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 672, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES", AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATES, FEES AND CHARGES FOR THE USE OF THE CITY'S SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS/DAKOTA EXTENSION

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 Federal Clean Water Act requires the reduction or elimination of untreated discharges from the sanitary system into the environment resulting from inflow and infiltration (I&I) caused by certain water sources, such as storm and ground water; and

WHEREAS, the City's current National Pollution Discharge Elimination System (NPDES) Permit provides for the operation and maintenance of forty-six (46) combined sewer overflow points (CSO's) resulting from I & I, conditioned upon an attempt to eliminate them or reduce them to an allowable number which requires the City to drastically reduce the number of CSO's currently in existence; and

WHEREAS, in order to comply with the provisions of the Federal Clean Water Act and the NPDES Permit, the City of Fairmont Sanitary Board has adopted Phase I of a long term control plan to reduce the current level of discharge, which phase has been approved by the West Virginia Department of Environmental Protection; and

WHEREAS, upgrades and improvements within twenty (20) designated areas of its existing collection system have been identified as a part of said Phase I. The upgrades and improvements will consist of inflow and infiltration reduction, as well as the removal, replacement, and relocation of sewage collection lines. The lines requiring upgrades and improvements have a history of problems

associated with infiltration, blockages, surcharging or have been constructed over in the past and require relocation; and

WHEREAS, Greenhorne & O'Mara, Inc., have been employed to design biddable plans and specifications for said upgrades and improvements; and

WHEREAS, the cost of construction of the necessary upgrades and improvements to the system has been estimated to be $6,540,000.00 dollars; and

WHEREAS, the following funding sources to fund the construction of said upgrades and improvements have been identified and secured:

WV Water Development Authority Loan @ 2% interest & 1% Admin. Fee for 20 years	$ 5,577,760.00
Federal Assistance Grant from the FY 2005 Appropriations Act	962,240.00
Total	$6,540,000.00

WHEREAS, Gary K. Bennett, CPA, has prepared the financial statements and other additional information as required by Rule 42 for the Construction and Filing of Tariffs of the Public Service Commission of West Virginia which reveal that in order to provide sufficient revenues for the payment of current operating and maintenance costs and to provide debt service coverage relating to the aforementioned funding at a level of 125% as required by bond covenants, it is necessary to increase rates by an average of 24.72% over current levels for all classes of customers, excluding the Meredith Springs -Dakota Extension; and

WHEREAS, the Council for the City of Fairmont, West Virginia, hereby finds that it is necessary and reasonable to increase the bulk rate charged to its resale customers for sanitary sewer service so as to provide sufficient revenue to continue to satisfy operating and maintenance expenses; to meet existing debt service; and to provide increased revenues to fund the necessary capital improvements; 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:

Ordinance No. 672, as amended, be and is hereby further amended and supplemented to provide for and establish rates, fees and charges for sanitary sewer services for all classes of customers as follows: **(Matter to be deleted bracketed; new matter double underlined)**

ARTICLE 925 SEWER CHARGES

SECTION 925.02 RATES, FEES AND CHARGES:

The following schedules of rates, fees, 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's sewage system.

SECTION I. SANITARY SEWER; Schedule No. 1

[(A) INTERIM RATES

(1) APPLICABILITY: Applicable in the entire territory or area served.

(2) AVAILABILITY: Available for general domestic, commercial and industrial sewer service.

(3) RATES: Rates are based upon the metered amount of water supplied. After the first 2,500 gallons, rates shown are per 1,000 gallons used per month.

Gallons	Rate
First 50,000	$2.90
Next 25,000	2.78
Next 25,000	2.63
Next 25,000	2.48
All Over 125,000	2.32

(4) EFFECTIVE DATE: The interim rates hereinabove established shall become effective 60 days from the date of the adoption of this Ordinance and shall continue until the last day of February, 2004, or until the substantial completion of the project as certified by the project engineer, whichever shall first occur.

(B) PERMANENT RATES]

(1) APPLICABILITY: Applicable in the entire territory or area served except the area served by the Meredith Springs/Dakota Extension.

(2) AVAILABILITY: Available for general domestic, commercial and industrial service.

(3) RATES: Rates are based upon the metered amount of water supplied. After the first 2,500 gallons, rates shown are per 1,000 gallons used per month.

Gallons	Rate
First 50,000	$ [3.31] 4.13
Next 25,000	[3.18] 3.96
Next 25,000	[3.00] 3.74
Next 25,000	[2.82] 3.52
All Over 125,000	[2.65] 3.31

[(4) EFFECTIVE DATE; The permanent rates hereinabove established shall become effective on March 1, 2004, or upon the substantial completion of the project as certified by the project engineer, whichever shall first occur.]

[SECTION II:] (4) MINIMUM CHARGE: Upon the effective date of the [interim rates hereinabove established, the minimum charge for sanitary sewer service shall be seven dollars and twenty-five cents ($7.25) per month. Thereafter, upon the effective date of the permanent] rates hereinabove established, the minimum charge for sanitary sewer service shall be [eight dollars and twenty-six cents ($8.28)] ten dollars and thirty-one cents ($10.31) per month.

[SECTION III:] (5) DELAYED PAYMENT PENALTY: [The rate assessed pursuant to the foregoing schedule shall be paid within twenty days of the billing date and a penalty of ten percent (10%) shall be added for any default in payment. Such ten percent (10%) delinquent fee shall be on the net amount due and payable to include prior penalties, if any.] The above rates are net. On all current usage billings not paid within twenty (20) days ten per cent (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:

(A) The manner provided for the collection of delinquent water utility service charges shall be the manner in which delinquent sanitary sewer service charges shall be collected, to-wit, discontinuing water after notice.

(B) All sanitary sewer service fees shall be billed simultaneously and upon the same bill as water utility service.

(C) No customer shall be permitted to pay for only water utility service in order to avoid termination of sewer coverage.

(D) No person, firm or corporation shall receive sewer service without paying the lawful charges therefor, and it shall be the duty of the Finance Director to institute appropriate criminal proceedings in the Municipal Court for all violations.

[SECTION IV:] (6): SERVICE CONNECTION CHARGE: A fee of two hundred and fifty dollars ($250.00) shall be charged new customers connecting to the sewage system. The increase in the service connection charge shall become effective 60 days after the date of the adoption of this

Ordinance.

[SECTION V:] (7): RE-CONNECTION SERVICE CHARGE: In the event water service is terminated due to nonpayment of a sanitary sewer bill, a twenty-five dollars ($25.00) re-connection fee shall be paid in addition to the delinquent sanitary sewer charged prior to restoration of water service. Customers of the Fairmont Water Department shall be exempt from such re-connection fee.

[SECTION VI:] (8): BIMONTHLY OR QUARTERLY BILLING: The above rates and charges may be adjusted to a bimonthly or quarterly basis, providing no lower charges.

[SECTION VII:] (9): 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 [VIII] II: INDUSTRIAL SERVICE; Schedule No. 2:

(1) APPLICABILITY: Applicable in the entire territory or area served.

(2) AVAILABILITY: Available for non-connected industrial service.

(3) RATE: The charge for the treatment of industrial waste shall be calculated on the basis of the following formula:

$$Ci=VoVi-BoBi+SoSi$$

Ci = charge to industrial users per year.
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon.
Vi = volume of waste water from industrial users, in gallons per year.
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per ground.
Bi = weight of BOD from industrial users, in pounds per year.
So = average unit cost of treatment (including sludge treatment) chargeable to total solids, in dollars per pound.
Si = weight of total solids from industrial users, in pounds per year.

When an industrial user is to be served, a preliminary study of its waste, and the cost of transport and treatment thereof, shall be made. Waste containing materials, which in the judgment of the Sanitary Sewer Board should not be introduced into the sewer system, need not be handled by it. The results of this preliminary study shall be used to determine the feasibility of the proposed sewer

service and the charge therefor, based upon the formula set out above. Thereafter, industrial sewage shall be monitored on a regular basis and at the conclusion of each fiscal year, based on the aforesaid investigation and audit of the Sanitary Sewer Board records, new cost figures shall be calculated for use on the above formula. The cost of establishing the monitoring facilities shall be paid by the industrial user. Based on these audited figures, additional billings covering the past fiscal year shall be made for payment by each industrial user, or refund given by the Sanitary Sewer Board, as the case may be. Such audited figures shall then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment shall be made as aforesaid.

SECTION [IX] III: BULK SERVICE; Schedule No. 3:

(1) APPLICABILITY: Applicable in the entire territory or area served.

(2) AVAILABILITY: Available for bulk rate, resale or satellite customers.

(3) RATE: The bulk service rate for the treatment of waste water shall be [$1.2833[1]] $1.18 per 1000 gallons of metered water wastewater treated.

[(4) EFFECTIVE DATE: The bulk service rate hereinabove established shall become effective 60 days from the date of the adoption of this Ordinance and shall continue until changed by subsequent ordinance.]

SECTION IV: EFFECTIVE DATE: The rates, fees and charges herein established shall become effective 60 days from the date of the adoption of this Ordinance and shall continue until changed by subsequent ordinance.

SECTION [X] V : 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 VI: SAVINGS CLAUSE: The provisions of Ordinance No. 1200 duly adopted on the 12th day of November, 2002, and the rates, fees and charges for sanitary sewer services established thereby for the Meredith Springs/Dakota Extension be and are hereby saved and the same shall remain in full force and effect and the provisions of said Ordinance shall in no way be altered or amended by this Ordinance.

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1. The provisions of Ordinance No. 692, as amended by Ordinance No. 1189 established the bulk rate at $1.2833. Said ordinance was the subject of WV PSC Case No. 02-0695-S-MA. By PSC Final Order entered October 16, 2002, the City's Bulk Rate was established at .9451 per 1000 gallons of metered wastewater treated.

[SECTION XI: LIMITATION ON EFFECTIVE DATE OF ORDINANCE OR ANY AMENDMENT: Under no circumstance shall any charge, rate or fee herein established either by the original enactment of this ordinance or by any amendment thereto become effective until after at least forty-five days from the date of the adoption of the ordinance providing therefor.]

Passed this the 14th day of March, 2006.

MAYOR

ATTEST:

CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No. 1339:**

> **AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 672, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES", AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATES, FEES AND CHARGES FOR THE USE OF THE CITY'S SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS/DAKOTA EXTENSION**

was introduced and publicly read in its entirety at the Regular Meeting of Council held February 14, 2006 and was published in the Times-West Virginian on February 20, 2006 and on February 27, 2006, pursuant to Charter provisions Section 2.13(d); a public hearing was held on March 14, 2006. 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 March, 2006.

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 is hereby given the City of Fairmont, a municipal corporation, a public sewer utility, will hold a hearing before the final vote on a proposed ordinance, the principal object of which is the increase of sewer rates for customers of the sewer system operated by the City of Fairmont. The title of such ordinance is:

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 572, AS AMENDED, WHICH ORDIANCNE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES" , AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATE, FEES AND CHARGES FOR THE USE OF THE CITY SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS / DAKOTA EXTENSION.

The final vote on adoption of said proposed ordinance shall be held in the Council Chambers of the City of Fairmont, Third Floor, Room 303, City-County Complex, J. Harper Meredith Building 200 Jackson Street, Fairmont, Marion County, West Virginia on Tuesday March 14, 2006, at 7o'clock p.m.

The proposed rate schedule is as follows

I. General Service:

Rates are based upon the metered amount of water supplied. After the first 2,500 gallons, rates shown are per 1,000 gallons used per month.

Gallons	Rate
First 50,000	$4.13
Next 25,000	3.96
Next 25,000	3.74
Next 25,000	3.52
All over 125,000	3.31

rates hereinabove established, the minimum charge for sanitary sewer service shall be ten dollars and thirty-one cents ($10.31) per month.

Delayed Payment Penalty:

The above rates are net. On all current usage billings not paid within twenty (20) days ten per cent (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.

Service Connection Charge:

A fee or two hundred and fifty dollars ($250.00) shall be charged new customers connecting to the sewage system. The increase in the service connection charge shall become effective 60 days after the date of the adoption of this Ordinance.

Reconnection Service Charge: In the event water service is terminated due to non-payment of a sanitary sewer bill, a twenty-five dollars ($25.00) reconnection fee shall be paid in addition to the delinquent sanitary sewer charged prior to restoration of water service. Customers of the Fairmont Water Department shall be exempt from such re-connection fee.

II. Bulk Service: the bulk service rate for the treatment of waste water shall be $1.18 per 1000 gallons of metered wastewater treated.

Interested parties may appear and be heard at such time with respect to the passage of the proposes ordinance.

Copies of the proposed ordinance are available at the Office of the Clerk of the City of Fairmont, Third Floor, Room 312, City-County Complex- J. Harper Meredith Building, 200 Jackson Street, Fairmont, Marion County, West Virginia.

Times: Feb. 20, 27, 2006

AFFIDAVIT OF PUBLICATION

005947

State of West Virginia

County of Marion, to wit:

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 Hearing was duly published in said newspaper once week for 2 successive weeks (Class II), commencing with the issue of the 20 day of February, 2006, and ending with the issue of the 27 day of February, 2006, and was posted at the front door of the Marion County Courthouse on the 20 day of February, 2006; that said annexed notice was published on the following dates: February 20, 27, 2006

and the cost of publishing said annexed notice as aforesaid was $ _____

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 28 day of Feb, 2006.

My commission expires Jan 24, 2010

OFFICIAL SEAL NOTARY PUBLIC STATE OF WEST VIRGINIA

Notary Public of Marion County, West Virginia

Fairmont, WV 26554

My Commission Expires Jan. 24, 2010

AFFIDAVIT OF MUNICIPAL CLERK

STATE OF WEST VIRGINIA
COUNTY OF MARION, TO WIT:

This day personally appeared before the undersigned Notary Public in and for the County and State aforesaid, Janet Keller, who, being first duly sworn, upon her oath, deposes and says:

1. That she is the Clerk for the City of Fairmont and that as such she has personal knowledge of the facts set forth in this affidavit;

2. That on February 14, 2006, the Council for the City of Fairmont, by motion, proposed, read for the first time, and set for public hearing on March 14, 2006, an ordinance, being Ordinance No. 1339, the purpose of which was to increase the rates and charges for residential, commercial and industrial and resale sanitary sewer service;

3. That on February 15, 2006, she caused to be posted a notice of public hearing on said ordinance at a conspicuous place at the City of Fairmont's business premises, being the location of payment for bi-monthly water bills by the City's customers, a copy of which notice is attached;

4. That on February 20, 2006 and February 27, 2006, she caused to be published, as a Class II legal advertisement, in the Times-West Virginian, a newspaper in general circulation in the City of Fairmont and Marion County, West Virginia, the aforementioned notice of public hearing. A copy of the "Affidavit of Publication" is attached;

5. That on March 14, 2006, following the public hearing, the Council for the City of Fairmont duly adopted the aforementioned ordinance;

6. That for purposes of providing its customers with notice of the rate change, the City of Fairmont has chosen to issue a press release announcing the adoption of the proposed rate change and publish a public notice of change in sewer rates (PSC Form 12) as a Class- II Legal Advertisement. A copy of the notice and request for press release are attached;

7. That the public notice of change in sewer rates is scheduled to be published in the Times-West Virginian on March 20, 2006, and March 27, 2006.

And further affiant sayeth naught.

Janet L. Keller
AFFIANT

Taken, subscribed and sworn to before me, the undersigned authority, this the 17th day of March, 2006.

Susan M. Kisner
NOTARY PUBLIC

My Commission Expires:
October 13, 2013

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SUSAN M. KISNER
1112 Deerfield Drive
Fairmont, West Virginia 26554
My Commission Expires Oct. 13, 2013

NOTICE is hereby given that the City of Fairmont, a municipal corporation, a public sewer utility, will hold a hearing before the final vote on a proposed ordinance, the principal object of which is the increase of sewer rates for customers of the sewer system operated by the City of Fairmont. The title of such ordinance is:

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 672, AS AMENDED, WHICH ORDINANCE IS CODIFIED AS CITY OF FAIRMONT CODE ARTICLE 925 "SEWER CHARGES", AND MORE PARTICULARLY SECTION 925.02 "RATES, FEES AND CHARGES" THEREOF, TO PROVIDE FOR AND ESTABLISH INCREASED RATES, FEES AND CHARGES FOR THE USE OF THE CITY'S SEWAGE SYSTEM FOR ALL CLASSES OF CUSTOMERS, EXCLUDING THE MEREDITH SPRINGS/DAKOTA EXTENSION

The final vote on adoption of said proposed ordinance shall be held in the Council Chambers of the City of Fairmont, Third Floor, Room 303 City-County Complex-J. Harper Meredith Building, 200 Jackson Street, Fairmont, Marion County, West Virginia on Tuesday, March 14, 2006, at 7 o'clock p.m.

The proposed rate schedule is as follows:

I. General Service: Rates are based upon the metered amount of water supplied. After the first 2,500 gallons, rates shown are per 1,000 gallons used per month.

Gallons	Rate
First 50,000	$ 4.13
Next 25,000	3.96
Next 25,000	3.74
Next 25,000	3.52
All Over 125,000	3.31

Minimum Charge: Upon the effective date of the rates hereinabove established, the minimum charge for sanitary sewer service shall be ten dollars and thirty-one cents ($10.31) per month.

Delayed Payment Penalty: The above rates are net. On all current usage billings not paid within twenty (20) days ten per cent (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.

Service Connection Charge: A fee of two hundred and fifty dollars ($250.00) shall be charged new customers connecting to the sewage system. The increase in the service connection charge shall become effective 60 days after the date of the adoption of this Ordinance.

Re-connection Service Charge: In the event water service is terminated due to nonpayment of a sanitary sewer bill, a twenty-five dollars ($25.00) re-connection fee shall be paid in addition to the delinquent sanitary sewer charged prior to restoration of water service. Customers of the Fairmont Water Department shall be exempt from such re-connection fee.

II. Bulk Service: The bulk service rate for the treatment of waste water shall be $1.18 per 1000 gallons of metered wastewater treated.

Interested parties may appear and be heard at such time with respect to the passage of the proposes ordinance.

Copies of the proposed ordinance are available at the Office of the Clerk of the City of Fairmont, Third Floor, Room 312 City-County Complex-J. Harper Meredith Building, 200 Jackson Street, Fairmont, Marion County, West Virginia.

Published as a Class II Legal Ad on the 20th and 27th days of February, 2006.
Post at Customer Service Window and Utility w/copy of ordinance on February 15, 2006.

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, April 24, 2007, at 7:00 p.m., in the Council Chambers located at the first floor of the Public Safety Building, 500 Quincy Street, 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 action 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 CITY OF NOT MORE THAN $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007 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 10, 2007.

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 10, 2007.

Janet Keller
City Clerk

Times: April 12, 19, 2007.

AFFIDAVIT OF PUBLICATION

007076

State of West Virginia
County of Marion, to wit:

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 12 day of April, 2007, and ending with the issue of the 19 day of April, 2007, and was posted at the front door of the Marion County Courthouse on the 12 day of April, 2007; that said annexed notice was published on the following dates: April 12, 19, 2007

and the cost of publishing said annexed notice as aforesaid was $ 142.64.

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 25 day of April, 2007,

My commission expires April 21, 2009.

NOTARY PUBLIC
STATE OF WEST VIRGINIA
Toni A. Rice
200 Quincy Street
Fairmont, WV 26554
My Commission Expires Apr. 21, 2009

Toni A. Rice
Notary Public of Marion County, West Virginia

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

EXCERPT OF MINUTES ON ADOPTION
OF SUPPLEMENTAL RESOLUTION

The undersigned Recorder of City of Fairmont (the "City") hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said City:

*** *** ***

The Council of the City met in regular session, pursuant to notice duly posted, on the 25th day of September, 2007, in Fairmont, West Virginia, at the hour of 7:00 pm.

PRESENT:

S. Scott Sears	- Mayor
John J. Dahlia	- Councilmember
Deborah D. Seifrit	- Councilmember
Phyllis J. Mills	- Councilmember
Charles E. Warner, Jr.	- Councilmember
Robin W. Smith	- Councilmember
Matthew S. Delligatti	- Councilmember
Burley Tennant	- Councilmember
De'Andrea Bussey	- Councilmember
Ronald J. Straight	- Councilmember
Janet Keller	- Clerk
Bruce McDaniel.	- City Manager

ABSENT: None.

Scott Sears, Mayor, presided, and Janet Keller, acted as Clerk. The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

The Mayor presented a proposed Supplemental Resolution in writing entitled:

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 2007 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE

LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon upon motion duly made by Robin Smith and seconded by Burley Tennant, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

*** *** ***

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 11th day of October, 2007.

Janet L. Keller
Clerk

268460.00004

CH916714.1

CERTIFICATION

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

I, Janet L. Keller, 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 City Council minutes from the meetings held on February 14, 2006, March 14, 2006, March 27, 2007, April 10, 2007, and April 24, 2007.

Given under my hand and seal this the 12th day of September, 2007.

Janet L. Keller
CITY CLERK

April 24, 2007

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 24th day of April, 2007, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Sears called the meeting to order.

Councilmembers present were:

First District	John J. Dahlia
Second District	Burley (Butch) Tennant
Third District	Deborah D. Seifrit
Fourth District	Phyllis J. Mills
Fifth District	Charles E. (Chuck) Warner
Sixth District	De'Andrea Bussey
Seventh District	S. Scott Sears
Eighth District	Robin W. Smith
Ninth District	Matthew S. (Matt) Delligatti

Also present were:

City Manager	Bruce McDaniel
City Attorney	Kevin Sansalone
City Planner	Jay Rogers
Acting City Clerk	Lisa Darden

IN RE: OPENING CEREMONIES

Rev. D.D. Meighen of the Central United Methodist Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Mills.

APPROVAL OF MINUTES

Mayor Sears noted that each member of Council had received a copy of the minutes from the regular meeting held on April 10th, 2007 and the minutes from the special meeting that was held on April 17th, 2007. He asked if there were any corrections, deletions, or amendments.

Councilmember Tennant moved to approve the minutes as submitted. Councilmember Dahlia seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

IN 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 $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007A (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 Sears asked if anyone was present to speak for this proposed ordinance.

Mr. McDaniel spoke that this was the third reading of this ordinance and explained the purpose of this ordinance.

Mayor Sears asked if there was anyone to speak against this public hearing.

There being no others to speak, the public hearing was called closed at 7:10 p.m.

ANNOUNCEMENTS

IN RE: VANDALIA HERITAGE FOUNDATION

Councilmember Dahlia reported that the Vandalia Heritage Foundation has a lot of great projects in the process and hopes to have them presented at a work session very soon.

IN RE: CLEAN UP CAMPAIGN

Councilmember Seifrit reminded Council that the clean up will take place on Saturday, April 28th. She also commended Rev. D.D. Meighen on his programs that air Channel 19.

IN RE: RIBBON CUTTING

Councilmember Mills reminded Council of the ribbon cutting that will take place on May 10th at the A-1 Car Wash.

IN RE: UTILITY DEPARTMENT COMMENDED

Councilmember Smith noted that Barbara Core asked him to express to the City how grateful she was when she had a sewage and water problem. He reported the Utility Department was very helpful.

IN RE: PROPOSED WORK SESSION

Councilmember Delligatti asked Rev. D. D. Meighen if he would be interested in having a work session with Council regarding the public access channel.

IN RE: GOVERNOR MANCHIN'S VISIT TO FAIRMONT

Mayor Sears reminded Council that the Mayor will be visiting the Fairmont area on May 10th and visiting several locations. The Mayor has asked Janet Keller to put together an itinerary of the Governor's scheduled visits for next council meeting. Mayor Sears also thanked Councilmember Seifrit for her efforts with the cleanup.

CITIZENS PETITIONS

IN RE: CIVIL CASE CONCERNING MISSION FARMS

FRAN PERRY, 18 Spence Street, addressed council concerning a civil case that has been brought against the families that originally donated the Mission Farms in 1952. The plaintiff is WV Rescue Ministries. The family of Mr. Linn does not recognize the sale of the land. Ms. Perry has asked the new owner of the farm not to move any of the historical buildings that are on the property. They are part of the Historical Society. Ms. Perry is asking for support of the Council. The Council will write a letter of support for this petition.

IN RE: LACK OF RESPONSE BY CITY OFFICIALS TO CITIZEN CONCERNS

SHIRLEY MERCHANT, 417 O'Dell Street, addressed Council in regards to the lack of response by City Officials to citizens concerns. Ms. Merchant is concerned that her yard is torn up and the Police give her attitude when she calls them. Mayor Sears stated that the Lieutenant was present and that he can take this back to the Chief and possibly handle the situation better.

IN RE: TOWING ROTATION

DANNY JONES, Suncrest Boulevard, spoke against the way that cars were being towed in the Fairmont area. He stated he would like for the City to use a rotation schedule.

Mayor Sears stated that Council will take his complaint into consideration.

CITY MANAGER'S REPORT

IN RE: SCHEDULED WORK SESSION

Mr. McDaniel reminded Council of the scheduled work session on May 8th at 5:30pm. He noted that it will be between the Council and the members of MCPARC in an effort to do more things efficiently.

IN RE: MAIN STREET BANQUET

The City Manager also reminded Council of the Main Street Banquet that will take place on May 2nd in Charleston. He noted that it be sponsored by the West Virginia Development Office.

CONSIDERATION OF COUNCIL BUSINESS

IN 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 $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007A (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.

Mayors Sears entertained a motion for adoption of an ordinance Authorizing the Acquisition and Construction of Addition and Improvements to the Existing Public Sewage System.

Motion:

Councilmember Tennant moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Dahlia.

Roll call was taken by the Acting Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1382 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ORDINANCE NO. 1201, WHICH ORDINANCE IS CODIFIED AS ARTICLE 1763 "SIGNS AND SIMILAR STRUCTURES" OF THE FAIRMONT CITY CODE AND MORE PARTICULARLY SECTION 1763.07 PROHIBITED SIGNS THEREOF, TO PROVIDE FOR OR PERMIT, AS A CONDITIONAL USE, AN INFORMATION SIGN BELONGING TO THE STATE OF WEST VIRGINIA OR A POLITICAL SUBDIVISION THAT CONTAINS AN ELECTRONIC SCROLLING MESSAGE.

Mayor Sears entertained a motion for the introduction of an ordinance providing for an amendment to the Sign Ordinance regarding electronic scrolling messages.

Motion:

Councilmember Delligatti 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 Smith.

The Acting Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Acting Clerk to set a public hearing for May 8, 2007.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING FOR THE VACATION AND ABANDONMENT OF AN UNNAMED THIRTY (30) FOOT STREET SITUATE PERPENDICULAR TO MAPLE AVENUE AND EXTENDING TO A PARCEL OF LAND DESIGNATED AS PARCEL 60.1 OF MARION COUNTY TAX MAP 01-34, IN THE CITY OF FAIRMONT, FAIRMONT DISTRICT, MARION COUNTY, WEST VIRGINIA, WHICH STREET IS APPROXIMATELY 199 FEET IN LENGTH, SITUATE AND LYING BETWEEN THOSE CERTAIN PARCELS OF REAL ESTATE IDENTIFIED AS PARCEL NO. 39 OF MARION COUNTY TAX MAP 01-34 AND PARCEL NOS. 38 AND 60 OF SAID TAX MAP, WHICH SAID PARCELS ARE OWNED BY FAIRMONT COMMUNITY DEVELOPMENT PARTNERSHIP, INC., JACK E. MCGINNIS, AND FAIRMONT COMMUNITY DEVELOPMENT PARTNERSHIP, INC., RESPECTIVELY, RESERVING ALL UTILITY RIGHTS.

Mayor Sears entertained a motion for the introduction of an ordinance providing for the abandonment of an unnamed street perpendicular to Maple Avenue.

Motion:

Councilmember Delligatti 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 Smith.

The Acting Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Acting Clerk to set a public hearing for May 8, 2007.

IN RE: ADOPTION, A RESOLUTION PROVIDING AUTHORIZATION TO FILE AN APPLICATION AND TO RECEIVE FUNDING FROM THE DEPARTMENT OF JUSTICE DRUG AND VIOLENT CRIME CONTROL TASK FORCE.

Mayor Sears entertained a motion for the adoption of a resolution providing authorization to file an application and to receive funding from the Department of Justice Drug and Violent Crime Control Task Force.

Motion:

Councilmember Seifrit 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 Acting Clerk read the proposed resolution by synopsis for the first time.

Roll was taken by the Acting Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: FIRE CAPTAIN JIM EMERICK INTRODUCED

Mr. McDaniel introduced Jim Emerick who is serving as Interim Fire Chief until a replacement is named.

IN RE: PLAQUE PRESENTED TO RETIRED FIRE CHIEF GREGG FREME

Mayor Sears presented Gregg Freme with a plaque for his 29 years of dedicated service to the City of Fairmont's Fire Department.

Mayor Sears then stated that there will be a reception held after the meeting to honor Chief Freme.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Delligatti.

The Mayor declared the meeting adjourned by voice vote of Council at 7:55 p.m.

March 27, 2007

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 27th day of March, 2007, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Sears called the meeting to order.

Councilmembers present were:

First District	John J. Dahlia
Second District	Burley (Butch) Tennant
Third District	Deborah D. Seifrit
Fourth District	Phyllis J. Mills
Fifth District	Charles E. (Chuck) Warner
Sixth District	De'Andrea Bussey
Seventh District	S. Scott Sears
Eighth District	Robin W. Smith
Ninth District	Matthew S. (Matt) Delligatti

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
Finance Director	Eileen Layman
Utility Manager	Dave Sago
Police Chief	Steve Cain

IN RE: OPENING CEREMONIES

Councilmember Bussey gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Seifrit.

APPROVAL OF MINUTES

Mayor Sears noted that each member of Council had received a copy of the minutes from the regular meeting held on March 13, 2007. He asked if there were any corrections, deletions, or amendments.

Councilmember Delligatti 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 PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2006-2007 ANNUAL BUDGET: GENERAL FUND

Pursuant to a notice duly published in the Times-West Virginian on March 19, 2007, a public hearing was held to obtain citizen input on an ordinance providing for a General Fund Budget Revision.

Mayor Sears asked if anyone present desired to speak to the proposed ordinance.

EILEEN LAYMAN, Finance Director, stated that this was the third budget revision of the year for the General Fund and will probably do one more that needs to be turned into the State no later than June 15. She then went over the budget revision.

There being no others to speak, the public hearing was called to a close at 7:10 p.m.

ANNOUNCEMENTS

IN RE: TRUMAN SCHOLARSHIP AWARDED

Councilmember Dahlia reported that Councilmember Delligatti won the Truman Scholarship which was a pretty big distinction for anyone because there is only one person in the whole State that receives this scholarship. He then extended congratulations to Councilmember Delligatti.

Councilmember Delligatti thanked Councilmember Dahlia and said the distinction is great; however, he would never have been able to do it if it weren't for being on City Council. He then thanked the citizens of Fairmont and said it was quite an honor.

IN RE: THREE RIVERS FESTIVAL

The Mayor announced that the Three Rivers Festival will be held the weekend of May 24-27, 2007. He noted the parade will be held on Thursday, May 24, and Three Rivers would like to have all Councilmembers participate.

CITIZENS PETITIONS

IN RE: PAVING OF STREETS REQUESTED

ALFREDA BRITTON, 42 Holbert Avenue, addressed Council concerning the condition of streets in the Jackson Addition area. She noted that the whole Jackson Addition area is full of pot holes and you have to drive on the other side of the road on certain streets. She then requested that someone from the City look at the streets.

The Mayor explained that we will be starting to evaluate different streets in the Spring and evaluating streets through the paving program. He said that, hopefully, we will be able to pave some streets.

The City Manager noted that he will have Public Works take a look at those particular streets to see if there is some immediate relief.

CITY MANAGER'S REPORT

IN RE: SCHEDULED WORK SESSION

Mr. McDaniel reported that the next work session will be held on Tuesday, April 10, at 5:00 p.m. to discuss the TIF District for the Sharon Steel project.

CONSIDERATION OF COUNCIL BUSINESS

IN RE; ADOPTION, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2006-2007 ANNUAL BUDGET: GENERAL FUND

Mayor Sears entertained a motion for the adoption of an ordinance providing for a General Fund Budget Revision.

Motion:

Councilmember Dahlia moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Tennant.

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. 1379 was duly adopted.

IN 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 $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007 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 Sears entertained a motion for the introduction of an ordinance providing for a Sewer Revenue Bond authorizing improvements to the existing public sewerage system.

Motion:

Councilmember Smith 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 Delligatti.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for April 24, 2007.

The City Manager noted there were a couple of ordinances on the agenda tonight for introduction that deal with the Sanitary Sewer project and there were some substantive changes that had to be made to the ordinance as a request of the funding agency, West Virginia State Revolving Fund, changing the way they are going to fund the program and our Charter requires anytime there is a substantive change, you have to re-introduce the ordinance instead of moving on to the second reading and public hearing.

TOM AMAN, Bond Counsel with Steptoe and Johnson, stated that since the last meeting, the SRF has determined that we cannot actually fund the City's 1988 Bond Reserve Account which has an existing deficiency. He said that because we cannot fund that Reserve Account, we need to now issue these bonds on the subordinate basis to the 1988's which will hold a first lien position basically until such time as we can fund up the Reserve Account or until those bonds are paid off. He went on to say at which time the 2003 Bonds and the bonds we are issuing now will then move up to a first lien position based on parity with each other and the Reserve Account will be funded at that time or they will be paid off. He noted that was a substantial enough modification to the ordinance to go ahead a make those revisions and bring it before Council for first reading to start the process again.

Mr. McDaniel added that the decision not to fund that Reserve Account was based on the fact that the original bonds were a new money issue in 1981 and they actually pay off in 2011. He went on to say that the State of West Virginia SRF decided they were not going to tie up their funds for that period of time so they would take a subordinate position on these particular bonds.

Mr. Aman stated at the stage that we were going to fund the Reserve Account, you cannot do that on the tax-exempt basis so those bonds were actually going to be issued on a taxable basis and now that we are not funding the Reserve Account, these bonds will be tax-exempt. He then said that when you have tax-exempt bonds, you want to adopt a reimbursement resolution so that the Sanitary Sewer Board can go back and be reimbursed and the City can be reimbursed for any costs incurred with connection this project.

The Mayor said that the construction additions on these improvements are mandated through the Federal Government.

Mr. McDaniel replied this is the first series of improvements that have to be done to the Sanitary Sewer system because we are a combined sewer overflow community and these improvements

are spelled out in our NPDES permit, which is the Federal permit that allows us to discharge wastewater into the river. He noted that it was a Federal mandate.

The Mayor stated that it was something that we do not set the rates on then the Federal government will come in at a later time and set rates which, of course, could be higher.

The Manager noted that it could be as much as one and one-half percent of median household income.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE FAIRMONT CITY CODE

Mayor Sears entertained a motion for the introduction of an ordinance to approve current replacement pages for the Fairmont City Code.

Motion:

Councilmember Tennant moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. Councilmember Dahlia 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 April 10, 2007.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING, RATIFYING, APPROVING AND CONFIRMING THE LEASE OF THAT CERTAIN PARCEL OF REAL ESTATE, TOGETHER WITH THE IMPROVEMENTS THEREON, OWNED BY THE CITY OF FAIRMONT, SITUATE AT 211 MONROE STREET, FORMERLY POLICE & CENTRAL FIRE STATION, IN THE CITY OF FAIRMONT, FAIRMONT DISTRICT, MARION COUNTY, WEST VIRIGNIA AND BEING PARCEL NO. 156, OF MARION COUNTY TAX MAP 01-01, TO THE FAIRMONT-MARION COUNTY TRANSIT AUTHORITY, A PUBLIC CORPORATION

Mayor Sears entertained a motion for the introduction of an ordinance approving the lease agreement for the Fairmont-Marion County Transit Authority to lease the property located at 211 Monroe Street.

Motion:

Councilmember Smith 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 Mayor asked the Clerk to set a public hearing for April 10, 2007.

The City Manager noted that this is actually temporary quarters for the Transit Authority while their facility is under renovation.

IN RE: ADOPTION, A RESOLUTION PROVIDING AUTHORIZATION TO ENTER INTO A CONTRACTUAL AGREEMENT AND TO RECEIVE FUNDING FROM THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF MOTOR VEHICLES

Mayor Sears entertained a motion for the adoption of a resolution to receive grant funds in the amount of $28,500 for six (6) In-Car Cameras for the Police Department.

Motion:

Councilmember Smith 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 Mills.

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.

Councilmember Warner asked about the cost of the cameras and how the cost is established.

STEVE CAIN, Chief of Police, explained that the State Purchasing set the price at $4,750.00 and they set standards to meet. He said that you can set them up to three minutes, maybe longer, and when you start the car the system is activated but when you hit the blue lights, it automatically starts recording. He then said that you can set the time on it where maybe an incident occurred maybe a minute or up to three minutes prior to turning on the blue lights, it is on the system.

Councilmember Delligatti asked the Chief if he will be reviewing the footage.

The Chief said, like the system in this building, anytime we have an event, it is available 24 hours seven days a week. He noted the system in this building has been valuable to the Police Department on at least 3 occasions since they have been in the building. He said that it is good evidence.

Councilmember Dahlia asked how long it records for.

The Chief said he forgets the hours, but it is over weeks.

IN RE: ADOPTION, A RESOLUTION PROVIDING FOR AUTHORIZATION TO FILE AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE WEST

VIRGINIA EMERGENCY SHELTER GRANTS PROGRAM (SCOTT PLACE SHELTER)

Mayor Sears entertained a motion for the adoption of a resolution for Scott Place Shelter.

Motion:

Councilmember Robin 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 Dahlia.

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 PROVIDING FOR AUTHORIZATION TO FILE AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE WEST VIRGINIA EMERGENCY SHELTER GRANTS PROGRAM (HOPE, INC.)

Mayor Sears entertained a motion for the adoption of a resolution for Hope, Inc.

Motion:

Councilmember Warner 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 Bussey.

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 OF THE COUNCIL FOR THE CITY OF FAIRMONT AND DECLARATION OF OFFICIAL INTENT TO AUTHORIZE THE EXECUTION AND DELIVERY OF A MASTER LEASE PURCHASE AGREEMENT TO BE PLACED WITH CHASE LEASING COMPANY, INC., LESSOR, FOR THE PURCHASE OF CERTAIN WATER PLANT EQUIPMENT

Mayor Sears entertained a motion for the adoption of a resolution providing for a lease/purchase with Chase Leasing Company for Water Filtration Plant Membranes.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Mills seconded the motion.

The Clerk read the proposed resolution by synopsis for the first time.

Councilmember Bussey asked what the $5,000.00 is that will be paid for outside of the transaction.

Eileen Layman replied the price of the membranes were first quoted at $713,000.00; however, when she went shopping for the financing she actually asked for quotes on $713,000.00 so the Water Fund will pay the $5,000.00 out of its operating account.

Councilmember Warner asked about the results of the installation of those new units.

Mr. McDaniel replied that the new units were installed over the course of the last couple of weeks and they are up and operating and have given us the capacity that we need to get through some of the events that we have had in the past.

Councilmember Dahlia asked at what level we are producing water each day.

The Manager replied that you only produce what you need to keep the tanks full and each day our tanks are filled.

DAVID SAGO, Utility Manager, said the production is back to normal.

The Mayor stated that he has asked the City Manager and the Utility Manager to make sure what they are purchasing, that we will not have this problem in the near future again. He then said that if you look around the State of West Virginia, Salem has had this problem, several areas in Harrison County, Putnam County, Kanawha County, and from what we have all learned through this situation in the last month, it seems like this problem has come up throughout the State.

The City Manager said that without the installation of these membranes, it would have been very hard to recover from the event that we experienced. He then said that now we have this additional membrane capacity, it is going to enable us to handle adverse water conditions better. He then noted that there are some long term solutions at the plant that need to be evaluated and made.

Councilmember Bussey asked if they will be able to test the full capacity up to 12 MGD per day and, if so, at what point.

Mr. McDaniel replied yes; however, it will not be a situation where you are running 12 MGD a day through that plant because you need to do that for a sustained period and obviously we only have seven million gallons of storage so we would be running tanks over. He then said that it will be done in a systematic way.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION STATING THE REASONABLE EXPECTATION OF THE CITY COUNCIL OF THE CITY OF FAIRMONT TO REIMBURSE THE CITY FOR CAPITAL EXPENDITURES IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF WATERWORKS SYSTEM FACILITIES AND IMPROVEMENTS MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT REVENUE BONDS OR OTHER OBLIGATIONS AND RATIFYING THE ADOPTION OF THAT CERTAIN REIMBURSEMENT RESOLTUION ON MARCH 13, 2007

Mayor Sears entertained a motion for the adoption of a Reimbursement Resolution to reimburse the city for capital expenditures with the waterworks system.

Motion:

Councilmember Delligatti moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Mills seconded the motion.

The Clerk read the proposed resolution by synopsis for the first time.

Mr. McDaniel noted this was the same resolution Council passed at the March 13, 2007 meeting in conjunction with the resolution that approved the financing for the membranes; however, we have to go ahead and pass a new reimbursement resolution so that we can reimburse ourselves for costs out of a bond issue if we convert this financing to bonds because at the last meeting this was not on the agenda.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION STATING THE REASONABLE EXPECTATION OF THE CITY COUNCIL OF THE CITY OF FAIRMONT TO REIMBURSE THE CITY FOR CAPITAL EXPENDITURES IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF SEWERAGE SYSTEM FACILITIES AND IMPROVEMENTS MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT REVENUE BONDS OR OTHER OBLIGATIONS

Mayor Sears entertained a motion for the adoption of a Reimbursement Resolution to reimburse the city for capital expenditures with the sewerage system.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Mills 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.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Dahlia.

The Mayor declared the meeting adjourned by voice vote of Council at 7:50 p.m.

April 10, 2007

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 10th day of April, 2007, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Sears called the meeting to order.

Councilmembers present were:

First District	John J. Dahlia
Second District	Burley (Butch) Tennant
Third District	Deborah D. Seifrit
Fourth District	Phyllis J. Mills
Fifth District	Charles E. (Chuck) Warner
Sixth District	De'Andrea Bussey
Seventh District	S. Scott Sears
Eighth District	Robin W. Smith
Ninth District	Matthew S. (Matt) Delligatti

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Attorney	Kevin Sansalone
City Planner	Jay Rogers

IN RE: OPENING CEREMONIES

Rev. Gene Lassiter of the First Presbyterian Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Mills.

APPROVAL OF MINUTES

Mayor Sears noted that each member of Council had received a copy of the minutes from the regular meeting held on March 27, 2007. He asked if there were any corrections, deletions, or amendments.

Councilmember Tennant moved to approve the minutes as submitted. Councilmember Bussey seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

IN RE: PRESENTATIONS BY THE MAYOR

Mayor Sears presented a Certificate of Achievement to Christopher Layman with Troop 16 for obtaining the rank of Eagle Scout.

The Mayor then presented a Certificate of Achievement to Councilmember Delligatti in honor of his achievement as the 2007 Truman Scholar from West Virginia University.

PUBLIC HEARINGS

IN RE: AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE FAIRMONT CITY CODE

Pursuant to a notice duly published in the Times-West Virginian on April 2, 2007, a public hearing was held to obtain citizen input on an ordinance providing for an ordinance to approve and adopt current replacement pages to the City Code.

Mayor Sears asked if anyone present desired to speak to the proposed ordinance.

The Clerk stated that this ordinance will adopt the 2007 replacement pages for the City Code. She noted that all ordinances that were adopted in 2006 were codified into these replacement pages.

There being no others to speak, the public hearing was called to a close at 7:10 p.m.

IN RE: AN ORDINANCE AUTHORIZING, RATIFYING, APPROVING AND CONFIRMING THE LEASE OF THAT CERTAIN PARCEL OF REAL ESTATE, TOGETHER WITH THE IMPROVEMENTS THEREON, OWNED BY THE CITY OF FAIRMONT, SITUATE AT 211 MONROE STREET, FORMERLY POLICE & CENTRAL FIRE STATION, IN THE CITY OF FAIRMONT, FAIRMONT DISTRICT, MARION COUNTY, WEST VIRIGNIA AND BEING PARCEL NO. 156, OF MARION COUNTY TAX MAP 01-01, TO THE FAIRMONT-MARION COUNTY TRANSIT AUTHORITY, A PUBLIC CORPORATION

Pursuant to a notice duly published in the Times-West Virginian on April 2, 2007, a public hearing was held to obtain citizen input on an ordinance providing for an ordinance to approve the lease of 211 Monroe Street to the Fairmont-Marion County Transit Authority.

Mayor Sears asked if anyone present desired to speak to the proposed ordinance.

The City Manager stated that this lease is so that the Fairmont-Marion County Transit Authority can operate their facility out of the old Police and Fire Station at 211 Monroe Street for approximately the next year while their facility is under construction and renovation.

There being no others to speak, the public hearing was called to a close at 7:12 p.m.

ANNOUNCEMENTS

IN RE: CONGRATULATIONS EXTENDED TO CITY PLANNER JAY ROGERS

Councilmember Dahlia extended congratulations to City Planner Jay Rogers for being highlighted in a statewide newspaper called "The State Journal" as a Generation Next awardee. He noted that it was an important honor and great for the City because he is probably the only City Planner to receive this award.

IN RE: WEST VIRGINIA SHINE DAY

Councilmember Seifrit announced that West Virginia has a "West Virginia Shine" every April and some of the City Councilmembers are going to join in West Virginia Shine and try to help get Maple Grove Cemetery cleaned up. She noted there was a lot of work to be done and a planning session will be held on Thursday, April 12.

IN RE: WATER RUNOFF COMPLAINT/TREE COMPLAINT

Councilmember Warner reported that Shirley Merchant of 417 O'Dell Street asked him to look into a water runoff problem that she contends is in front of her residence. He then reported that Edie Evans of 625 O'Dell Street pointed out a large tree across the highway beyond O'Dell and Moyer Way. He asked that both complaints be looked into.

IN RE: NEIGHBOR WORKS PROCLAMATION REQUESTED

Councilmember Bussey stated that the Fairmont Community Development Partnership will be sponsoring Neighbor Works Week for June 2-9, 2007. He said that they are requesting that a proclamation be issued by the Mayor.

IN RE: RALLY AT WINDMILL PARK

Councilmember Bussey announced that the North Central West Virginia Christian Council will be sponsoring a rally at Windmill Park on April 28 beginning at 1:00 p.m.

IN RE: GUESTS INTRODUCED

Councilmember Delligatti stated that he volunteers with "Big Brothers Big Sisters" and he was honored to have here tonight his little brother, Mataio Swain. He said that he was nine years old, in the third grade at Cheat Lake Elementary School and had played football this year for 612 MAC. He then introduced his big brother, Anthony Delligatti, who will be graduating this year from WVU.

IN RE: NATIVE SON OF FAIRMONT UP FOR WVU PRESIDENT

Councilmember Delligatti stated that WVU will be naming a new President soon and we have a native son of Fairmont up for the position.

IN RE: RIBBON CUTTING FOR BUSINESES

The Mayor stated that several weeks ago Council talked about getting involved in ribbon cuttings on new businesses that are opening in Fairmont. He then said that it would be great if Council could attend some of these events to show the community that we are involved. He then reported ribbon cuttings for the following businesses:

Wright Hot Dogs, East Park Avenue, April 27, at 5:00 p.m.
A-1 Car Wash, Bellview Boulevard, May 10, at 12:00 p.m.

CITIZENS PETITIONS

There were no petitions for this meeting.

CITY MANAGER'S REPORT

IN RE: FIRE CHIEF GREGG FREME ANNOUNCED HIS RETIREMENT

The City Manager reported that Fire Chief Gregg Freme will be retiring on April 22 after 29 years of service to the City of Fairmont. He then asked Council to put together some special recognition for the Chief for the next meeting.

The Mayor asked Council if they would like to have a little reception after the next Council meeting in honor of the Chief's retirement.

It was the consensus of Council to have a reception after the April 24 meeting.

IN RE: ACCOUNT CLERK JEAN HARNEY RETIRED

The City Manager also announced that Account Clerk Jean Harney retired on April 5 after 24 years of service.

IN RE: PARKING ORDINANCE TO BE PULLED FROM AGENDA

Mr. McDaniel reported that on this agenda is an ordinance for introduction for parking rates at the Mid-City Parking Lot. He noted this was the result of some action that was taken at the last Parking Authority meeting. He went on to say that during the budgetary process Council talked about our efforts to make the parking garage a self-sustaining operation of the City. He then said that there was some talk about what we are going to do with some certain City properties and Council would like to have a work session with the Parking Authority prior to making any changes to the parking rates. He then said that it will be prudent to pull this item off the agenda, schedule a work session with the Parking Authority and then the Parking Authority can tell Council where the parking system is going and Council can share with the Parking Authority of what we want to do with some of the City-owned properties.

Councilmember Dahlia noted this was a great idea from the Mayor about figuring out re-uses for some of these properties and maybe to even generate revenues from these properties to do other things.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE FAIRMONT CITY CODE

Mayor Sears entertained a motion for the adoption of an ordinance to approve and adopt current replacement pages to the City Code.

Motion:

Councilmember Tennant moved for the adoption of the proposed ordinance. Councilmember Delligatti 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. 1380 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AUTHORIZING, RATIFYING, APPROVING AND CONFIRMING THE LEASE OF THAT CERTAIN PARCEL OF REAL ESTATE, TOGETHER WITH THE IMPROVEMENTS THEREON, OWNED BY THE CITY OF FAIRMONT, SITUATE AT 211 MONROE STREET, FORMERLY POLICE & CENTRAL FIRE STATION, IN THE CITY OF FAIRMONT, FAIRMONT DISTRICT, MARION COUNTY, WEST VIRIGNIA AND BEING PARCEL NO. 156, OF MARION COUNTY TAX MAP 01-01, TO THE FAIRMONT-MARION COUNTY TRANSIT AUTHORITY, A PUBLIC CORPORATION

Mayor Sears entertained a motion for the adoption of an ordinance approving the lease of the property at 211 Monroe Street to the Fairmont-Marion County Transit Authority.

Motion:

Councilmember Dahlia moved for the adoption of the proposed ordinance. Councilmember Mills 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. 1381 was duly adopted.

IN RE: SECOND READING, 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 $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007 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 Sears entertained a motion for the second reading of an ordinance providing for a Sewer Revenue Bond authorizing improvements to the existing public sewerage system.

Motion:

Councilmember Smith moved for the second reading of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. The motion was seconded by Councilmember Bussey.

The Clerk read the proposed ordinance by synopsis for the first time.

The Mayor asked the Clerk to set a public hearing for April 24, 2007.

IN RE: SUSPEND RULES AND AMEND AGENDA

Mayor Sears entertained a motion to suspend the rules and amend the agenda to delete Item #4 from the agenda regarding parking rates for the Mid-City Parking Lot.

Motion:

Councilmember Delligatti moved to suspend the rules and amend the agenda to delete Item #4 from the agenda regarding parking rates for the Mid-City Parking Lot. Councilmember Smith seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the motion adopted by unanimous vote of Council and Item #4 was deleted from the agenda.

IN RE: ADOPTION, A RESOLUTION PROVIDING APPROVAL OF A DECLARATION OF INTENT TO ISSUE TAX INCREMENT FINANCING BONDS TO FINANCE CERTAIN REDEVELOPMENT PROJECTS AND REIMBURSE EXPENDITURES MADE PRIOR TO SUCH ISSUANCE

Mayor Sears entertained a motion for the adoption of a resolution permitting the reimbursement to the City with the proposed Project of "Volcano Island".

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution. The motion was seonded by Councilmember Smith.

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 PROVIDING FOR SUBMISSION OF A TAX INCREMENT FINANCING APPLICATION, DESIGNATING THE CITY MANAGER AS THE CITY'S REPRESENTATIVE IN CONNNECTION WITH TAX INCREMENT FINANCING MATTERS, AND SETTING A DATE FOR A PUBLIC HEARING RELATING TO SUCH APPLICATION

Mayor Sears entertained a motion for the adoption of a resolution reflecting the acceptance by the City for the consideration of the approval of a Tax Increment Financing Application and to set a public hearing on the proposed establishment of the Redevelopment District.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution. The motion was seonded by Councilmember Warner.

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 PROCLAIMING APRIL 2007 AS FAIR HOUSING MONTH IN THE CITY OF FAIRMONT

Mayor Sears entertained a motion for the adoption of a resolution proclaiming April 2007 as Fair Housing Month in the City of Fairmont.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution. The motion was seonded by Councilmember Smith.

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: TWO APPOINTMENTS, ICC BOARD OF APPEALS, TERMS TO END APRIL 14, 2011

Mayor Sears entertained a motion for two appointments to the ICC Board of Appeals.

Motion:

Councilmember Bussey moved to re-appoint John Sanford and Sid Absher to the ICC Board of Appeals for terms ending April 14, 2011. The motion was seconded by Councilmember Smith.

Roll call was taken by the Clerk.

The Mayor declared John Sanford and Sid Absher re-appointed to the ICC Board of Appeals for terms ending April 14, 2011.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Mills.

The Mayor declared the meeting adjourned by voice vote of Council at 7:30 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: October 11, 2007

(See Reverse for Instructions)

ISSUE: City of Fairmont, Sewer Revenue Bonds, Series 2007 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: October 11,2 007

CLOSING DATE: October 11, 2007

ISSUE AMOUNT: $ 5,577,760

RATE: 2%; Administrative Fee 1.0%

1ST DEBT SERVICE DUE: June 1, 2009

1ST PRINCIPAL DUE: June 1, 2009

1ST DEBT SERVICE AMOUNT: $84,765.80

PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Steptoe & Johnson PLLC
Contact Person: Vincent A. Collins, Esquire
Phone: (304) 598-8161

UNDERWRITERS COUNSEL: Jackson Kelly PLLC
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK: The Huntington National Bank
Contact Person: Margaret Byrd
Phone: (304) 363-5800

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: Mike Johnson, P.E.
Function: Program Manager
Phone: (304) 926-0499

DEPOSITS TO MBC AT CLOSE:
By: ____ Wire
____ Check

____ Accrued Interest: $_____
____ Capitalized Interest: $_____
____ Reserve Account: $_____
____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE
By: ____ Wire
____ Check
____ IGT

____ To Escrow Trustee: $_____
____ To Issuer $_____
____ To Cons. Invest. Fund $_____
____ To Other: _____ $_____

NOTES: Reserve account to be funded over 10 years.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED: _____
TRANSFERS REQUIRED: _____

CH907877.1

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 2007 A
(West Virginia SRF Program)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

The Huntington National Bank, 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 April 24, 2007, and a Supplemental Resolution adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated October 11, 2007, issued in the original aggregate principal amount of $5,577,760 (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 11th day of October, 2007.

THE HUNTINGTON NATIONAL BANK

By: Margaret M Byrd
Its: Authorized Officer

268460.00004

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

ACCEPTANCE OF DUTIES AS REGISTRAR

The Huntington National Bank, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Fairmont Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated October 11, 2007, issued in the original aggregate principal amount of $5,577,760 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 11th day of October, 2007.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

268460.00004

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 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 2007 A (West Virginia SRF Program), of the Issuer, dated October 11, 2007, in the principal amount of $5,577,760, numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of Huntington National Bank, as Registrar.

WITNESS my signature on this 11th day of October, 2007.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

268460.00004

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 11th day of October, 2007, by and between the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $5,577,760 Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted April 24, 2007, and a Supplemental Resolution of the Issuer duly adopted September 25, 2007 (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.

[Remainder of Page Intentionally Blank]

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

268460.00004

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See attached)

Private Financial Group
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date October 11, 2007

City of Fairmont
Account Number 6089001809

City of Fairmont
Sewer Revenue Bonds, Series 2007 A
C/o John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

****

FEE CALCULATION FOR October, 2007

****

TOTAL AMOUNT	$	500.00
TOTAL DUE	$	500.00

* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT *
* IS NOT RECEIVED, FEES WILL DEBUCTED FROM THE PLAN *
* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: BARRY. . *
* .. GRIFFITH, PO BOX 633, CHARLESTON, WV 25322-0633 . . . . . .*

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304)348-5035

Division of Water and Waste Management
414 Summers Street, Second Floor
Charleston, West Virginia 25301
Phone (304) 558-4086
Fax (304) 558-5903

West Virginia Department of Environmental Protection

Bob Wise
Governor

Stephanie R. Timmermeyer
Cabinet Secretary

April 30, 2004

BRUCE MCDANIEL, CITY MGR.
FAIRMONT CITY OF
PO BOX 1428
FAIRMONT, WV 26554

CERTIFIED RETURN RECEIPT REQUESTED

Dear Permittee:

Enclosed please find WV/NPDES Permit Number WV0023353 dated April 30, 2004.

The Division of Water and Waste Management wishes to address the comments submitted by Mr. David Sago, Utility Manager, City of Fairmont, Sanitary Sewer Board, on the 27th day of February 2004, and the comments made by the USEPA Region III by its email received on 27th day of February 2004, on the draft WV/NPDES Water Pollution Control Permit No. WV0023353, and succeeding conference call with the City's representatives on March 13, 2004. The Division of Water and Waste Management shall address the comments in the same numerical order as contained in the correspondence received from Mr. David Sago. Please be advised due to the revisions made in the final permit, the page numbering have changed in the final permit reissuance.

Comment No. 1 : Page 7 - Comment: 85% removal efficiency requirements for BOD5 and TSS.

After review of the information and in accordance with 40 CFR Part133.103(e), the Director has established the percent removal efficiency for BOD5 at 70% and for TSS at 75%. The necessary changes have been made in the final permit and Section C.8. has been revised.

Comment No. 2 : Page 8 - Comment: Remove the arsenic monitoring requirement.

This Division reevaluated the additional information submitted by the City and the reasonable potential assessment indicates that arsenic should not be present in amounts to violate applicable water quality standards. However, the City of Fairmont operates an approved pretreatment program with local limitations imposed on metals. The pretreatment program requires effluent monitoring of certain pollutants on a quarterly frequency. That is why the metal pollutant continues to have monitoring requirements with a 1/quarter frequency imposed.
The necessary change has been made in the final permit.

Comment No. 3 : Page 9 - Comment: Comments on zinc, lead, cyanide, cadmium, mercury, and nickel.

This Division agrees that reasonable potential assessment indicates that zinc, lead, cyanide, cadmium, mercury, and nickel should not be present in amounts to violate applicable water quality standards. However, the City of Fairmont operates an approved pretreatment program with local limitations imposed on metals. The pretreatment program requires effluent monitoring of certain pollutants on a quarterly frequency. That is

why the metal pollutants continue to have monitoring requirements with a 1/quarter frequency imposed. Therefore, no change was made in the final permit.

Comment No. 4 : Page 9-10 - Comment: Comments on copper, silver, hex chrome:

This Division has reevaluated the additional information submitted and the reasonable potential assessment indicates that copper, silver and hexavalent chromium should not be present in amounts to violate applicable water quality standards.
The necessary changes have been made in the final permit.

Comment No. 5 : Page 10 - Comment: Percent removal monitoring

The percent removal efficiency monitoring requirements as based upon the current practice of this Division and no change is being made on this request.

Comment No. 6 : Page 15 - Comment: Compliance schedule

Due to the revisions made in the final permit, Section B - Schedule of Compliance has been deleted from the final permit.

Comment No. 7 : Page 21 - Comment: Ambient monitoring

Due to the revisions made in the final permit, this comment is no longer valid.

Comment No. 8 : Page 25 - Comment: Add landfill site

The landfill(s) are already identified in the draft permit and no change was made in the final permit.

Comment No. 9 : Page 34 - Comment: Requirement in 2.f. & 2.g.

The necessary change has been made in the final permit for 2.f. and no chage has been made for 2.g.

Comment No. 10 : Page 35 - Comments:

Paragraph i(1)
After discussion with the City, no change has been made in the final permit.

Paragraph 3
After discussion with the City, no change has been made in the final permit.

Item 4.b.
After discussion with the City, the necessary change requested by the City has been made in the final permit.

Comment No. 11 : Miscellaneous - Acceptance of septage

After discussion with the City, necessary change has been made in the final permit and condition C.22. has been included in the final permit.

Comment No. 12 : Requirements to monitor for Total Phosphorus and Total Nitrogen.

The Division has begun to analyze the impacts of nutrients upon water quality and to explore whether there is a need to establish nutrient water quality standards. After discussion with the City, the Division shall impose effluent monitoring for Total Phosphorus and Total Nitrogen in order to assist the Division in this analysis and the necessary change has been made in the final permit. Also, Section C.14. has been revised in the final permit.

Please note that a Discharge Monitoring Report (DMR) is to be completed and submitted to this Division each month. It is suggested that several copies of the enclosed DMR forms be made for your future use, as this Division does not supply permittees with DMR forms.

Finally note that copies of all future correspondence regarding the permit including copies of DMRs must be forwarded to the Field Inspector and Field Supervisor at the following address:

Department of Environmental Protection
Environmental Enforcement
2031 Pleasant Valley Rd
Suite #1
Fairmont, WV 26554

Also, please note the attachment to this permit which describes the annual permit fee requirement. Reissuance of your permit does not change the annual fee billing cycle.

If you have any questions, please contact Bhupinder Gill of this Division at (304) 558-4086 or our TDD number (304) 558-2751.

Sincerely,

Allyn G. Turner
Director

AGT:bg

Enclosures

Permit Number: WV0023353

Permittee: FAIRMONT CITY OF

cc: Bureau of Public Health
Construction Assistance
Env. Insp. Supv.
Env. Insp.
Environmental Enforcement
Public Service Commission
US EPA

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
414 SUMMERS STREET, SECOND FLOOR
CHARLESTON, WV 25301

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

NPDES PERMIT NO.: WV0023353
SUBJECT: Sewage

ISSUE DATE: April 30, 2004
EFFECTIVE DATE : May 30, 2004
EXPIRATION DATE: April 29, 2009
SUPERSEDES: Permit No. WV0023353 dated March 13, 1996

LOCATION:	FAIRMONT	Marion	Monongahela River
	(City)	(County)	(Drainage Basin)

See the next page for a list of Outlets.

TO WHOM IT MAY CONCERN:

This is to certify that: FAIRMONT CITY OF
PO BOX 1428
FAIRMONT, WV 26554

is hereby granted a West Virginia NPDES Water Pollution Control Permit to:
operate and maintain an existing 9.0 million gallon per day [MGD] wastewater collection and treatment facility which is further described as follows:

The wastewater collection system is comprised of approximately 8,400 linear feet of four(4) inch diameter gravity sewer line, 359,800 linear feet of six(6) inch diameter gravity sewer line, 316,700 linear feet of eight(8) inch diameter gravity sewer line, 63,200 linear feet of 10 inch diameter gravity sewer line, 42,600 linear feet of 12 inch diameter gravity sewer line, 25,100 linear feet of 15 inch diameter gravity sewer line, 2,100 manholes, 400 cleanouts, 23 lift stations, 600 linear feet of one(1) inch diameter force main line, 2,800 linear feet of two(2) inch diameter force main line, 4,200 linear feet of four(4) inch diameter force main line, 7,200 linear feet of six(6) inch diameter force main line, 1,800 linear feet of eight(8) inch diameter force main line, 4,400 linear feet of 10 inch diameter force main line, 1,800 linear feet of 12 inch diameter force main line, 2,800 linear feet of 16 inch diameter force main line, 600 linear feet of 24 inch diameter force main line, and all requisite appurtenances.

The 9.0 MGD wastewater treatment facility is comprised of two(2) trash racks, an aerated grit chamber, a mechanical bar screen, three(3) 150 feet x 20 feet x 10 feet each primary clarifiers, four(4) 150 feet x 20 feet x 10 feet each secondary clarifiers, 24 rotating biological contractors (RBCs) totaling 2.35 million square foot, chlorine disinfection with two(2) 45 feet x 48 feet each contact chambers, a dechlorination unit, two(2) sludge thickeners, two(2) anaerobic sludge digesters, two(2) belt filter presses, and all necessary appurtenances.

Also, to implement a Publicly Owned Treatment Work Pretreatment Program.

Facilities are to serve City of Fairmont, Town of Barrackville, Town of Monongah, Kingmill Valley PSD, Greater Paw Paw PSD, and Whitehall PSD and discharge treated wastewater to the Monongahela River (Mile point 125.5).

This permit is subject to the following terms and conditions :
The information submitted on and with Permit Application No. WV0023353 dated the 31st day of March 2003, additional information received on March 10, 2003, June 23, 2003, September 25, 2003, October 01, 2003,

December 18, 2003 and January 15, 2004 are all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, D, E, F, and Appendix A.

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.

Inspectable Unit	Latitude	Longitude	Receiving Stream	Dist to Stream Mouth (Miles)	Milepost
001	39°29'40"	80°07'20"	MONONGAHELA RV	N/A	125.5
101	39°29'38"	80°07'26"	N/A	N/A	N/A
102	39°29'40"	80°07'20"	N/A	N/A	N/A
103	39°29'40"	80°07'20"	N/A	N/A	N/A
C002	39°28'22"	80°11'32"	WEST FORK RV -- No DMRs Required	N/A	N/A
C003	39°28'08"	80°10'39"	WEST FORK RV -- No DMRs Required	N/A	N/A
C004	39°28'02"	80°10'31"	WEST FORK RV -- No DMRs Required	N/A	N/A
C005	39°28'05"	80°10'31"	WEST FORK RV -- No DMRs Required	N/A	N/A
C006	39°27'59"	80°09'33"	WEST FORK RV -- No DMRs Required	N/A	N/A
C007	39°28'04"	80°09'53"	WEST FORK RV -- No DMRs Required	N/A	N/A
C008	39°27'58"	80°09'30"	WEST FORK RV -- No DMRs Required	N/A	N/A
C009	39°27'56"	80°09'21"	WEST FORK RV -- No DMRs Required	N/A	N/A
C010	39°27'53"	80°09'25"	WEST FORK RV -- No DMRs Required	N/A	N/A
C012	39°28'08"	80°08'58"	Unnamed Tributary Of MONONGAHELA RV -- No DMRs Required	N/A	N/A
C013	39°28'13"	80°08'49"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C014	39°28'21"	80°08'48"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C015	39°28'32"	80°08'48"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C016	39°28'53"	80°08'02"	COAL RN -- No DMRs Required	N/A	N/A
C017	39°28'57"	80°08'59"	COAL RN -- No DMRs Required	N/A	N/A
C018	39°28'57"	80°08'34"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C019	39°29'59"	80°08'27"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C021	39°29'06"	80°07'55"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C022	39°29'50"	80°08'04"	BUFFALO CK -- No DMRs Required	N/A	N/A
C023	39°29'46"	80°08'09"	BUFFALO CK -- No DMRs Required	N/A	N/A
C024	39°29'49"	80°08'37"	BUFFALO CK -- No DMRs Required	N/A	N/A
C025	39°28'47"	80°08'33"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C026	39°28'55"	80°08'23"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C027	39°28'59"	80°08'25"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C028	39°28'58"	80°08'17"	MONONGAHELA RV -- No DMRs Required	N/A	N/A

Discharge Point	Latitude	Longitude	Receiving Stream	River & Stream Mouth (in Miles)	Milepost
C029	39°29'00"	80°08'15"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C030	39°29'02"	80°08'09"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C031	39°29'09"	80°07'16"	HICKMAN RN -- No DMRs Required	N/A	N/A
C032	39°29'05"	80°07'08"	HICKMAN RN -- No DMRs Required	N/A	N/A
C033	39°29'05"	80°07'04"	HICKMAN RN -- No DMRs Required	N/A	N/A
C034	39°28'52"	80°09'19"	COAL RN -- No DMRs Required	N/A	N/A
C035	39°28'47"	80°09'22"	COAL RN -- No DMRs Required	N/A	N/A
C037	39°29'01"	80°07'08"	HICKMAN RN -- No DMRs Required	N/A	N/A
C038	39°28'45"	80°07'02"	HICKMAN RN -- No DMRs Required	N/A	N/A
C039	39°28'43"	80°07'51"	Unnamed Tributary Of MONONGAHELA RV -- No DMRs Required	N/A	N/A
C040	39°28'47"	80°08'45"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C041	39°29'50"	80°08'33"	BUFFALO CK -- No DMRs Required	N/A	N/A
C042	39°28'51"	80°09'58"	COAL RN -- No DMRs Required	N/A	N/A
C043	39°29'34"	80°07'28"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C044	39°28'14"	80°10'18"	Unnamed Tributary Of WEST FORK RV -- No DMRs Required	N/A	N/A
C045	39°25'59"	80°11'12"	Unnamed Tributary Of TYGART VALLEY RV -- No DMRs Required	N/A	N/A
C046	39°30'12"	80°07'51"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C047	39°29'27"	80°07'22"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C048	39°30'12"	80°07'51"	MONONGAHELA RV -- No DMRs Required	N/A	N/A
C049	39°28'13"	80°10'58"	WEST FORK RV -- No DMRs Required	N/A	N/A
C050	39°28'02"	80°09'39"	WEST FORK RV -- No DMRs Required	N/A	N/A
S01	39°29'40"	80°07'20"	N/A	N/A	N/A

A.001 DI__ ARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations Quantity		Units		Other Units		Units	Monitoring Requirements Measurement Frequency	Sample Type
Flow,in Conduit or thru plant (Year Round) (ML-1)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mgd	Continuous	measured
Refer to Conditions C.9., C.10. and C.11.									
BOD, 5-Day 20 Deg.C (Year Round) (ML-B)	2252 Avg. Monthly	3378 7 Day Average	Lbs/Day	N/A	30 Avg. Monthly	45 7 Day Average	mg/l	2/week	24 hr Composite
Refer to Condition C.4.									
Total Suspended Solids (Year Round) (ML-A)	2252 Avg. Monthly	3378 7 Day Average	Lbs/Day	N/A	30 Avg. Monthly	45 7 Day Average	mg/l	2/week	24 hr Composite
Refer to Condition C.4.									
Ammonia Nitrogen (Year Round) (ML-A)	1126 Avg. Monthly	2252 Max. Daily	Lbs/Day	N/A	15 Avg. Monthly	30 Max. Daily	mg/l	2/week	24 hr Composite
Coliform, Fecal (Year Round) (ML-A)	N/A	N/A	N/A	N/A	200 Mo. Geo. Mean	400 Max. Daily	Cnts/100ml	2/week	Grab
Refer to Condition C.12.									
pH (Year Round) (ML-A)	N/A	N/A	N/A	6 Min.	N/A	9 Max.	S.U.	1/daily	Grab
Chlorine, Total Residual (Year Round) (ML-A)	N/A	N/A	N/A	N/A	0.028 Avg. Monthly	0.057 Max. Daily	mg/l	2/week	Grab
Refer to Condition C.15.									
Arsenic, Total (As AS) (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Toxicity, Acute Daphnia (Year Round) (ML-A)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	TUa	1/year	24 hr Composite
Refer to Condition C.17.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent BOD5 samples shall be collected at a location immediately proceeding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DIS__RGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Toxicity, Acute Pimephales (Year Round) (ML-A)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	TUa	1/year	24 hr Composite
Refer to Condition C.17.									
Zinc, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Lead, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Copper, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Cyanide, Weak Acid Dissociable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Silver, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Cadmium, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Mercury, Total (As Hg) (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Nickel, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent BOD5 samples shall be collected at a location immediately proceeding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DIS__ ARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Phosphorus, Total (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
BOD, % Removal (Year Round) (ML-K) Refer to Condition C.8.	N/A	N/A	N/A	N/A	70 Avg. Monthly	N/A	Percent	8/month	24 hr Composite
Suspended Solids, % Removal (Year Round) (ML-K) Refer to Condition C.8.	N/A	N/A	N/A	N/A	75 Avg. Monthly	N/A	Percent	8/month	24 hr Composite
Chromium, Hexavalent (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite
Nitrogen, Total (AS N) (Year Round) (ML-A) Refer to Condition C.14.	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	24 hr Composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent BOD5 samples shall be collected at a location immediately proceeding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.101 DIS__ .RGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to discharge from Outlet Number(s) 101 (Storm Water Runoff)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units	Other Units			Units	Measurement Frequency	Sample Type
Flow,in Conduit or thru plant (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mgd	1/6 months	Estimated
Refer to Condition C.18. and C.19.									
BOD, 5-Day 20 Deg.C (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Refer to Condition C.18. and C.19.									
Total Suspended Solids (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Refer to Condition C.18. and C.19.									
Ammonia Nitrogen (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Refer to Condition C.18. and C.19.									
Coliform, Fecal (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	Cnts/100ml	1/6 months	Grab
Refer to Condition C.18. and C.19.									
pH (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	S.U.	1/6 months	Grab
Refer to Condition C.18. and C.19.									
Chem. Oxygen Demand (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Refer to Condition C.18. and C.19.									
Oil and Grease, Hexane EXTR. (Year Round) (ML-1)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Refer to Condition C.18. and C.19.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

All effluent samples shall be collected at or as near as possible to the final combined discharge point prior to the stormwater mixing with any other wastestream.

A.S01 SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Quantity		Units	Limitations	Other Units		Units	Monitoring Requirements Measurement Frequency	Sample Type
Coliform, Fecal (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	col/gr	1/quarter	Grab
pH (Year Round) (ML-+)	N/A	N/A	N/A	Rpt Only Min.	N/A	Rpt Only Max.	S.U.	1/quarter	Grab
Arsenic, Sludge Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	20 Max.	mg/kg	1/quarter	1/wk Comp
Cadmium,Sludge,Tot Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	39 Max.	mg/kg	1/quarter	1/wk Comp
Chromium, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	1000 Max.	mg/kg	1/quarter	1/wk Comp
Copper,Sludge,Tot,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	1500 Max.	mg/kg	1/quarter	1/wk Comp
Lead, Dry. Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	250 Max.	mg/kg	1/quarter	1/wk Comp
Mercury, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	10 Max.	mg/kg	1/quarter	1/wk Comp
Molybdenum,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	18 Max.	mg/kg	1/quarter	1/wk Comp

A.S01 SE__GE SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Quantity		Units	Limitations	Other Units		Units	Monitoring Requirements: Measurement Frequency	Monitoring Requirements: Sample Type
Nickel, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	200 Max.	mg/kg	1/quarter	1/wk Comp
Selenium,Sludge,Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	36 Max.	mg/kg	1/quarter	1/wk Comp
Zinc, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	2800 Max.	mg/kg	1/quarter	1/wk Comp
Calcium, Total (as Ca) (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Solids, Total Sludge Percent (Year Round) (ML-+)	N/A	N/A	N/A	Rpt Only Min.	Rpt Only Avg.	Rpt Only Max.	Percent	1/quarter	1/wk Comp
Potassium, Sludge Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Phosphorus,Sludge,Tot,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Nitrogen, Ammonia Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Nitrogen, Sludge Tot. Dry Wt (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp

A.S01 SEWAGE SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning May 30, 2004 and lasting through midnight April 29, 2009 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Organic Nitrogen (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Magnesium,Tot (as Mg) (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp

B. SCHEDULE OF COMPLIANCE

1. **The permitee shall achieve compliance with the provisions for waste treatment and the monitoring requirements specified in the permit in accordance with the following schedule :**
   Effective date of permit.

2. **Reports of compliance or non-compliance with, and progress reports on interim and final requirements contained in the above compliance schedule, if any, shall be postmarked no later than 14 days following each schedule date.**

Section C - Other Requirements

1. The herein-described treatment works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected one hundred (100) year flood level and operability be maintained during the twenty-five (25) year flood level.

2. The entire sewage treatment facility shall be adequately protected by fencing.

3. The proper operation and maintenance of the listed sewage treatment facility shall be performed, or supervised, by a certified operator possessing at least a Class IV certificate for Waste Water Treatment Plant Operators as issued by the State of West Virginia. The on-site attendance of this facility's Class IV operator shall be determined and directed by the Bureau for Public Health, Office of Environmental Health Services.

4. The permittee has requested five(5) day Biochemical Oxygen Demand and Total Suspended Solids regulation in the form of seven(7) day average limitations in lieu of maximum daily limitations. Seven (7) day average is defined as the arithmetic mean of pollutant parameter values for samples collected in a period of seven (7) consecutive days. The Director has determined that regulation in that form is appropriate for the permitted facility, and has incorporated applicable seven (7) day average limitations and self-monitoring requirements in Section A.001 of this permit. The seven (7) day average shall be calculated as the arithmetic mean of the sample values recorded during the four (4) seven (7)-day periods of the month (i.e. 1st to 7th, 8th to 14th, 15th to 21st, and 22nd to 28th). Additionally, when representatives of the Director are performing compliance assessment activities that are independent of effluent data provided by the permittee, the representatives may perform such assessment based upon maximum daily limitations of 60.0 milligrams per liter for both parameters.

5. The permittee shall submit each month according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration and/or quantities the values of the constituents listed in Section A analytically determined to be in the plant effluent(s). Additional information pertaining to effluent monitoring and reporting can be found in Section III of Appendix A.

6. The required DMRs should be postmarked no later than 15 days or received no later than 20 days following the end of the reporting period and be addressed to:

Director Division of Water and Waste Management 414 Summers Street, 2nd Floor Charleston, West Virginia 25301 Attention: Permitting Section	U. S. Environmental Protection Agency Region III, Water Protection Division NPDES Branch (3WP31) 1650 Arch Street Philadelphia, PA 19103

7. For any noncompliance reports required to be submitted in writing by Appendix A, Part IV, of this Permit, a copy shall also be forwarded to the Environmental Protection Agency at the location specified in Section C.6. above.

8. The permittee shall be required to test Outlet Number 001 wastewater treatment plant influent in order to calculate the percent (%) removal parameters for five (5) day Biochemical Oxygen Demand and Total Suspended Solids, as prescribed in Section A.001 of this permit. Influent sampling requirements shall include the following:

   a. Percent removal shall be defined as a percentage expression of the removal efficiency across the wastewater treatment plant for a given pollutant parameter, as determined from the thirty day average values of the influent concentrations to the facility and the thirty day average effluent pollutant concentrations. Only influent and effluent samples taken concurrently as specified below shall be used for reporting.

   b. Influent BOD5 and TSS samples shall be collected using the permittee's established sampling schedule at least eight times per month (8/month) for the wastewater treatment facility.

   c. The permittee shall collect representative BOD5 and TSS influent samples using their established sampling procedures over a 24-hour period.

   d. Influent BOD5 and TSS sampling shall be performed over the same 24 hour time period as the effluent BOD5 and TSS sampling.

9. The average daily design flow of this Publicly Owned Treatment Works has been established at 9.0 million gallons per day (MGD). When the average monthly effluent flow reported on Discharge Monitoring Reports reaches, or exceeds, 90 percent of the average design flow (8.1 MGD) during three (3) consecutive monthly reporting periods, the permittee shall prepare and submit a Plan of Action to the Director. The Plan of Action shall present, at a minimum, an analysis of current hydraulic and organic loadings on the plant, an analysis of the future projected loadings, and a Schedule of Tasks to accomplish procedures necessary to maintain required treatment levels.

Section C - Other Requirements

10. If the permittee experiences flows greater than 90% of average design flow during three consecutive months, and can demonstrate that such flows resulted from the maximization of wet weather flow through the POTW, in accordance with the Combined Sewer System Overflow requirements of this Permit, then submission of the following information will satisfy the above requirement for the submission of a Plan of Action:
    a. During the period, compliance with applicable BOD5, TSS, and Fecal Coliform effluent limitations was maintained.
    b. Dry weather flows experienced over the period are less than 90% of average design flow.
    c. The permittee is compliant with the Combined Sewer System Overflow requirements of the permit, and that continued operation in accordance with those requirements is intended to ensure the maintenance of required treatment levels.
11. Any future collection system extensions projected to cause an increase in the wastewater flow equal to, or greater than, 450,000 gallons per day (five(5) percent of average design flow) shall require the permittee to contact the Director to secure approval of the extension. After consideration of the complexity of the project, and the available treatment capacity of the facility, the Director may require the permittee to seek approval through Modification of the Permit.
12. Over the term of this permit, the permittee is allowed up to five (5) excursions of the maximum daily fecal coliform effluent limitation prescribed in Section A.001. The number of allowed excursions is based upon one (1) percent of the number of required self-monitoring events. Utilization of the excursion allowance is conditioned as follows:
    a. Excursion allowances are afforded only to self-monitoring results and only when self-monitoring activities assess compliance with the maximum daily effluent limitation by analysis of an individual grab sample.
    b. No excursion allowance can be applied to analytical results obtained by representatives of the Director in the performance of their compliance assessment activities. Additionally, representatives of the Director may assess compliance with the maximum daily effluent limitation by collection and analysis of an individual grab sample.
    c. No more than one excursion may be utilized in any calendar month.
    d. The excursion allowance is contingent upon the permittee's prompt return to compliance as evidenced by the next required fecal coliform self-monitoring event.
    e. The result for which an excursion allowance is claimed shall be included in the calculation of the average monthly effluent value.
    f. Should an excursion allowance be utilized by the permittee, said allowance must be reported as an attachment to the Discharge Monitoring Report. This attachment should state that (1) an excursion allowance was taken in accordance with the conditions outlined above, (2) the total number of allowances taken to date during the term of this permit, and (3) the total number of allowances remaining during the term of this permit. The permittee shall maintain an on-site record of the excursion allowances utilized during the term of the permit.
13. Certain characteristics of sewage, industrial wastes, and other wastes cause pollution and are objectionable in all waters of the State. The Environmental Quality Board has proclaimed that there are certain general conditions that are not allowed in any waters of the State. Therefore, the effluent discharge from the permittee's treatment facility shall not cause violation of any of the following conditions not allowed in State waters as stated below (pursuant to Chapter 22B, Article 3):
    a. Distinctly visible floating or settleable solids, scum, foam, or oily slicks;
    b. Deposits or sludge banks on the stream bottom;
    c. Odors in the vicinity of the waters;
    d. Taste or odor that would adversely affect the designated uses of the affected waters;
    e. Materials in concentrations that are harmful, hazardous, or toxic to man, animal, or aquatic life;
    f. Distinctly visible color;
    g. Concentrations of bacteria that may impair or interfere with the designated uses of the affected waters;

Section C - Other Requirements

13. h. Requiring an unreasonable degree of treatment for the production of potable water by modern water treatment processes as commonly employed; and

    i. Any other conditions, including radiological exposure, which adversely alters the integrity of the waters of the State including wetlands; no significant adverse impact to chemical, physical, hydrologic, or biological components of aquatic ecosystems shall be allowed.

14. The analytical test procedures, set forth in 40 CFR Part 136, prescribe colorimetric methods for certain parameters. The digestion process for the performance of total recoverable is not sufficient for the utilization of a colorimetric procedure. Therefore, colorimetric procedures shall not be acceptable for the analysis of parameters prescribed as total recoverable.

    Effluent monitoring for the Cadmium, Hexavalent Chromium, Copper, Lead, Nickel, Silver, Zinc, Mercury, Arsenic and Cyanide parameters shall be conducted using the most sensitive methods and detection levels commercially available and economically feasible. The following methods and detection levels are offered as a guide:

Parameter	EPA Method No.	Detection Level (ug/l)
Cadmium, Total Recoverable	213.2	0.2
Chromium, Hexavalent	218.4	1
Copper, Total Recoverable	220.2	1
Lead, Total Recoverable	239.2	1
Nickel, Total Recoverable	249.2	3
Silver, Total Recoverable	272.2	0.2
Zinc, Total Recoverable	289.2	1
Mercury, Total	245.1	0.2
Arsenic, Total	206.2	2
Cyanide, Free	Use the Standard Method for Weak Acid Dissociable Cyanide, as specified in the latest edition of Standard Methods.	

    The Division has begun to analyze the impacts of nutrients upon water quality and to explore whether there is a need to establish nutrient water quality standards. Therefore, the Division shall impose effluent monitoring for Total Phosphorus and Total Nitrogen in order to assist the Division in this analysis. Currently, there is no EPA approved method to directly test for Total Nitrogen. The value reported for Total Nitrogen should be the sum of the following:

    Total Kjeldahl Nitrogen (TKN)
    Nitrite (NO2)
    Nitrate (NO3)

    Each of these pollutants listed above has an EPA approved method.

15. Available sampling methods for total residual chlorine (TRC) are currently not sensitive enough to confirm compliance with the permit limitations imposed for the new treatment plant. Total residual chlorine (TRC) samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136. Because the permittee does not operate a certified wastewater laboratory at the plant site but still must comply with the instantaneous sample-type requirements, the permittee shall use an EPA Approved Method with at least a method detection level (MDL) of 100 ug/l. Any TRC sampling result reported as less than the MDL stated above shall be assumed to confirm compliance for purposes of permit compliance. Should a more sensitive EPA approved method become available for field analysis of TRC, the permittee shall perform TRC self-monitoring in accordance with the new method. If the new method is not sensitive enough to determine compliance with specified TRC limits, analytical results reported as "not detected" at the MDL of the new method will be deemed compliant for purposes of permit compliance.

16. The permittee shall continue to implement a program to identify and eliminate sources of inflow and infiltration. Written progress reports shall be provided on a quarterly basis, as an attachment to the Discharge Monitoring Report, detailing what has been performed in relation to the implementation and accomplishments of the inflow and infiltration elimination program. Failure of the permittee to comply with this requirement shall result in subsequent administrative and/or legal action, as may be necessary in order to obtain the compliance sought herein.

17. The permittee shall perform whole effluent toxicity testing in accordance with the following:

Section C - Other Requirements

17. The permittee shall perform whole effluent toxicity testing in accordance with the following:

    a. The whole effluent toxicity testing prescribed herein, shall be the performance of a 48-hour static acute toxicity testing.

        i. The acute toxicity testing shall be performed on an annual (1/year) basis.

        ii. The tests shall be conducted using Pimephales promelas, fathead minnow, and ceriodaphnia dubia, as the test species.

        iii. An eight (8) hour composite sample of the effluent shall be utilized for testing.

        iv. Test results shall be reported on the attached Discharge Monitoring Reports and copies of all test results provided as an attachment thereto.

        v. The acute toxicity units, TUa, required to be reported, are calculated by dividing 100 by the LC50.

    b. The monitoring required herein shall be conducted in accordance with the sample collection, preservation, and analytical procedures specified in 40 CFR Part 136.

    c. If whole effluent toxicity testing shows noncompliance with the specified limitations prescribed in Section A.001, the permittee shall immediately resample and test the effluent. This shall be performed within 30 days of the initial demonstration of noncompliance with the whole effluent toxicity discharge limitations prescribed herein. Copies of the retesting results shall be provided to this Division immediately upon completion of the test.

    d. If the second test shows compliance, whole effluent toxicity testing shall continue in accordance with the requirements as prescribed herein. However, if the second test shows noncompliance, the Director shall impose further requirements, as may be necessary, in order to obtain compliance with the whole effluent toxicity discharge limitations.

    e. The Director shall impose further requirements should the whole effluent toxicity testing results demonstrate an irregular pattern of noncompliance.

18. Monitoring for the Stormwater Outlet Nos. 101, 102 and 103, listed in the permit, shall be in accordance with the following requirements:

    Outlet No. 101: Stormwater collected from the sludge holding tanks area, the sludge drying bed area, and the chlorine building area.

    Outlet No. 102: Stormwater collected from drains from the top of parking lot of the wastewater treatment plant, which is located inside the fenced area of the plant.

    Outlet No. 103: Stormwater collected from drains from the lower parking lot of the wastewater treatment plant, which is located inside the fenced area of the plant.

    a. Sampling: The collection of the samples for the reported analyses shall be in accordance with Appendix A, Part III of this permit. Any specific requirements contained in the applicable analytical methods must be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc.

    b. A grab sample shall be collected during the first 30 minutes, or as soon thereafter as practicable, of the discharge and analyzed.

    c. Grab samples are defined as an individual sample of at least 100 milliliters collected during the first 30 minutes, or as soon thereafter as practicable, of the discharge.

    d. Sample Type: Samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where once per six (6) month sampling is required, the samples for each six month period shall be collected at least three (3) months apart, if possible. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impractical, a sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impractical.

Section C - Other Requirements

18. e. Stormwater monitoring shall be performed at the final combined discharge location prior to the stromwater mixing with any other wastestream.

19. Monitoring benchmark concentrations for stormwater pollutants from stormwater Outlet Nos.: 101, 102 and 103, are as follows:

Pollutant	Monitoring Cut-Off Concentration	Sampling Frequency	Sample Type
Biological Oxygen Demand	30.0 mg/l	1/6 Months	Grab
Chemical Oxygen Demand	120.0 mg/l	1/6 Months	Grab
Total Suspended Solids	100.0 mg/l	1/6 Months	Grab
Ammonia Nitrogen	4.0 mg/l	1/6 Months	Grab
Fecal Coliform	400 counts/100ml	1/6 Months	Grab
pH	6.0 - 9.0 SU	1/6 Months	Grab
Oil & Grease	15.0 mg/l	1/6 Months	Grab

When the average concentration of a pollutant calculated from all monitoring data, minimum of four(4) consecutive samples, is less than the corresponding bench mark value for the pollutant, additional monitoring for the pollutant is not required (all pH values of the samples must be within the range 6.0 to 9.0 S.U.). The permittee shall submit, twice per year, to the Division of Water and Waste Management, in lieu of the monitoring data, a certification (form will be provided upon request) that there has not been a significant change in the industrial activity or the pollution prevention measures in the area of the facility that drains to the outlets for which sampling is to be waived. If the average concentration of a pollutant exceeds the corresponding benchmark concentration or pH values of all samples are not within the range of 6.0 to 9.0 S.U., monitoring shall continue and storm water pollution prevention measures shall be revised and the revised plan implemented.

When a facility has two or more stormwater outlets that, based on a consideration of the activities within the area drained by the stormwater outlet, the permittee reasonably believes discharges are essentially identical effluents, the permittee may test the effluent of one of these stormwater outlets and report that the quantitative data also applies to the essentially identical stormwater outlet(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the stormwater outlets and explains in detail why the stormwater outlets are expected to discharge essentially identical effluents.

20. If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge associated with the wastewater treatment facility covered by this permit, the permit may be promptly modified and/or reissued to include effluent limitations and/or other requirements to control such storm water discharges.

21. Within six (6) months of the issuance of this permit, the permittee shall develop and implement a storm water pollution prevention plan (SWPPP) for the wastewater treatment facility site. The SWPPP shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with the industrial activity. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity at the facility and to assure compliance with the terms and conditions of this permit. A copy of the plan shall be retained at the site for review upon request.

Section D - Sewage Sludge Management Requirements

1. The permittee shall monitor and report monthly on the enclosed Sewage Sludge Management Report form the quality and quantity of sewage sludge produced. The required report shall be received no later than 20 days following the end of the reporting period and be addressed to:

   Director
   Division of Water and Waste Management
   414 Summers Street, Second Floor
   Charleston, West Virginia 25301
   Attention: Permitting Section

2. The permittee shall provide copies of monthly reports to the county or regional solid waste authority in which the facility or land application site(s) is located.

3. The Sewage Sludge Monitoring Report form shall be submitted quarterly. The required report shall be received no later than 20 days following the end of the reporting period and shall be addressed to:

   Director
   Division of Water and Waste Management
   414 Summers Street, Second Floor
   Charleston, West Virginia 25301
   Attention: Permitting Section

4. The following method(s) of sludge disposal shall be used for sewage sludge generated and/or processed at the permitted facility:

   a. Land Application: Sewage sludge shall not be applied in a manner or in an amount that would cause the land application site(s) to exceed the annual or lifetime loading rates as listed below. The following site(s) may be used for land application:

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five (5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Kenneth Bragg			
Field A	3.5	14.2	126
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	3.5	14.2	126
Donald Carpenter			
Field A	3.5	14.2	135
Joe Defazio			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Donald Hanning			
Field 1	3.5	14.2	125
Field 2	3.5	14.2	125
Field 3	3.5	14.2	125
Donald Martin			
Field A	3.5	14.2	127
Field B	3.5	14.2	127
Field C	3.5	14.2	127

Section D - Sewage Sludge Management Requirements

4. a.

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five (5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Lillian Parker			
Field A	3.5	14.2	133
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Jeff Taylor			
Field A	3.5	14.2	117
Randall Wolfe			
Field A	3.5	14.2	131
Field B	3.5	14.2	131
Field C	3.5	14.2	131
Kevin Amos			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
L. J. Bartlett			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Kenneth Bragg, II			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Roy Feather			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Kathy Hall			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field D	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field E	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
William Kusik			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
John Linn			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)

Section D - Sewage Sludge Management Requirements

4. a.

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five (5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Bruce Nickles			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field D	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field E	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Gary Poling			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Dan Snyder			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Ernest VanGilder			
Field A	3.5	14.1	78
James Vermillion			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field C	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
David Vincent			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Edward Vincent			
Field A	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)
Field B	(Under Evaluation)	(Under Evaluation)	(Under Evaluation)

b. Landfill Disposal: Sewage sludge may also be disposed at a landfill by placing the sewage sludge in the landfill cell, provided that the landfill obtains approval from the Division of Water and Waste Management to allow the acceptance of sewage sludge from the permittee, and provided that the landfill(s) is/are identified in the permit application. Prior approval by the Division of Water and Waste Management is required to change landfill disposal site(s).

5. Sewage sludge shall not be applied to land that has any of the following siting restrictions and/or location standards:

a. Land that is frozen, snow-covered, or known to be flooded on a regular basis unless the applicant can demonstrate to the Secretary that the land application will not cause runoff into streams or wetlands.

b. Land that is within 50 feet of surface water including any streams, springs, ponds, wetlands, or other collection points for surface water.

c. Land that is within 200 feet of drinking water supply wells or other personal water supply.

d. Land that is within 200 feet of an occupied dwelling.

e. Land that is within 50 feet of a federal or state highway.

Section D - Sewage Sludge Management Requirements

5. f. Land that is within 100 feet of an adjacent property owner's property line.

   g. Land that drains into a sinkhole.

   h. Land that has been tested and determined to have a pH of less than 6.2 SUs, unless the pH is adjusted to 6.2 SUs or greater.

   i. Land that has a slope greater than 15 percent.

   j. Land that has a seasonal high groundwater table less than two (2) feet from the surface.

   k. Land that has less than 6 inches of soil over bedrock or an impervious pan.

   l. Land that contains soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

   m. Land that, if sewage sludge was applied, is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

   n. Other land determined by the Secretary to be unsuitable of sewage sludge.

6. The following requirements concerning crops grown on land used for application of sewage sludge, the time requirements between application of sewage sludge and the harvesting of crops, and the restrictions on animal grazing and public access shall be met:

   a. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

   b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four (4) months or longer prior to incorporation into the soil.

   c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four (4) months prior to incorporation into the soil.

   d. Food crops (human consumption), feed crops (animal consumption), and fiber crops shall not be harvested for 30 days after application of sewage sludge.

   e. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.

   f. Turf grown on land where sewage sludge is applied shall not be harvested for one (1) year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

   g. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.

   h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

7. Sewage sludge shall not be stored at a land application site for a period longer than one week; except, storage can be allowed for a period not to exceed three months when provisions, approved by the Director of the Division of Water and Waste Management of the Department, are made to prevent leachate runoff to the surface water and/or groundwater.

8. Sewage sludge shall only be land applied during the hours of daylight.

9. Sewage sludge which is land applied shall not contain excessive amounts of other solid waste materials, as defined in Title 33, Series 2, Section 2.34 of the Legislative Rules.

10. Areas used for processing, curing, and/or storage of sewage sludge shall be designed, constructed and operated to prevent release of contaminants to the groundwater and/or surface water.

11. The land application site(s) shall maintain the soil pH at a minimum of 6.2 SUs for at least five (5) years from the date of application. The soil pH and soil nutrients shall be monitored once per year by obtaining a composite sample of each field utilized for land application during the previous year. The composite samples shall be made up of a minimum of four (4) aliquots taken at locations equally spaced through the land application site(s). The samples may be analyzed through the WVU Extension Service or by other certified laboratories.

Section D - Sewage Sludge Management Requirements

12. All analyses performed on soils and sewage sludges shall be analyzed in accordance with analytical methods listed in 40 CFR Part 503.8 except that Nutrients may be analyzed in accordance with the most recently approved edition of Standard Methods and pH may be analyzed using EPA Method 9045A. Additionally, Fecal Coliform samples shall be prepared for analysis by using the method described in EPA 625R-92/013, Appendix F.

13. Sewage sludge disposed in a landfill cell shall be a non-hazardous material as defined in 40 CFR Part 261.24 and a minimum of 20 percent solids. If the sewage sludge is not 20 percent solids, a bulking agent may be used to achieve 20 percent solids before the sewage sludge is weighed in at the landfill. Alternative sludge disposal methods at the landfill can be utilized upon obtaining prior written approval from the Director of the Division of Water and Waste Management.

14. If sewage sludge is used for revegetation, or spread in any other manner at the landfill, the sewage sludge shall meet all of the land application requirements. These requirements include vector attraction and pathogen reduction methods, heavy metals limits, and abiding by an approved loading rate based on soil analyses.

15. The following primary method for pathogen reduction shall apply to the sewage sludge or sewage sludge products:

    a. Anaerobic Digestion - The sewage sludge mean cell residence time and temperature shall be for minimum of 15 days and within a temperature range of 35 to 55 degrees Celsius OR a minimum of 60 days at a minimum temperature of 20 degrees Celsius. The permittee shall maintain logs documenting the mean cell residence time of the sewage sludge in the digester and the digester temperature, either by continuous measurements or two manual measurements per day, at least one per shift.

    b. If compliance cannot be achieved using the primary method for pathogen reduction, then the permittee must obtain approval from the Director prior to use of a secondary method. The permittee shall not dispose of sewage sludge until approval of a secondary pathogen reduction method is granted. The following secondary method for pathogen reduction shall apply to the sewage sludge or sewage sludge products:

        (1) Lime Stabilization - Lime is added to maintain the sewage sludge pH above 12.0 SUs for at least two (2) hours after the lime addition. The permittee shall record the pH of the sewage sludge at least twice, once upon addition of lime and once two (2) hours after addition.

16. The following primary method for vector attraction reduction shall apply to the sewage sludge or sewage sludge products:

    a. 38 Percent Reduction in Percent Volatile Solids - Sewage sludge is treated by an anaerobic or aerobic digestion (or dried) to achieve volatile solids reduction. The permittee shall monitor and record the volatile solids concentration (mg/kg) of raw and final sludge streams and evaluated weekly.

    b. If compliance cannot be achieved using the primary method for vector attraction reduction, then the permittee must obtain approval from the Director prior to using a secondary method. The permittee shall not dispose of sewage sludge until approval of a secondary vector attraction method is granted. The following secondary method for vector attraction reduction shall apply to the sewage sludge or sewage sludge products:

        (1) Lime Stabilization - Lime is added to maintain the sewage sludge pH above 12.0 SUs for two (2) hours and above 11.5 SUs for 24 hours after the lime addition. The permittee shall record the pH of the sewage sludge at the 0, 2, and 24 hour intervals of treatment, and record the duration of time (hours) that the pH is maintained at or above the specified minimum levels.

17. The permittee shall maintain all records and reports of all monitoring required by Section D of this permit for five (5) years after the date of monitoring or reporting. Records should include all sample results, including pathogen and vector attraction reduction monitoring; any landfill receipts; land application records, including site maps, the landowner agreement, soil sample results, daily and cumulative sludge loading rate information; copies of all required reports; and records of all data used to complete these reports.

Section D - Sewage Sludge Management Requirements

18. The appropriate composite sampling procedures shall be based upon the particular sludge processing methods used by the permittee. The composite sampling procedures for the various methods are described as follows:

    Belt Press or Vacuum Filter - During the week that the composite sample is obtained, the permittee shall take a minimum of three (3) grab samples during each day of the week that the dewatering system is in operation. These grab samples are to be mixed together and the final sample obtained from the composite. Samples should be collected at a point immediately after the dewatering operation.

    Liquid Sludge - During the week that the composite sample is obtained, the permittee shall take a representative grab sample from each truck load of sewage sludge hauled during that week. These grab samples are to be mixed together and the final sample obtained from the composite. Samples should be collected from the sewage sludge being pumped into the truck or as the sewage sludge is being discharged from the truck.

    Sewage Sludge Drying Beds - During the week that the composite sample is obtained, the permittee shall take a minimum of four (4) grab samples from each bed finished during that week. These grab samples are to be mixed together and the final sample obtained from the composite.

    Composting or Stock Piles - The permittee shall obtain a minimum of eight (8) grab samples from the pile of finished product. These grab samples are to be mixed together and the final sample obtained from the composite.

19. Written notification shall be given to the Director within five (5) days of the determination of any excursion(s) of the maximum allowable limitations for sewage sludge listed in Section A.S01 of this Permit. A written plan to identify and correct the excursion(s) must be submitted to the Director within sixty (60) days.

20. No single instantaneous grab sample of the final sewage sludge product shall exceed the values found below as listed in Table 2 of the West Virginia Sewage Sludge Management Regulations (Title 33, Series 2).

Metal	Concentration (mg/kg)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

21. Sewage sludge shall not be land applied in a manner or in an amount that will cause the land application site(s) to exceed the maximum soil concentrations for the following heavy metals:

Parameter	Maximum Allowable Limitations For Soils (mg/kg)
Arsenic	13.0
Cadmium	2.4
Chromium	290.0
Copper	92.0
Lead	85.0
Mercury	2.4
Molybdenum	4.6
Nickel	83.0*
Selenium	10.0
Zinc	290.0**

* For sandy to silt loam soils with a permeability greater than 2.0 inches per hour, the maximum allowable soil concentration for nickel is 50.0 mg/kg.

** For those sites with greater than 30% legume species, the maximum allowable soil concentration for zinc is 130.0 mg/kg for sandy to silt loam soils with permeability greater than 2.0 inches per hour and 200.0 mg/kg for other soil types.

Section D - Sewage Sludge Management Requirements

22. All land application site(s) shall have new soil analyses performed for the metals listed in Section D.21 of this Permit when the cumulative loading reaches 50% of the assigned lifetime loading rate.

23. Should any landowner of a sludge land application site fail to comply with the terms and conditions pertaining to the landowner under an applicable landowner agreement, the permittee shall immediately contact said landowner and identify the violation causing the noncompliance with the said agreement. The permittee shall take all reasonable, escalating enforcement steps, up to and including disallowing further land application of sludge on the owner's site, in order to keep the landowner compliant with the terms and conditions of said land owner agreement. Also, the permittee shall immediately inform the Agency of any current noncompliance by the owner of a land application site by attaching a written summary of these violations, the cause of each violation, and the steps taken to prevent their recurrence with the submitted Sludge Monitoring Reports. Should the permittee take all of the enforcement steps outlined above, these actions may be used as a mitigating factor to any enforcement actions taken upon the permittee for the noncompliance by the land application site owners to the terms and conditions of Section D herein. However, the burden of proof in relation to the use of this mitigating factor shall lie exclusively upon the permittee. This condition shall not be used as a mitigating factor to any noncompliance associated with any other sections of this permit, even if said noncompliance is, in whole or in part, caused by the land application site owner.

Section E - Combined Sewer System Overflows

1. Outlet numbers, C002 to C010, C012 to C019, C021 to C035, and C037 to C050, listed below, serve as combined sewer overflow points. Combined Sewer Overflows (CSOs) are authorized only when flows in the combined sewer system exceed either the conveyance or treatment capacity of the system, during wet weather periods. Dry weather overflows from these outfalls are prohibited. The permittee shall ensure that all discharges from the CSOs identified below comply with the following requirements:

Outlet No.	Name and/or Location	Receiving Stream
C002	Westchester Pump Station Behind 10 N 19 202 Rt. 19 South Latitude 39 28' 22" (N) Longitude 80 11' 32 (W)	West Fork River
C003	Goose Run Pump Station End of Edgeway Drive Latitude 39 28' 08" (N) Longitude 80 10' 39" (W)	West Fork River
C004	Rhea's Run Pump Station End of Kennywood Drive Latitude 39 28' 02" (N) Longitude 80 10' 31" (W)	Rheas Run of West Fork River
C005	Industrial End of Industrial Road Latitude 39 28' 05" (N) Longitude 80 10' 31" (W)	West Fork River
C006	Freeland Industrial Road behind 13 Freeland Street Latitude 39 27' 59" (N) Longitude 80 09' 33" (W)	West Fork River
C007	West Fork Pump Station Industrial Road Latitude 39 28' 04" (N) Longitude 80 09' 53" (W)	West Fork River
C008	Waston Bridge North Side of Waston Bridge Latitude 39 27' 58" (N) Longitude 80 09' 30" (W)	West Fork River
C009	Beverly Behind 1414 Beverly Road Latitude 39 27' 56"(N) Longitude 80 09' 21"(W)	West Fork River
C010	Waston Pump Station Behind 135 Rosewood Ave Latitude 39 27' 53" (N) Longitude 80 09' 25" (W)	West Fork River

C011: Combined Sewer Overflow Outlet No. C011 eliminated.

Section E - Combined Sewer System Overflows

1. C012	Eleventh Street End of 11th St. below Minor Ave Latitude 39 28' 08" (N) Longitude 80 08' 56" (W)	Unnamed drainage ditch of Monongahela River
C013	Tenth Street End of Tenth Street Latitude 39 28' 13" (N) Longitude 80 08' 49" (W)	Monongahela River
C014	Ninth Street End of Ninth Street Latitude 39 28' 21" (N) Longitude 80 08' 48" (W)	Monongahela River
C015	Seventh Street End of Seventh Street Latitude 39 28' 32" (N) Longitude 80 08' 48" (W)	Monongahela River
C016	Fourth Street Under Fourth Street bridge Latitude 39 28' 53" (N) Longitude 80 08' 02" (W)	Coal Run
C017	Benoni Benoni Ave below 300 Nuzum Place Latitude 39 28' 57" (N) Longitude 80 08' 59" (W)	Coal Run
C018	Coal Run Pump Station Under Everest Drive Bridge Latitude 39 28' 57" (N) Longitude 80 08' 34" (W)	Monongahela River
C019	Cleveland Avenue Latitude 39 28' 59" (N) Longitude 80 08' 27" (W)	Monongahela River

C020: Combined Sewer Overflow Outlet No. C020 eliminated.

C021	Washington Street End of Baltimore Street Latitude 39 29' 06" (N) Longitude 80 07' 55" (W)	Monongahela River
C022	Buffalo Pump Station End of Pell St. below Buffalo Ave Latitude 39 29' 50" (N) Longitude 80 08' 04" (W)	Buffalo Creek
C023	Pell Street End of Pell Street Latitude 39 29' 46" (N) Longitude 80 08' 09" (W)	Buffalo Creek
C024	Hampton Road End of Dewey Street Latitude 39 29' 49" (N) Longitude 80 08' 37" (W)	Buffalo Creek
C025	Water Street Latitude 39 28' 47" (N) Longitude 80 08' 33" (W)	Monongahela River

Section E - Combined Sewer System Overflows

1 C026	Newton Street Water St. under High level bridge Latitude 39 28' 55" (N) Longitude 80 08' 23" (W)	Monongahela River
C027	Madison Street End of Madison Street Latitude 39 28' 59" (N) Longitude 80 08' 25" (W)	Monongahela River
C028	Palatine 1 Everest Drive Palatine Park Latitude 39 28' 58" (N) Longitude 80 08' 17" (W)	Monongahela River
C029	Palatine 2 Everest Drive Papatine Park Latitude 39 29' 00" (N) Longitude 80 08' 15" (W)	Monongahela River
C030	New Street Pump Station End of New Street Latitude 39 29' 02" (N) Longitude 80 08' 09" (W)	Monongahela River
C031	Hickman Run Pump Station Latitude 39 29' 09" (N) Longitude 80 07' 16" (W)	Hickman Run of Monongahela River
C032	Hickman Run Latitude 39 29' 05" (N) Longitude 80 07' 08" (W)	Hickman Run of Monongahela River
C033	May Brothers End of Terrace Manor Latitude 39 29' 05" (N) Longitude 80 07' 04" (W)	Hickman Run of Monongahela River
C034	Carleton Carleton St. & Oliver Ave Latitude 39 28' 52" (N) Longitude 80 09' 19" (W)	Coal Run of Monongahela River
C035	Oakwood Oakwood Road & Park Drive Latitude 39 28' 47" (N) Longitude 80 09' 22" (W)	Coal Run of Monongahela River

C036: Combined Sewer Overflow Outlet No. C036 eliminated (Bryant St. & College Park)

C037	Sheridan Latitude 39 29' 01" (N) Longitude 80 07' 08" (W)	Hickman Run of Monongahela River
C038	King Street Latitude 39 28' 45" (N) Longitude 80 07' 02" (W)	Hickman Run of Monongahela River
C039	Mason 613 Mason Street Latitude 39 28' 43" (N) Longitude 80 07' 51" (W)	Unnamed drainage ditch of Monongahela River
C040	Third Street Latitude 39 28' 47" (N) Longitude 80 08' 45" (W)	Monongahela River

Section E - Combined Sewer System Overflows

1. C041	Dewey Street Latitude 39 29' 50" (N) Longitude 80 08' 33" (W)	Buffalo Creek
C042	Bell Run Latitude 39 28' 51" (N) Longitude 80 09' 58" (W)	Coal Run
C043	RBCs at WWTP Latitude 39 29' 34" (N) Longitude 80 07' 28" (W)	Monongahela River
C044	Barry Street Latitude 39 28' 14" (N) Longitude 80 10' 18" (W)	Unnamed drainage ditch of West Fork River
C045	Whitehall Rt. 250 South at Toyota Latitude 39 25' 59" Longitude 80 11' 12" (W)	Unnamed drainage ditch of Tygart River
C046	Trolly Street Latitude 39 30' 12" (N) Longitude 80 07' 51" (W)	Monongahela River
C047	South Main Main interceptor south of WWTP Latitude 39 29' 27" (N) Longitude 80 07' 22" (W)	Monongahela River
C048	North Main Main interceptor North of WWTP Latitude 39 30' 12" (N) Longitude 80 07' 51" (W)	Monongahela River
C049	Norway Behind 100 Fairlane Ave Latitude 39 28' 13" (N) Longitude 80 10' 58" (W)	West Fork River
C050	Nearway Drive Behind 15 Nearway Drive Latitude 39 28' 02" (N) Longitude 80 09' 39" (W)	West Fork River

2. TECHNOLOGY-BASED EFFLUENT LIMITATION REQUIREMENTS FOR CSOs

The permittee shall continue to comply with the following technology-based nine minimum CSO control requirements:

a. Conduct Proper Operations and Regular Maintenance Programs.

i. The permittee shall implement proper operation and maintenance plan for the Combined Sewer System (CSS). The permittee shall update the plan from time to time to incorporate any changes to the system and shall operate and maintain the system according to the plan. The permittee shall keep records to document the implementation of the plan.

ii. Designation of a Manager for Combined Sewer System.

The permittee shall designate an individual to be responsible for the wastewater collection system and serve as the contact person regarding the CSS.

iii. Inspection and Maintenance of CSS.

Section E - Combined Sewer System Overflows

2. a. iii. The permittee shall inspect and maintain all CSO structures, regulators, pumping stations, and outlet inflow prevention devices to ensure that they are in good working condition and adjusted to minimize CSOs and prevent stream inflow. The permittee shall inspect, or cause to be inspected, each CSO outfall at an appropriate frequency to ensure no dry weather overflows are occurring. The inspection shall include, but is not limited to, entering the regulator structure if accessible, determining the extent of debris and grit buildup, and removing any debris that may constrict flow, cause blockage, or result in a dry weather overflow. The permittee shall record in a maintenance logbook the results of the inspections. For CSO outfalls that are inaccessible, the permittee may perform a visual check of the overflow pipe to determine whether or not the CSO is occurring during dry weather flow conditions.

b. Maximize Use of the Collection System for Storage.

The permittee shall implement procedures that will maximize the in-line storage capacity of the CSS. The permittee shall keep records to document implementation. The permittee shall:

[1] Maintain all dams or diversion structures at their current heights or greater.

[2] Minimize discharges from the CSO outfall location.

c. Review and Modify Pretreatment Program.

If and when the permittee accepts non-domestic discharges from an industrial user, at that time, the permittee shall implement selected CSO controls to minimize the impact of non-domestic discharges on CSOs. The permittee shall reevaluate at an appropriate frequency, whether additional modifications to its pretreatment program are feasible or of practical value. The permittee shall keep records to document this evaluation an implementation of the selected CSO controls to minimize CSO impacts resulting from non-domestic discharges.

The permittee shall require significant industrial users (SIUs) discharging to the CSS to minimize batch discharges during wet weather conditions.

d. Maximize Flow to POTW Treatment Plant.

The permittee shall operate the Publicly Owned Treatment Works (POTW) treatment plant at maximum treatable flow during all wet weather flow conditions/events and deliver all flows to the treatment plant within the constraints of the capacity of the treatment plant. The permittee shall keep records to document these actions.

e. Prohibit Combined Sewer Overflows During Dry Weather.

Dry weather overflows from CSO outfalls are prohibited. All dry weather overflows must be reported to the permitting authority immediately upon the permittee becoming aware of the dry weather overflow in accordance with the provisions of Appendix A, Part II, Section 3. When the permittee detects a dry weather overflow, the permittee shall begin corrective action immediately. The permittee shall inspect the dry weather overflow each subsequent day until the overflow has been eliminated. The permittee shall record in the inspection logbook dry weather overflows, as well as the cause, corrective measures taken, and the dates of beginning and cessation of the overflow.

f. Control Solid and Floatable Materials in CSOs.

The permittee shall implement measures to control solid and floatable materials in its CSOs.

g. Develop and Implement Pollution Prevention Program.

The permittee shall implement a pollution prevention program focused on reducing the impact of CSOs on receiving waters. The permittee shall keep records to document pollution prevention implementation activities. This program shall include:

Section E - Combined Sewer System Overflows

2.g. Street sweeping and catch basin modification or cleaning at an appropriate frequency to prevent large accumulations of pollutants and debris.

h. Notify the Public of CSOs.

The permittee shall continue to implement a public notification process to inform citizens of when and where CSOs occur. The process must include:

The permittee shall keep records documenting public notification.

(1) A mechanism to alert persons using all receiving water bodies affected by CSOs.

(2) A system to determine the nature and duration of conditions that are potentially harmful to users of receiving waters due to CSOs.

(3) The permittee shall install and maintain identification signs at all CSO outfalls, C002 to C010, C012 to C019, C021 to C035, and C037 to C050, owned and operated by the permittee. The permittee must place the signs at or near the CSO outfalls and ensure that the signs are easily readable by the public.

(4) A CSO log book documenting CSO events shall be placed at bill paying location.

(5) CSO pamphlets shall be available for distribution to the public.

i. Monitoring to effectively characterize CSO Impacts and the Efficacy of CSO Controls.

(1) The permittee shall regularly monitor CSO outfalls, C002 to C010, C012 to C019, C021 to C035, and C037 to C050, to effectively characterize CSO impacts and the efficacy of CSO controls. All discharges from each monitored CSO shall report the time of occurrence, duration and estimated volume of each discharge. The permittee shall submit quarterly reports as an attachment to the DMRs.

(2) The monitoring shall be done approximately mid-stream from shore within 100 feet upstream of the influence of the CSO discharge as well as 100 feet below CSO discharge.

(3) Quarterly monitoring periods are January 1st - March 31st, April 1st - June 30th, July 1st - September 30th, and October 1st - December 31st.

3. WATER QUALITY-BASED EFFLUENT LIMITATION REQUIREMENTS FOR CSOs

Upon full implementation of the projects identified in the LTCP, the permittee shall not discharge any pollutant at a level that causes or contributes to an in-stream excursion above numeric or narrative criteria adopted as part of the West Virginia water quality standards.

4. LONG - TERM CONTROL PLAN

The permittee shall implement and effectively operate and maintain the CSO controls identified and approved in the long-term control plan dated April 17, 2003.

a. The City of Fairmont has 17 CSOs located on Monongahela River, 10 CSOs located on West Fork River, five(5) CSOs located on Coal Run, five(5) CSOs located on Hickman Run, four(4) CSOs located on Buffalo Creek, one(1) CSO located on Rheas Run, and four(4) CSOs located on an unnamed ravines. City of Fairmont is in the initial stages of a proposed Sanitary Sewer System Upgrade Project to identify and eliminate sources of Inflow and Infiltration (I/I) into the system. The number of CSO events will decrease when the sources of I/I are eliminated.

b. To evaluate the scope and the cost of the Sanitary Sewer Upgrade Project, City of Fairmont has hired an engineering consultant to develop a Preliminary Engineering Report. The report will be submitted to the West Virginia Infrastructure and Jobs Development Council to receive funding approval. This report was approved by the West Virginia Infrastructure and Jobs Development Council on the 7th day of January 2004.

c. Once funding has been secured, the following proposed construction schedule would be a part of the LTCP as CSO structural controls:

Construction of Marion Street Separation Project.....Begin December 31, 2005

Construction of 11th Street Sewer Separation Project...Begin December 31, 2007

Section A - Combined Sewer System Overflows

4. d. The following projects have also been approved in the LTCP for construction and completion by the City.

Construction of Industrial Sanitary Sewer Replacement Project.

Construction of East Grafton Road Sanitary Sewer Replacement Project.

Construction of Rheas Run Sanitary Sewer Replacement Project.

Construction of Goose Run Sanitary Sewer Replacement Project. (SEE 2/8/05 CORRESPONDENCE)

e. The following nonstructural controls include:

1. Continue to implement the Nine Minimum Controls.
2. Conduct ongoing LTCP CSO monitoring program.

CHANGE TO 6/30 CHANGE TO 12/31

5. REPORTING REQUIREMENTS

a. The permittee shall submit semi-annual progress reports detailing actions taken to meet the above CSO requirements. The required reports should be received no later than 15th day of April and 15th day of August of each calendar year. The reports should be sent to the address below:

~~Director~~
Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304
Attention: ~~Permitting and Engineering Sections~~

SEND COPY TO DIRECTOR AND TO DON LEWIS AT SAME ADDRESS.

CC TO DON LEWIS ALSO

b. The permittee shall submit a year-end report for CSOs C002 to C010, C012 to C019, C021 to C035, and C037 to C050 quarterly monitoring requirements. The required annual report should be received no later than January 31 of the following year.

6. SPECIAL CONDITIONS

a. This permit may be modified or revoked and reissued to include new or revised conditions if new information, not available at the time of permit or permit modification issuance, indicates that CSO controls imposed under the permit have failed to ensure the attainment of state water quality standards.

b. This permit may be modified or revoked and reissued to include new or revised conditions based on new information resulting from implementation of the Long-Term Control Plan.

Section F - Approved Pretreatment Programs

1. The permittee shall implement the Industrial Pretreatment Program in accordance with the Clean Water Act and the regulations, 40 CFR Part 403, promulgated, thereunder. The program shall also be implemented in accordance with the program submission, approved in February 1985, and as modified, in November 1987 and January 1992.
2. The permittee shall implement the program upon all industrial users of the Publicly Owned Treatment Works (POTW), irrespective of the geographical location of the users. The permittee shall secure and maintain adequate legal authority to control users located in the Town of Barrackville, Kingmill Valley PSD, Whitehall PSD, Greater Paw Paw PSD and City of Monongah, as well as any users located in unincorporated areas outside the corporate boundaries of the City of Fairmont.
3. The permittee shall submit proposed changes to the approved program in accordance with 40 CFR Part 403.18, and shall obtain prior approval of Substantial Modifications as defined by 40 CFR Part 403.18(c).
4. The permittee's implementation of the program shall, at a minimum, meet the requirements listed below.
   a) The permittee shall issue individual discharge permits to all significant industrial users (SIUs) as defined by 40 CFR Part 403.3(t). Permits shall contain the minimum requirements of 40 CFR Part 403.8(f)(1)(iii). The permittee shall reissue permits to SIUs prior to their expiration. Administrative extensions of expiring permits shall not be granted without written consent from the Director.
   b) The permittee shall inspect each SIU at least once per year. The annual inspection shall evaluate the manufacturing process, chemical storage areas, pretreatment facilities, spill prevention and control procedures, slug discharge control procedures, hazardous waste generation and disposal procedures, self-monitoring procedures and records.
   c) The permittee shall sample and analyze the nondomestic wastewater discharge(s) of each SIU at least once per year. Such monitoring shall include all parameters limited in the SIU's permit and shall be performed in accordance with 40 CFR Part 136, where applicable.
   d) The permittee shall perform quarterly assessments of SIU compliance, and document the names of SIUs that demonstrate significant noncompliance (SNC) and the SNC criteria violated. The permittee shall publish the name of any SIU that demonstrates significant noncompliance in the pretreatment year, as required by 40 CFR Part 403.8(f)(2)(vii). Publication shall occur, on or before the 31st day of January, of the following year.
   e) The permittee shall take timely and appropriate enforcement for all instances of industrial user noncompliance in accordance with an Enforcement Response Plan as required by 40 CFR Part 403.8(f)(5). The permittee shall take "formal" enforcement actions against SIUs demonstrating Significant Noncompliance as defined by 40 CFR 403.8(f)(2)(vii). A formal enforcement action is an Administrative Order or more stringent action.
   f) The permittee shall ensure that adequate resources (equipment and personnel) are available to fully implement the pretreatment program.
5. The permittee shall conduct monitoring, at its wastewater treatment plant, as follows.
   a) The permittee shall monitor the effluent of the POTW on a quarterly basis as specified in Section A.001 of this permit.
   b) The POTW influent shall be monitored on a quarterly basis for the total form of cadmium, chromium, arsenic, mercury, copper, lead, nickel, silver, zinc, cyanide and phenolics. For all parameters, except cyanide and phenolics, 24 hour composite samples shall be obtained. An individual grab sample shall be obtained for cyanide and phenolics. Influent monitoring shall be conducted concurrently with effluent monitoring required by Section 5.a of the pretreatment requirements.
   c) The permittee shall conduct annual (1/year) monitoring for the POTW influent for all priority pollutants not specified in Section A.1. For volatile organics, a minimum of four(4) individual grab samples shall be obtained. The samples may be analyzed separately, or may be combined in the laboratory, using flask or purge device compositing techniques, as specified in EPA's draft guidance, VOA Compositing Procedures, and the composite sample then analyzed. Twenty-four hour composite samples shall be obtained and analyzed for base neutrals, acid extractables, pesticides and metals.
   d) The POTW sludge shall be monitored, as specified, in Section A. and Section D.

Section F - Approved Pretreatment Programs

6. On or before the 28th day of February of each year, the permittee shall submit an annual report that describes the permittee's pretreatment implementation activities of the previous pretreatment implementation year (January 1st through December 31st). The annual report shall include the following information:

   a) SIU Listing - Provide an updated list of all current SIUs. The list shall indicate which SIUs are subject to Categorical Pretreatment Standards, and the applicable standard.

   b) SIU Permits - Provide a list of the issuance and expiration dates of each SIU permit, and the names of SIUs that are without a valid permit.

   c) Sampling and Inspection - Provide the number of inspections and sampling events performed by the permittee at SIUs and a listing of SIUs that were not sampled and those that were not inspected.

   d) Compliance and Enforcement - Provide a summary of the violations of pretreatment standards and requirements that occurred during the year. Include the results of the quarterly SNC assessments required by Section 4.d) above, and for each SIU that demonstrated SNC, describe the specific enforcement action taken and the current compliance status of the SIU. Also provide the numbers of each type of enforcement action taken by the permittee, and a copy of the published list of SIUs in SNC, as required by Section 4.d) above.

   e) POTW Operations - Provide a description of any interference, upset or permit violations experienced by the POTW which are attributable to the discharges of industrial users. Include a summary of the results of the influent, effluent and sludge monitoring required by Section F.05. above.

   f) Local Limitations -- For each pollutant that a Local Limitation exists provide a summary of the current total available load for the POTW and the allocation of that load to existing industrial users for the previous year. Include the loads allocated by the addition and/or deletion of industrial users and uncontrollable sources such as but not limited to domestic waste background loads, non-significant industrial users, etc.

7. The Director and the U.S. EPA retain the right to require the permittee to institute changes to the pretreatment program if:

   a) The requirements of 40 CFR Part 403 are not satisfied by program implementation;

   b) Problems such as interference, pass through or sludge contamination develop;

   c) Federal or State requirements change.

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0023353; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0023353; and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and the invocation of all the enforcement procedures set forth in Chapter 22, Article 11, or 15 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 and 12 and/or 15 of the Code of West Virginia and is transferable under the terms of Section 11 of Article 11.

Allyn B. Turner

Director

WRD 2A-8

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: 001
WASTELOAD FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity		Units	N.E.	Other Units			CEL*	Units	N.E.	Measurement Frequency	Sample Type
50050 (ML-1) RF-A Flow,in Conduit or thru plant Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mgd		Continuous	measured
00310 (ML-B) RF-A BOD, 5-Day 20 Deg.C Year Round	Reported												
	Permit Limits	2252 Avg. Monthly	3378 7 Day Average	Lbs/Day		N/A	30 Avg. Monthly	45 7 Day Average	N/A	mg/l		2/week	24 hr Composite
00530 (ML-A) RF-A Total Suspended Solids Year Round	Reported												
	Permit Limits	2252 Avg. Monthly	3378 7 Day Average	Lbs/Day		N/A	30 Avg. Monthly	45 7 Day Average	N/A	mg/l		2/week	24 hr Composite
00610 (ML-A) RF-A Ammonia Nitrogen Year Round	Reported												
	Permit Limits	1126 Avg. Monthly	2252 Max. Daily	Lbs/Day		N/A	15 Avg. Monthly	30 Max. Daily	N/A	mg/l		2/week	24 hr Composite
74055 (ML-A) RF-A Coliform, Fecal Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	200 Mo. Geo. Mean	400 Max. Daily	N/A	Cnts/100m		2/week	Grab
00400 (ML-A) RF-A pH Year Round	Reported												
	Permit Limits	N/A	N/A			6 Min.	N/A	9 Max.	N/A	S.U.		1/daily	Grab
50060 (ML-A) RF-A Chlorine, Total Residual Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	0.028 Avg. Monthly	0.057 Max. Daily	100	mg/l		2/week	Grab
01002 (ML-A) RF-B Arsenic, Total (As AS) Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	24 hr Composite

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer	I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.	Date Completed
Title of Officer		Signature of Principal Executive Officer or Authorized Agent

WRD 2A-6

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: 001
WASTELOAD FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity		Units	N.E.	Other Units			CEL*	Units	N.E.	Measurement Frequency	Sample Type
61425 (ML-A) RF-D Toxicity, Acute Daphnia Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	TUa		1/year	24 hr Composite
61427 (ML-A) RF-D Toxicity, Acute Pimephales Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	TUa		1/year	24 hr Composite
01094 (ML-A) RF-B Zinc, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	24 hr Composite
01114 (ML-A) RF-B Lead, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	24 hr Composite
01119 (ML-A) RF-B Copper, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	24 hr Composite
00718 (ML-A) RF-B Cyanide, Weak Acid Dissociable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
01079 (ML-A) RF-B Silver, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	24 hr Composite
01113 (ML-A) RF-B Cadmium, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	24 hr Composite

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer

Title of Officer

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

Date Completed

Signature of Principal Executive Officer or Authorized Agent

WRD 2A-

STATE OF ST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: 001
WASTELOAD FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameters		Quantity		Units	N.E.	Other Units			CEL*	Units	N.E.	Measurement Frequency	Sample Type
71900 (ML-A) RF-B Mercury, Total (As Hg) Year Round	Reported								N/A	mg/l		1/quarter	24 hr Composite
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily					
01074 (ML-A) RF-B Nickel, Total Recoverable Year Round	Reported								N/A	mg/l		1/quarter	24 hr Composite
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily					
00665 (ML-A) RF-B Phosphorus, Total Year Round	Reported								N/A	mg/l		1/quarter	24 hr Composite
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max Daily					
81010 (ML-K) RF-A BOD, % Removal Year Round	Reported								N/A	Percent		8/month	24 hr Composite
	Permit Limits	N/A	N/A			N/A	70 Avg. Monthly	N/A					
81011 (ML-K) RF-A Suspended Solids, % Removal Year Round	Reported								N/A	Percent		8/month	24 hr Composite
	Permit Limits	N/A	N/A			N/A	75 Avg. Monthly	N/A					
01032 (ML-A) RF-B Chromium, Hexavalent Year Round	Reported								N/A	mg/l		1/quarter	24 hr Composite
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily					
00600 (ML-A) RF-B Nitrogen, Total (AS N) Year Round	Reported								N/A	mg/l		1/quarter	24 hr Composite
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily					
									N/A				

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer	I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.	Date Completed
Title of Officer		Signature of Principal Executive Officer or Authorized Agent

WRD 2A-

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: 101
WASTELOAD FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity		Units	N.E.	Other Units			CEL*	Units	N.E.	Measurement Frequency	Sample Type
50050 (ML-1) RF-C	Reported												
Flow,in Conduit or thru plant	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	mgd		1/6 months	Estimated
Year Round													
00310 (ML-1) RF-C	Reported												
BOD, 5-Day 20 Deg.C	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	mg/l		1/6 months	Grab
Year Round													
00530 (ML-1) RF-C	Reported												
Total Suspended Solids	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	mg/l		1/6 months	Grab
Year Round													
00610 (ML-1) RF-C	Reported												
Ammonia Nitrogen	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	mg/l		1/6 months	Grab
Year Round													
74055 (ML-1) RF-C	Reported												
Coliform, Fecal	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	Cnts/100m		1/6 months	Grab
Year Round													
00400 (ML-1) RF-C	Reported												
pH	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	S.U.		1/6 months	Grab
Year Round													
81017 (ML-1) RF-C	Reported												
Chem. Oxygen Demand	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	mg/l		1/6 months	Grab
Year Round													
00552 (ML-1) RF-C	Reported												
Oil and Grease, Hexane EXTR.	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max. Daily	N/A	mg/l		1/6 months	Grab
Year Round													

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer

Title of Officer

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Date Completed

Signature of Principal Executive Officer or Authorized Agent

WRD 2A-6

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SEWAGE SLUDGE MONITORING REPORT

Final Limitations
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: S01
RESULTS FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity				Other Units						Measurement Frequency	Sample Type
				Units	N.E.				CEL	Units	N.E.		
74055 (ML-+) RF-B Coliform, Fecal Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	col/gr		1/quarter	Grab
00400 (ML-+) RF-B pH Year Round	Reported												
	Permit Limits	N/A	N/A			Rpt Only Min.	N/A	Rpt Only Max.	N/A	S.U.		1/quarter	Grab
61521 (ML-+) RF-B Arsenic, Sludge Tot. Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	20 Max.	N/A	mg/kg		1/quarter	1/wk Comp
78476 (ML-+) RF-B Cadmium,Sludge,Tot Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	39 Max.	N/A	mg/kg		1/quarter	1/wk Comp
78473 (ML-+) RF-B Chromium, Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	1000 Max.	N/A	mg/kg		1/quarter	1/wk Comp
78475 (ML-+) RF-B Copper,Sludge,Tot,Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	1500 Max.	N/A	mg/kg		1/quarter	1/wk Comp
78468 (ML-+) RF-B Lead, Dry. Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	250 Max.	N/A	mg/kg		1/quarter	1/wk Comp
78471 (ML-+) RF-B Mercury, Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	10 Max.	N/A	mg/kg		1/quarter	1/wk Comp

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Name of Principal Executive Officer	I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.	Date Completed
Title of Officer		Signature of Principal Executive Officer or Authorized Agent

WRD 2A-1

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SEWAGE SLUDGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: S01
RESULTS FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity		Units	N.E.	Other Units			CEL*	Units	N.E.	Measurement Frequency	Sample Type
78465 (ML-+) RF-B Molybdenum,Dry Wt. Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	18 Max.					
78469 (ML-+) RF-B Nickel, Dry Wt. Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	200 Max.					
49031 (ML-+) RF-B Selenium,Sludge,Tot. Dry Wt. Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	36 Max.					
78467 (ML-+) RF-B Zinc, Dry Wt. Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	2800 Max.					
00916 (ML-+) RF-B Calcium, Total (as Ca) Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.					
61553 (ML-+) RF-B Solids, Total Sludge Percent Year Round	Reported								N/A	Percent		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			Rpt Only Min.	Rpt Only Avg.	Rpt Only Max.					
78472 (ML-+) RF-B Potassium, Sludge Tot. Dry Wt. Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.					
78478 (ML-+) RF-B Phosphorus,Sludge,Tot,Dry Wt. Year Round	Reported								N/A	mg/kg		1/quarter	1/wk Comp
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.					

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer	I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.	Date Completed
Title of Officer		Signature of Principal Executive Officer or Authorized Agent

WRD 2A-6

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SEWAGE SLUDGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (FAIRMONT CITY OF) FAIRMONT CITY OF
LOCATION OF FACILITY: FAIRMONT; Marion County
PERMIT NO.: WV0023353 OUTLET NO.: S01
RESULTS FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity				Other Units						Measurement Frequency	Sample Type
				Units	N/E				CEL *	Units	N/E		
82294 (ML-+) RF-B Nitrogen, Ammonia Tot. Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/quarter	1/wk Comp
78470 (ML-+) RF-B Nitrogen, Sludge Tot. Dry Wt Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/quarter	1/wk Comp
51020 (ML-+) RF-B Organic Nitrogen Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/quarter	1/wk Comp
00927 (ML-+) RF-B Magnesium,Tot (as Mg) Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/quarter	1/wk Comp
									N/A				
									N/A				
									N/A				
									N/A				

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer:

Title of Officer:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

Date Completed:

Signature of Principal Executive Officer or Authorized Agent:

SEWAGE SLUDGE MANAGEMENT REPORT

FACILITY NAME: (FAIRMONT CITY OF)FAIRMONT CITY OF
ADDRESS: P.O. Box 1428, Fairmont, WV 26554

DESIGN FLOW: 9,000,000 gpd
YEAR: _____
MONTH: _____

PERMIT NUMBER: WV0023353
MONITORING FREQUENCY: _____
LAST SAMPLE DATE: _____

Total Sludge Generated this Report Period: (Dry Tons) _____
Sludge Generated this Year to Date: (Dry Tons) _____
Sewage Sludge/Domestic Septage Received: (Gallons) _____

Disposal Method: _____
Amount Disposed: (Dry tons) _____
Name of Landfill or Compost Facility : _____

Percent Solids: Average: _____ Measurement Frequency: _____ Number of Loads Landfilled With Less Than 20% Solids: _____

Pathogen Reduction Method:

- ☐ Not Applicable. No land application of sewage sludge.
- ☐ Fecal Coliform Monitoring: Geometric mean of last seven samples is _____ col/dry gram
  Sample results for this report period were: _____ col/dry gram _____ col/dry gram
- ☐ Limit Addition: pH of sample two hours after lime addition: Range _____
- ☐ Aerobic Digestion: Average detention time for this report period:(days) _____
  Digester Temperature: Average _____ Range _____
- ☐ Anaerobic Digestion: Average detention time for this report period:(days) _____
  Digester Temperature: Average _____ Range _____
- ☐ Other: (Provide Description) _____

NE: Number of loads land applied which did not fully meet pathogen reduction requirements: _____

Vector Attraction Reduction Method:

- ☐ Not Applicable. No land application of sewage sludge.
- ☐ 38% Volatile Solids Reduction: Average volatile solids reduction for the month of _____ was _____ percent
- ☐ SOUR: The average Specific Oxygen Uptake rate for the month of _____ was _____ mg Oxygen/hour/dry gram
- ☐ Lime Addition: pH of sample two hours after lime addition: Range _____
  pH of sample 24 hours after lime addition: Range _____
- ☐ Other: (Provide Description) _____

NE: Number of loads land applied which did not fully meet vector attraction reduction requirements: _____

I certify under penalty of law that the management practices, vector attraction reduction requires, and the pathogen reduction requirements of Federal regulations 40 CFR Part 503 and State Regulation Title 33, Series 2 have been met for all sewage sludge land applied during this report period. This determination has been made under my supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate information used to determine these requirements have been met. I also certify that this document and all the attachments were prepared under my direction or supervision, and that the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are penalties for false certification including the possibility of fine and imprisonment.

OFFICIAL _____ TITLE _____

SIGNATURE _____ DATE _____

Additional Comments or Explanation:

Division of Water and Waste Management
414 Summers Street, Second Floor
Charleston, West Virginia 25301
Phone (304) 558-4086
Fax (304) 558-5903

West Virginia Department of Environmental Protection

Bob Wise
Governor

Stephanie R. Timmermeyer
Cabinet Secretary

WV/NPDES Permit No.: WV0023353

NOTICE TO PERMITTEES

The 1999 regular session of the West Virginia legislature revised the Water Pollution Control Act, Chapter 22, Article 11, Section 10 of the Code of West Virginia relating to fees associated with permits. This section of the Code requires all holders of a State water pollution control permit or a national pollutant discharge elimination system permit to be assessed an annual permit fee, based upon rules promulgated by the Secretary of the Department of Environmental Protection. The Secretary has promulgated a final rule in accordance with the code revision to this effect and these rules were effective May 4, 2000. The rules establish an annual permit fee based upon the relative potential to degrade the waters of the State which, in most instances, relate to volume of discharge. However, for sewage facilities, the annual permit fee is based upon the number of customers served by the facility. You may contact the Secretary of State's Office, State Capitol Building, Charleston, WV 25305, to obtain a copy of the rules. The reference is Title 47, Legislative Rules, Department of Environmental Protection, Division of Water Resources, Series 26 Water Pollution Control Permit Fee Schedules.

Based upon the volume of discharge for which your facility is currently permitted, the number of customers served by your facility or for the category you fall within, pursuant to Section 7 of Title 47, Series 26, your annual permit fee is **$2500.00**. This fee is due no later than the anniversary date of permit issuance in each year of the term of the permit or in the case of coverage under a general permit, the fee is due no later than the anniversary date of your coverage under the general permit. **You will be invoiced by this agency at the appropriate time for the fee.** Failure to submit the annual fee within ninety(90) days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this permit which you are aggrieved by to the Environmental Quality Board by filing a NOTICE OF APPEAL on the form prescribed by such Board for this purpose, with the Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after the date of receipt of the above permit.

Appendix A

I. MANAGEMENT CONDITIONS:

1. **Duty to Comply**
   a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.
   b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
2. **Duty to Reapply**
   If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit at least 180 days prior to expiration of the permit.
3. **Duty to Mitigate**
   The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.
4. **Permit Actions**
   This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
5. **Property Rights**
   This permit does not convey any property rights of any sort or any exclusive privilege.
6. **Signatory Requirements**
   All applications, reports, or information submitted to the Director shall be signed and certified as required in Title 47, Series 10 , Section 4.6 of the West Virginia Legislative Rules.
7. **Transfers**
   This permit is not transferrable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.
8. **Duty to Provide Information**
   The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
9. **Other Information**
   Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
10. **Inspection and Entry**
    The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
    a) Enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
    b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
    c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
    d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.
11. **Permit Modification**
    This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22-11-12 of the Code of West Virginia.
12. **Water Quality**
    Subject to 47 WV CSR 10.3.4.a, the effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the Environmental Quality Board.
13. **Outlet Markers**
    A permanent marker at the establishment shall be posted in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules.
14. **Liabilities**
    a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308 or 405 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
    b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years, or by both.
    c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years, or by both.
    d) Nothing in I.14 a), b), and c) shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

II. OPERATION AND MAINTENANCE:

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by the WV Bureau of Public Health Laws, W. Va. Code Chapter 16-1, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Director may require a more highly skilled operator.

2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

3. Bypass

a) Definitions

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of II.3.c) and II.3.d) of this permit.

c) (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;

(2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in IV.2.b) of this permit.

d) Prohibition of bypass

(1) Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for a bypass, unless;

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(C) The permittee submitted notices as required under II.3.c) of this permit.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in II.3.d.(1) of this permit.

4. Upset

a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitation if the requirements of II.4.c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in IV.2.b) of this permit.

(4) The permittee complied with any remedial measures required under I.3. of this permit.

d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Director, any solids, sludges, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

II. MONITORING AND REPORTING

1. **Representative Sampling**

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. **Reporting**

a) Permittee shall submit, according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A analytically determined to be in the plant effluent(s). DMR submissions shall be made in accordance with the terms contained in Section C of this permit.

b) Enter reported average and maximum values under "Quantity" and "Concentration" in the units specified for each parameter, as appropriate.

c) Specify the number of analyzed samples that exceed the allowable permit conditions in the columns labeled "N.E." (i.e., number exceeding).

d) Specify frequency of analysis for each parameter as number of analyses/specified period (e.g.,3/month is equivalent to 3 analyses performed every calendar month). If continuous, enter "Cont.". The frequency listed on format is the minimum required.

3. **Test Procedures**

Samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136, unless other test procedures have been specified elsewhere in this permit.

4. **Recording of Results**

For each measurement or sample taken pursuant to the permit, the permittee shall record the following information.

a) The date, exact place, and time of sampling or measurement;

b) The date(s) analyses were performed;

c) The individual(s) who performed the sampling or measurement;

d) The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;

e) The analytical techniques or methods used, and

f) The results of such analyses. Information not required by the DMR form is not to be submitted to this agency, but is to be retained as required in III.6.

5. **Additional Monitoring by Permittee**

If the permittee monitors any pollutant at any monitoring point specified in this permit more frequently than required by this permit, using approved test procedures or others as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

6. **Records Retention**

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

7. **Definitions**

a) "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

b) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

c) "Maximum daily discharge limitation" means the highest allowable daily discharge.

d) "Composite Sample" is a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two hours.

e) "Grab Sample" is an individual sample collected in less than 15 minutes.

f) "is" = immersion stabilization - a calibrated device is immersed in the effluent stream until the reading is stabilized.

g) The "daily average temperature" means the arithmetic average of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.

h) The "daily maximum temperature" means the highest arithmetic average of the temperatures observed for any two (2) consecutive hours during a 24 hour day, or during the operating day if flows are of shorter duration.

i) The "monthly average fecal coliform" bacteria is the geometric average of all samples collected during the month.

j) "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or which a relationship to absolute volume has been obtained.

k) "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to pump capabilities, water meters and batch discharge volumes.

l) "Non-contact cooling water" means the water that is contained in a leak-free system, i.e., no contact with any gas, liquid, or solid other than the container for transport; the water shall have no net poundage addition of any pollutant over intake water levels, exclusive of approved anti-fouling agents.

IV. OTHER REPORTING

1. **Reporting Spills and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11. Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the Legislative rules as they pertain to the reporting of spills and accidental discharges.

2. **Immediate Reporting**

a) The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

b) The following shall also be reported immediately:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported immediately. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

c) The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.

d) Compliance with the requirements of IV.2 of this section, shall not relieve a person of compliance with Title 47, Series 11, Section 2.

3. **Reporting Requirements**

a) Planned changes. The permittee shall give notice to the Director of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 10, Title 47; or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under IV.2 of this section.

b) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c) In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Director in writing as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(A) One hundred micrograms per liter (100 ug/l);

(B) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitro phenol; and for 2-methyl 4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.9 of Series10, Title 47.

(D) The level established by the Director in accordance with Section 6.3.g of Series 10, Title 47;

(2) That any activity has occurred or will occur which would result in any discharge (on a non-routine or infrequent basis) of a toxic which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(A) Five hundred micrograms per liter (500 ug/l);

(B) One milligram per liter (1 mg/l) for antimony;

(C) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.7 of Series 10, Title 47;

(D) The level established by the Director in accordance with Section 6.3.g of Series 10, Title 47.

(3) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.

(4) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

4. **Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in IV.2.a). Should other applicable noncompliance reporting be required, these terms and conditions will be found in Section C of this permit.

EMERGENCY RESPONSE SPILL ALERT SYSTEM
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

REQUIREMENTS:

Title 47, Series 11, Section 2 of the West Virginia Legislative Rules, Environmental Protection, Water Resources - Waste Management, Effective July 1, 1994.

RESPONSIBILITY FOR REPORTING:

Each and every person who may cause or be responsible for any spill or accidental discharge of pollutants into the waters of the State shall give immediate notification to the Division of Water and Waste Management's Emergency Notification Number, 1-800-642-3074. Such notification shall set forth insofar as possible and as soon thereafter as practical the time and place of such spill or discharge, type or types and quantity or quantities of the material or materials therein, action or actions taken to stop such spill or discharge and to minimize the polluting effect thereof, the measure or measures taken or to be taken in order to prevent a recurrence of any such spill or discharge and such additional information as may be requested by the Division of Water and Waste Management. This also applies to spills to the waters of the State resulting from accidents to common carriers by highway, rail and water.

It shall be the responsibility of each industrial establishment or other entity discharging directly to a stream to have available the following information pertaining to those substances that are employed or handled in its operation in sufficiently large amounts as to constitute a hazard in case of an accidental spill or discharge into a public stream:

(1) Potential toxicity in water to man, animals and aquatic life;
(2) Details on analytical procedures for the quantitative estimation of such substances in water and
(3) Suggestions on safeguards or other precautionary measures to nullify the toxic effects of a substance once it has gotten into a stream.

Failure to furnish such information as required by Section 14, Article 11, Chapter 22, Code of West Virginia may be punishable under Section 24, Article 11, Chapter 22, and/or Section 22, Article 11, Chapter 22, Code of West Virginia.

It shall be the responsibility of any person who causes or contributes in any way to the spill or accidental discharge of any pollutant or pollutants into State waters to immediately take any and all measures necessary to contain such spill or discharge. It shall further be the responsibility of such person to take any and all measures necessary to clean-up, remove and otherwise render such spill or discharge harmless to the waters of the State.

When the Director determines it necessary for the effective containment and abatement of spills and accidental discharges, the Director may require the person or persons responsible for such spill or discharge to monitor affected waters in a manner prescribed by the Director until the possibility of any adverse effect on the waters of the State no longer exists.

VOLUNTARY REPORTING BY LAW OFFICERS, U. S. COAST GUARD, LOCK MASTERS AND OTHERS:

In cases involving river and highway accidents where the responsible party may or may not be available to report the incident, law officers, U. S. Coast Guard, Lock Masters and other interested person(s) should make the report.

WHO TO CONTACT:
Notify the following number: **1-800-642-3074**

INFORMATION NEEDED:

- Source of spill or discharge
- Location of incident
- Time of incident
- Material spilled or discharged
- Amount spilled or discharged
- Toxicity of material spilled or discharged
- Personnel at the scene
- Actions initiated
- Shipper/Manufacturer identification
- Railcar/Truck identification number
- Container type

Division of Water and Waste Management
414 Summers Street, 2nd Floor
Charleston, WV 25301
Telephone Number: (304) 558-4086
Fax Number: (304) 558-5903

West Virginia Department of Environmental Protection

Bob Wise
Governor

Stephanie R. Timmermeyer
Cabinet Secretary

August 31, 2004

Bruce McDaniel, City Manager
City of Fairmont
Post Office Box 1428
Fairmont, WV 26554

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0023353
Modification No. 1

Dear Mr. McDaniel:

This correspondence shall serve as WV/NPDES Water Pollution Control Permit Modification No. 1, of your existing WV/NPDES Water Pollution Control Permit No. WV0023353 issued the 30th day of April 2004.

After review and consideration of the information submitted on, and with, WV/NPDES Water Pollution Control Permit Modification Application No. WV0023353-A, dated the 15th day of July 2004, and other relevant information, the subject Permit is hereby modified to incorporate the following changes:

Outlet Nos. C011 and C020, which served as combined sewer overflow points have been permanently sealed-off with concrete and thus have been permanently eliminated.

Pages 3, 4, 25, 26, 30 and 31 of 34, of the permit have been revised to reflect the elimination of Combined Sewer Overflow Outlet Nos. C011 and C020.

Enclosed are revised pages 3, 4, 25, 26, 30 and 31 of 34. These documents shall supersede the one currently in your possession, and be incorporated, as appropriate, into your existing WV/NPDES Water Pollution Control Permit WV0023353.

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain in effect and unchanged.

If you have any questions, please contact Bhupinder Gill of this Division at (304) 558-4086.

Sincerely,

Allyn G. Turner
Director

AGT:bsg

Enclosure

cc: Env. Inspector Supervisor
Env. Inspector
EPA Region III

dep

Received 2/11/05

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone Number: (304) 926-0495
Fax Number: (304) 926-0496

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

February 1, 2005

Bruce McDaniel, City Manager
City of Fairmont
Post Office Box 1428
Fairmont, WV 26554

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0023353
Modification No. 2

Dear Mr. McDaniel:

This correspondence shall serve as WV/NPDES Water Pollution Control Permit Modification No. 2, of your existing WV/NPDES Water Pollution Control Permit No. WV0023353 issued the 30th day of April 2004.

After review and consideration of the information submitted on, and with, WV/NPDES Water Pollution Control Permit Modification Application No. WV0023353-B, dated the 1st day of December 2004, additional information received on January 26, 2005, and other relevant information, the subject Permit is hereby modified to incorporate the following changes:

City of Fairmont is authorized to discharge from the two (2) additional outlets, which are further described as follows:

Outlet No. 102: Stormwater collected from drains from the top of parking lot area of the wastewater treatment plant, which is located inside the fenced area of the plant.

Outlet No. 103: Stormwater collected from drains from the lower parking lot area of the wastewater treatment plant, which is located inside the fenced area of the plant.

Pages 3, 4, 16 and 17 of 34, of the permit have been revised to reflect the inclusion of two (2) Outlets and monitoring requirements.

Enclosed find revised pages 3, 4, 16 and 17 of 34 of your existing WV/NPDES Water Pollution Control Permit No. WV0023353. These documents shall supersede the one currently in your possession, and be incorporated, as appropriate, into your existing permit.

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain in effect and unchanged.

Sincerely,

Ken Ellison
Acting Director
Division of Water and Waste Management

KE:bsg

Enclosure

cc: Env. Inspector Supervisor
Env. Inspector
EPA Region III

Received 2/24/05

dep

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Tel. No.: 304-926-0495
Fax No.: 304-926-0463

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

February 16, 2005

Bruce McDaniel, City Manager
City of Fairmont
Post Office Box 1428
Fairmont, WV 26554

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0023353
Modification No. 3

Dear Mr. McDaniel:

This correspondence shall serve as WV/NPDES Water Pollution Control Permit Modification No. 3, of your existing WV/NPDES Water Pollution Control Permit No. WV0023353 issued the 30th day of April 2004.

After review and consideration of the information submitted on, and with, WV/NPDES Water Pollution Control Permit Modification Application No. WV0023353-C, dated the 1st day of December 2004, and other relevant information, the subject Permit is hereby modified to incorporate the following changes:

City of Fairmont has completed the construction of a new sanitary main on Bryant Street, and the Outlet No. C036, which served as combined sewer overflow point, has been permanently eliminated.

Pages 3, 4, and from 25 to 31 of 34, of the permit have been revised to reflect the elimination of Combined Sewer Overflow Outlet No. C036.

Enclosed find revised pages 3, 4, and from 25 to 31 of 34 of your existing WV/NPDES Water Pollution Control Permit WV0023353. These documents shall supersede the one currently in your possession, and be incorporated, as appropriate, into your existing permit.

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain in effect and unchanged.

Sincerely,

Ken Ellison
Acting Director
Division of Water and Waste Management

KE:bsg

Enclosure

cc: Env. Inspector Supervisor
Env. Inspector
EPA Region III

dep

Received 2/15/07

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304-2345
Telephone Number: (304) 926-0495
Fax Number: (304) 926-0463

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

January 31, 2007

Bruce McDaniel, Chairman
City of Fairmont
Sanitary Sewer Board
Post Office Box 1428
Fairmont, WV 26555

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0023353
Letter of Amendment

Dear Mr. McDaniel:

We are in receipt of the subsequent information, received the 17th day of January 2007, and additional information received the 29th day of January 2007, relative to the land application sludge disposal site(s) listed below. Consequently, this letter shall serve to effectuate the appropriate changes to your Permit relative to the utilization of this site.

Section D.4.a), on pages 18 and 19 of 34 of WV/NPDES Permit No. WV0023353, shall be amended to incorporate the following revisions to the loading rate(s) for the previously approved site(s).

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five(5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Joe Defazio			
Field A	4.4	17.6	127
Field B	4.4	17.6	127

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five(5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Lillian Parker			
Field C	4.4	17.6	127

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain unchanged and in effect.

If you have any questions, please feel free to contact Mr. Thomas Sowers of my staff at (304) 926-0499 ext 1012 or TTY (304) 926-0489.

Sincerely,

Lisa A. McClung

Lisa A. McClung
Director

LAM/tjs

cc: Env. Insp. Supervisor
Env. Inspector

ORDINANCE NO. 796

CITY OF FAIRMONT,

SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988

SUPPLEMENTAL AND AMENDATORY ORDINANCE

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11/21/88
FMTSR2-B

ORDINANCE NO. _____

CITY OF FAIRMONT

SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 680 OF THE CITY OF FAIRMONT, ENACTED AUGUST 13, 1985; AUTHORIZING THE REFUNDING OF A PORTION OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1985, OF THE CITY OF FAIRMONT, WEST VIRGINIA; AUTHORIZING THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $13,500,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 680 TO PERMIT THE REFUNDING OF LESS THAN ALL OF SUCH SERIES 1985 BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE ADOPTION OF A SUPPLEMENTAL RESOLUTION AND THE FORM OF AND EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT AND OTHER INSTRUMENTS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS

WHEREAS, the City of Fairmont (the "City") owns and operates a municipal sewerage system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, extensions and improvements for the System by issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Sewerage System Refunding Revenue Bonds, Series 1985, dated September 15, 1985, issued in the original aggregate principal amount of $7,370,000, and now outstanding in the principal amount of $7,185,000, the last maturity being November 1, 2011 (the "Prior Bonds"), as provided in an ordinance enacted August 13, 1985, and designated "Ordinance No. 680" and supplemented by a supplemental resolution adopted September 17, 1985 (such ordinance, as so supplemented, herein called the "Prior Ordinance");

WHEREAS, under the provisions of Chapter 16, Article 13 of the Official West Virginia Code of 1931, as amended (the "Act"), the City is authorized and empowered to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds;

WHEREAS, the City is advised that interest savings should be realized if a portion of the Prior Bonds is refunded, due to present favorable market conditions and interest rates, but that refunding more than such portion would not create any additional interest savings;

WHEREAS, such savings will be applied to certain needed additions, betterments and improvements for the System;

WHEREAS, the City has determined that it would therefore be to the benefit of the City and its inhabitants to refund such portion of the Prior Bonds to the first redemption date at which the Prior Bonds may be redeemed at par, being November 1, 1995, in the manner set forth herein and in the Escrow Deposit Agreement and Investment Purchase Agreement (as such terms are defined herein) by the issuance of a series of bonds to be designated "City of Fairmont Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988" (the "Series 1988 Bonds"), limited to the aggregate principal amount of $13,500,000, such Series 1988 Bonds to be on a parity with the Prior Bonds, the issuance thereof not effecting a defeasance of the Prior Ordinance, and containing such other terms and provisions as are hereinafter provided;

WHEREAS, the Prior Ordinance provides, in Section 6.08 thereof, that additional parity Bonds may be issued to refund the entirety of one or more series of Bonds issued pursuant thereto, but the City has determined that refunding of the entire series of the Prior Bonds would result in little or no savings to the City, and it is in the best interests of the City to refund only a portion of the Prior Bonds and to issue the Series 1988 Bonds on a parity with the Prior Bonds, which will remain Outstanding;

WHEREAS, in order to permit the partial refunding of the Prior Bonds and realize interest cost savings, the City has determined that the Prior Ordinance should be amended to permit issuance of parity Bonds for the purpose of refunding all <u>or any portion</u> of one or more series of Bonds issued pursuant to the Prior Ordinance;

WHEREAS, the City has determined that such amendment of the Prior Ordinance will not be materially adverse to any Holder of the Prior Bonds, and has obtained the express written consent of AMBAC Indemnity Corporation, as insurer of the Prior Bonds, to such amendment, and such amendment is therefore permitted under the terms of the Prior Ordinance;

WHEREAS, the City has determined that all payments into the respective funds and accounts provided for in the Prior Ordinance on account of the Prior Bonds Outstanding, and any other payments provided for in the Prior Ordinance have been made in full and will be made in full to the date of delivery of the Series 1988 Bonds;

WHEREAS, the City has obtained all consents required pursuant to the Prior Ordinance for the refunding of such portion of the Prior Bonds and for the issuance of the Series 1988 Bonds on a parity with the Prior Bonds, which will remain outstanding following such refunding;

WHEREAS, pursuant to the Act, the City has heretofore established a Sanitary Board and the Sanitary Board has petitioned the Council to provide for the refunding of such portion of the Prior Bonds as hereinafter provided; and

WHEREAS, the City now desires to authorize the refunding of such portion of Prior Bonds as aforesaid, and to provide for the financing thereof by the issuance of the Series 1988 Bonds as hereinafter provided;

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS:

ARTICLE I

DEFINITIONS; STATUTORY AUTHORITY; FINDINGS

Section 1.01. Definitions. All capitalized terms used herein and not otherwise defined in the recitals hereto shall have the meanings set forth in the Prior Ordinance. In addition, the following terms shall have the meanings set forth below with respect to the Series 1988 Bonds notwithstanding the fact that such terms may have different meanings under the Prior Ordinance, in this Supplemental and Amendatory Ordinance unless the context expressly requires otherwise:

"AMBAC Indemnity" means AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company.

"Bonds" means collectively, the Prior Bonds, the Series 1988 Bonds, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained in the Prior Ordinance, as supplemented and amended by this Ordinance.

"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.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1988 Bonds, in substantially the form set forth in Exhibit A hereto.

"Closing Date" means the date upon which there is an exchange of the Series 1988 Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of refunding a portion of the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, the cost of municipal bond insurance, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Series 1988 Bonds and the refunding of a portion of the Prior Bonds.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Depository Bank" means the bank to be designated, as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the City as Depository Bank.

"DTC-eligible" means, with respect to the Series 1988 Bonds and as hereafter deemed appropriate, meeting the qualifications prescribed by the Depository Trust Company, New York, New York.

"Escrow Agent" means the escrow agent for the Escrow Fund established pursuant to the Escrow Deposit Agreement.

"Escrow Deposit Agreement" means the agreement to be entered into between the City and the Bond Commission as the Escrow Agent, providing for the ultimate payment of a portion of the Prior Bonds, the disposition of moneys in the various funds and accounts under the Prior Ordinance and matters in connection therewith, the form of which shall be approved by the Supplemental Resolution.

"Escrow Fund" means the fund designated as such in the Escrow Deposit Agreement.

"Event of Default" means any occurrence or event specified in Section 7.01.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Series 1988 Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Series 1988 Bond, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

"Government Obligations" means direct obligations of (including obligations issued or held in book entry form on the books of) the Department of Treasury of the United States of America.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the City as a result of the sale of the Series 1988 Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1988 Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the City, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1988 Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are deemed to become proceeds of the Series 1988 Bonds ratably as original proceeds of the Series 1988 Bonds and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds,

investment proceeds or transferred proceeds (as referenced in clauses (i) through (iii) above) which are held in any fund to the extent that the City reasonably expects to use such fund to pay Debt Service;

(v) Amounts in any fund established hereby as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Series 1988 Bonds by the City;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1988 Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income under Section 103 of the Code, for federal income tax purposes.

"Investment Purchase Agreement" means the agreement among the City, the Escrow Agent and the Securities Provider providing for the purchase by the City of certain securities with a portion of the Net Revenues.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy issued by AMBAC Indemnity insuring the payment when due of the principal of and interest on the Series 1988 Bonds as provided therein.

"Net Proceeds" means the face amount of the Series 1988 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Accounts.

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Series 1988 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1988 Bonds.

"Nonrefunded Prior Bonds" means the Outstanding Prior Bonds which will not be refunded by the Series 1988 Bonds.

"Ordinance" means the Prior Ordinance, as amended and supplemented by this Supplemental and Amendatory Ordinance, as it may hereafter from time to time be further amended or supplemented.

"Original Purchaser" means Butcher & Singer Inc., Philadelphia, Pennsylvania, a corporation, as the purchasers of the Series 1988 Bonds directly from the City, or such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 1988 Bonds directly from the City, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the City shall agree to the purchase of the Series 1988 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adoped by the Council at the time of approval of such sale of said Series 1988 Bonds.

"Outstanding," when used with reference to Series 1988 Bonds and as of any particular date, describes all Series 1988 Bonds theretofore and thereupon being issued and delivered except (a) any Series 1988 Bond cancelled by the Registrar at or prior to said date; (b) any Series 1988 Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Supplemental and Amendatory Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Series 1988 Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Series 1988 Bondholders or Series 1988 Bonds for the purpose of consents, notices and the like, any Series 1988 Bond registered to the City.

"Paying Agent" means the Registrar and any other paying agent for the Series 1988 Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12.

"Prior Bonds" shall have the meaning defined in the premises hereof.

"Prior Ordinance" shall have the meaning defined in the premises hereof.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Series 1988 Bonds, has the same meaning as the term

"issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 1988 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1988 Bonds of each maturity is sold or, if the Series 1988 Bonds are privately placed, the price paid by the first buyer of the Series 1988 Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1988 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 1988 Bonds.

"Qualified Investments" means and includes any of the following for all purposes other than (i) investments in escrow accounts, and (ii) investing, and receiving credit for, accrued and capitalized interest:

(a) Government Obligations;

(b) Obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

Export - Import Bank
Farmers Home Administration
General Services Administration
U. S. Maritime Administration
Small Business Administration
Government National Mortgage Association (GNMA)
U. S. Department of Housing & Urban Development (PHA's)
Federal Housing Administration;

(c) Bonds, notes or other evidences of indebtedness rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(d) U. S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a

rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(e) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's Investors Service and which matures not more than 270 days after the date of purchase;

(f) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation;

(g) Pre-refunded municipal obligations defined as follows:

> Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on the escrow, in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service, Inc. or any successors thereto; or (B)(i) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (1) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates

pursuant to such irrevocable instructions, as appropriate, and (ii) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(h) Investment agreements approved in writing by AMBAC Indemnity Corporation (supported by appropriate opinions of counsel) and specifically including the Investment Purchase Agreement;

(i) Other forms of Investments approved in writing by AMBAC Indemnity, including, but not limited to, the West Virginia "restricted consolidated fund" (Fund No. 140) managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

(j) The Investment Purchase Agreement.

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

(a) Cash; or

(b) Government Obligations.

"Record Date" means the 15th day of the month preceding any interest payment date with respect to the Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Series 1988 Bonds, and any successor thereto appointed in accordance with Section 8.08.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Securities Provider" means the bank or other financial institution which shall purchase the securities in accordance with the Investment Purchase Agreement, and which shall be designated in the Supplemental Resolution.

"Series 1988 Bonds" means the Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, of the City originally authorized to be issued pursuant to this Supplemental and Amendatory Ordinance.

"Sinking Fund" means the City of Fairmont 1988 Sewerage System Bonds Sinking Fund created by Section 4.02.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 1988 Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Series 1988 Bonds produces an amount equal to the purchase price of such Nonpurpose Investment or the Series 1988 Bonds, all computed as prescribed in applicable Regulations.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Additional terms and phrases are defined in this Supplemental and Amendatory Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Supplemental and Amendatory Ordinance; and the term "hereafter" means after the date of enactment of this Supplemental and Amendatory Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Supplemental and Amendatory Ordinance so numbered.

Section 1.02. Authority for this Supplemental and Amendatory Ordinance. This Supplemental and Amendatory Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The Prior Bonds are currently outstanding in the aggregate principal amount of $7,085,000.

B. The City derives Revenues from the System, and, except for the pledge thereof to secure and pay the Prior Bonds, said Revenues are not pledged or encumbered in any manner.

C. The estimated Revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, upon the partial refunding of the Prior Bonds, as further prescribed herein, to provide for the repair, maintenance and operation of the System, the payment of interest upon all bonds issued pursuant to the Act and to create a sinking fund, as hereinafter provided, to pay the principal thereof as and when the same become due and reasonable reserves therefor, to provide an adequate depreciation fund, as hereinafter provided, and to make all other payments provided for in the Ordinance.

D. Based upon the assumed principal amount, maturity schedule and interest rates for the Series 1988 Bonds presented to the City by the Original Purchaser, the Series 1988 Bonds show a net saving to the City after deducting all expenses of the refunding.

E. The City shall not sell the Series 1988 Bonds without setting forth in the Supplemental Resolution the determination set forth in paragraph D, above, based upon the actual principal amount, maturity schedule and interest rates for the Series 1988 Bonds, and the City shall not issue the Series 1988 Bonds without having obtained from an independent certified public accountant a certification that the amount of saving stated to be achieved by the refunding shall in fact be saved, based upon his review, comparison and analysis of the net interest cost in dollars of the Series 1988 Bonds and the net interest cost in dollars of that portion of the Prior Bonds to be refunded.

F. Subject to the determination and certification required by paragraph E, above, it is in the best interests of the City, and the inhabitants thereof, that the City issue the Series 1988 Bonds and secure the Series 1988 Bonds by a pledge and assignment of the Net Revenues derived from the operation of the

System and as further set forth herein, all on a parity with the Prior Bonds Outstanding following such refunding.

G. The Series 1988 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in Exhibit A attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Supplemental and Amendatory Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

H. The Series 1988 Bonds are authorized as "additional parity bonds" pursuant to Section 6.08 of the Prior Ordinance, as amended hereby, and shall be payable from the Net Revenues on a parity with the Prior Bonds remaining Outstanding following the refunding and any other additional parity bonds which may be issued from time to time pursuant to the Prior Indenture.

I. All things necessary to make the Series 1988 Bonds, when authenticated by the Registrar and issued as in this Supplemental and Amendatory Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 1988 Bonds, will be timely done and duly performed.

J. The Sanitary Board of the City has presented a petition to the City for enactment of this Supplemental and Amendatory Ordinance and issuance of the Series 1988 Bonds.

K. The enactment of this Supplemental and Amendatory Ordinance, and the execution and issuance of the Series 1988 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the City is a part or by which it may be bound or affected.

Section 1.04. Supplemental and Amendatory Ordinance Constitutes Contract. In consideration of the acceptance of the Series 1988 Bonds by those who shall own or hold the same from time to time, this Supplemental and Amendatory Ordinance shall be deemed to be and shall constitute a contract between the City and such Series 1988 Bondholders, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the legal Holders of any and all of such Series 1988 Bonds all of which shall be of equal rank and without preference, priority or distinction between any one bond and the coupons, if any, thereon and any other Series 1988 Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.05. Provisions of Prior Ordinance Apply. This Supplemental and Amendatory Ordinance is supplemental to and amendatory of the Prior Ordinance. For convenience many, but not all, provisions of the Prior Ordinance are repeated herein. In the event of a conflict between any provision of this Supplemental and Amendatory Ordinance and the Prior Ordinance, this Supplemental and Amendatory Ordinance shall prevail with respect to the Series 1988 Bonds. This Supplemental and Amendatory Ordinance and the Prior Ordinance shall be read together.

Section 1.06. Amendment of Prior Ordinance. A. Section 6.08 of the Prior Ordinance is hereby amended to read as follows, with all deleted language struck out and new language underlined:

> Section 6.08. Additional Parity Bonds. No additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.
>
> No such additional parity Bonds shall be issued except for the purpose of financing the costs of the construction of additions, betterments or improvements to the System or refunding ~~the entirety~~ all or a portion of one or more series of Bonds issued pursuant hereto, or both such purposes.
>
> No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the clerk of the City a written statement by Independent 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 any 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 Series 1985 Bonds;

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the City, the time for appeal of which shall have expired prior to the date of delivery of such additional parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Clerk of the City prior to the issuance of such additional parity Bonds. The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineers and the Independent Accountants, and filed with said City clerk, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired prior to issuance of such additional parity Bonds.

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

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 1985 Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1985 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the

limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The City shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

No additional parity Bonds shall be valid unless authenticated pursuant to Section 3.03. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by Section 3.14 with respect to the Series 1985 Bonds, modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds. All additional parity Bonds shall mature on the date in the respective years of maturity, and the semiannual interest thereon shall be payable on such dates of each year, as shall be established with respect to the Series 1985 Bonds.

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

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The City may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service

required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Original Purchaser of the Series 1985 Bonds and anything to the contrary in this Section 6.08 notwithstanding, additional parity Bonds may be authorized and issued by the City pursuant to a Supplemental Resolution solely to complete the Project in accordance with the plans and specifications therefor, in the event that the amounts on deposit in the Construction Fund should be insufficient, together with other funds lawfully available therefor, to pay all costs of construction of the Project; provided, however, that, prior to the issuance of such additional parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the clerk of the City a certificate to the effect that additional funds are necessary for such purpose. All such additional parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such additional parity Bonds shall be in years and amounts suggested by such Original Purchaser of the Series 1985 Bonds.

ARTICLE II

AUTHORIZATION OF REFUNDING

Section 2.01. Authorization of Refunding. On the date of issuance of the Series 1988 Bonds, a substantial portion of the net proceeds thereof will be deposited in the Escrow Fund. The Amounts in the Escrow Fund, together with earnings thereon, will be applied to pay the principal of, and interest on, certain of the Prior Bonds, as provided in the Escrow Deposit Agreement. Thereafter, the City shall make certain payments to the Securities Provider pursuant to the Investment Purchase Agreement. Amounts deposited with the Securities Provider, together with earnings thereon, shall be applied by the Escrow Agent, upon receipt thereof, to redeem, on November 1, 1995, certain of the Prior Bonds, as provided in the Escrow Deposit Agreement. The lien of the Prior Ordinance on the Net Revenues of the System and on the funds and accounts created by such Prior Ordinance shall not be discharged as of the date of issuance of the Series 1988 Bonds. Rather, such lien shall continue for the equal and ratable benefit of the holders of the Prior Bonds and the Series 1988 Bonds so long as any thereof remain Outstanding.

ARTICLE III

THE SERIES 1988 BONDS

Section 3.01. Authorization for Issuance of Series 1988 Bonds. There is hereby authorized to be issued hereunder an issue of Bonds, to be designated "City of Fairmont Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988" (the "Series 1988 Bonds"), in an aggregate principal amount not to exceed $13,500,000. The Series 1988 Bonds shall be issued subject to the terms, conditions and limitations established in the Prior Ordinance, this Supplemental and Amendatory Ordinance and the Supplemental Resolution.

Section 3.02. Terms of Series 1988 Bonds. The Series 1988 Bonds shall be numbered from R-1 consecutively upward commencing with earliest maturity. The Series 1988 Bonds shall be dated such date upon original issuance; shall be in such aggregate principal amount; shall be capital appreciation bonds and shall not bear interest, shall be payable on such date or dates; shall mature on such dates and in such amounts; shall have such redemption provisions; and shall have such other terms, all as the City shall prescribe herein and in the Supplemental Resolution.

Section 3.03. Conditions to Delivery of Series 1988 Bonds. The Series 1988 Bonds shall be executed in the form and manner hereinabove recited and delivered to the Registrar for authentication and registration, but only upon receipt by the Registrar of the following or substantially similar documents, instruments and opinions, satisfactory to Bond Counsel:

(1) A direction and authorization to the Registrar, signed by an Authorized Officer, directing the authentication of the Series 1988 Bonds and the delivery thereof to the Original Purchaser;

(2) A certified copy of this Supplemental and Amendatory Ordinance and the Supplemental Resolution authorizing (i) the issuance, execution, authentication, sale and delivery of the Series 1988 Bonds, (ii) the execution and delivery of the Escrow Deposit Agreement, the Investment Purchase Agreement and a purchase contract between the City and the Original Purchaser, and (iii) the appointment of the Escrow Agent, Securities Provider, Depository Bank, Registrar and Paying Agent;

(3) An Opinion of Counsel for the City as to such matters as Bond Counsel may reasonably request;

(4) Evidence satisfactory to the Registrar that the City has deposited in the appropriate funds and accounts all of the amounts specified in the Escrow Deposit Agreement;

(5) A verification report of Independent Accountants in form and substance satisfactory to the City and Bond Counsel, as to the refunding of the Prior Bonds, including the sufficiency of the Escrow Fund, the verification of yield on the Refunded Prior Bonds, the Series 1988 Bonds and the verification of savings to be achieved by the refunding;

(6) The unqualified approving opinion upon the Series 1988 Bonds by Bond Counsel; and

(7) Such other documentation as may be required by Bond Counsel or the Registrar.

Section 3.04. Execution of Series 1988 Bonds. The Series 1988 Bonds shall be executed in the name of the City by the Mayor and the City Manager, by their manual or facsimile signatures, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Series 1988 Bonds shall cease to be such officer of the City before the Series 1988 Bonds so signed and sealed have been actually sold and delivered, such Series 1988 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 1988 Bonds had not ceased to hold such office. Any Series 1988 Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Series 1988 Bonds shall hold the proper office in the City, although at the date of such Series 1988 Bonds such person may not have held such office or may not have been so authorized.

Section 3.05. Authentication and Registration. No Series 1988 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Supplemental and Amendatory Ordinance unless and until the Certificate of Authentication and Registration on such Series 1988 Bond, substantially in the form set forth in Exhibit A attached hereto and incorporated herein by reference, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Series 1988 Bond shall be conclusive evidence that such Series 1988 Bond has been authenticated, registered and delivered under this Supplemental and

Amendatory Ordinance. The Certificate of Authentication and Registration on any Series 1988 Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 1988 Bonds issued hereunder.

Section 3.06. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 1988 Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Series 1988 Bonds, shall be conclusively deemed to have agreed that such Series 1988 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Series 1988 Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 1988 Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Series 1988 Bonds.

The Series 1988 Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Series 1988 Bond, there shall be issued at the option of the Holder or the transferee another fully registered Series 1988 Bond or fully registered Series 1988 Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Series 1988 Bond and of the same series, interest rate and maturity of said transferred Series 1988 Bond.

In all cases in which the privilege of transferring or exchanging a Series 1988 Bond is exercised, Series 1988 Bonds shall be delivered in accordance with the provisions of this Supplemental and Amendatory Ordinance. All Series 1988 Bonds surrendered in any such transfer or exchange shall forthwith be cancelled by the Registrar. Transfers of Series 1988 Bonds and exchanges of Series 1988 Bonds in the event of partial redemption of Series 1988 Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Series 1988 Bonds, the Registrar may impose a service charge. For every such transfer or exchange of Series 1988 Bonds, the Registrar may make a charge sufficient to reimburse its office

for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Series 1988 Bonds that have been called for redemption.

Section 3.07. Series 1988 Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 1988 Bond shall become mutilated or be destroyed, stolen or lost, the City may execute, in the discretion of Council, and the Registrar shall authenticate, register and deliver any new Series 1988 Bond of like series, maturity and principal amount as the Series 1988 Bond so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Series 1988 Bond or in lieu of and substitution for the Series 1988 Bond destroyed, stolen or lost, and upon the Holder's furnishing the City and the Registrar proof of his ownership thereof and that said Series 1988 Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City or the Registrar may prescribe and paying such expenses as the City or the Registrar may incur. The name of the Series 1988 Bondholder listed in the Bond Register shall constitute proof of ownership. All Series 1988 Bonds so surrendered shall be submitted to and cancelled by the Registrar, and evidence of such cancellation shall be given to the City. If such Series 1988 Bond shall have matured or be about to mature, instead of issuing a substitute Series 1988 Bond the City, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Series 1988 Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Series 1988 Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Series 1988 Bonds be at any time found by any one, and such duplicate Series 1988 Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the Revenues pledged herein with all other Series 1988 Bonds issued hereunder.

Section 3.08. Notice of Redemption. Unless waived by any Holder of the Series 1988 Bonds to be redeemed, official notice of any such redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Original Purchaser and the registered owner of the Series 1988 Bond or

Series 1988 Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

(1) The redemption date,

(2) The redemption price,

(3) If less than all outstanding Series 1988 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Series 1988 Bonds to be redeemed,

(4) That on the redemption date the Redemption Price and interest accrued will become due and payable upon each such Series 1988 Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Series 1988 Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Registrar, and

(6) Such other information, if any, as shall be required for DTC-Eligible Series 1988 Bonds.

Prior to any redemption date, the City shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Series 1988 Bonds or portions of Series 1988 Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Series 1988 Bonds or portions of Series 1988 Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Series 1988 Bonds or portions of Series 1988 Bonds shall cease to bear interest. Upon surrender of such Series 1988 Bonds for redemption in accordance with said notice, such Series 1988 Bonds shall be paid by the Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Series 1988 Bond, there shall be prepared for the registered owner a new Series 1988 Bond or Series 1988 Bonds of the same maturity in the amount of the unpaid

principal. All Series 1988 Bonds which have been redeemed shall be cancelled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Series 1988 Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Series 1988 Bonds for which there was no such failure.

In addition to the foregoing notice, further notice as set out below shall be given by the Registrar, at the instruction of the City, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(1) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Series 1988 Bonds being redeemed; (ii) the date of issue of the Series 1988 Bonds as originally issued; (iii) the rate of interest borne by each Series 1988 Bond being redeemed; (iv) the maturity date of each Series 1988 Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Series 1988 Bonds being redeemed.

(2) Each further notice of redemption shall be sent at least 35 days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Series 1988 Bonds (such depositories now being Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, Pacific Securities Depository Trust Company of San Francisco, California and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania).

(3) Each such further notice shall be published one time in the Bond Buyer of New York, New York or, if such publication is unlikely to reach a substantial number of the holders of the Series 1988 Bonds, in some other financial newspaper or journal which regularly carries notices of redemption of other obligations similar to the Series 1988 Bonds, such publication to be made at least 30 days prior to the date fixed for redemption.

(4) Upon the payment of the redemption price of Series 1988 Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Series 1988 Bonds being redeemed with the proceeds of such check or other transfer.

redemption having been given in the manner hereinabove provided, the Series 1988 Bonds, or portions thereof, shall on the date fixed for redemption be deemed paid, and interest on such Series 1988 Bonds, or portions thereof, shall cease to accrue; and upon presentation and surrender of such Series 1988 Bonds at the office specified in such notice, such bonds, or portions thereof, shall be paid at the designated redemption price.

Section 3.09. Persons Treated as Owners. The City, the Registrar and any agent of the City or the Registrar may treat the person in whose name any Series 1988 Bond is registered as the owner of such Series 1988 Bond for the purpose of receiving payment of the principal of and interest on such Series 1988 Bond and for all other purposes whether or not such Series 1988 Bond is overdue.

Section 3.10. Form of Series 1988 Bonds. The Series 1988 Bonds shall be substantially in the form set forth in Exhibit A attached thereto and incorporated herein by reference, with such appropriate variations, omissions and insertions as are permitted or required by this Supplemental and Amendatory Ordinance or the Supplemental Resolution or as are deemed necessary by the Registrar and the City, including, if requested by the Original Purchaser, any variations necessary to render the Series 1988 Bonds DTC-eligible.

Section 3.11. Disposition of Proceeds of Series 1988 Bonds. Upon the issuance and delivery of the Series 1988 Bonds, the City shall forthwith deposit the net proceeds (after payment of underwriters' discount and insurance premium) thereof as follows:

A. The amount of the Series 1988 Bond proceeds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish refunding of the designated portion of the Prior Bonds (which amount shall be set forth in the Escrow Deposit Agreement) shall be deposited in the Escrow Fund.

B. The amount of Series 1988 Bonds which shall be specified in the Supplemental Resolution shall be deposited with the Depository Bank in the Series 1988 Bonds Costs of Issuance Fund and shall be drawn out, used and applied by the City solely to pay costs of issuance of the Series 1988 Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the City.

Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this Supplemental and Amendatory Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose, such unapplied proceeds shall be transferred by the City to the Construction Fund established by the Prior Ordinance.

C. The balance of the proceeds of the Series 1988 Bonds shall be deposited in the Construction Fund established by the Prior Ordinance and applied to the acquisition and construction of additions, betterments and improvements for the System at the direction of the Sanitary Board of the City.

ARTICLE IV

SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. In addition to the funds and accounts heretofore established by the Prior Ordinance and the Escrow Fund established by the Escrow Deposit Agreement, the following special fund is created with, and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the City and from each other, and used solely for the purposes provided herein:

(1) Series 1988 Bonds Costs of Issuance Fund; and

(2) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. In addition to the funds and accounts heretofore established by the Prior Ordinance, the following special fund is hereby established with and shall be held by the Bond Commission:

(1) Series 1988 Bonds Sinking Fund.

Section 4.03. System Revenues and Application Thereof. So long as any of the Series 1988 Bonds shall be Outstanding and unpaid, the City covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The City 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) Thereafter, from the moneys remaining in the Revenue Fund, the City shall next:

(i) On the first day of each month beginning on the first day of that month which is 7 months prior to the first interest payment

date on the Nonrefunded Prior Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Nonrefunded Prior Bonds on the next ensuing semiannual interest payment date and which interest will not be paid from the Escrow Fund, less any investment earnings on sums previously deposited in the Sinking Fund for the purpose of making interest payments; provided, that "next ensuing semiannual interest payment date" shall not refer to the interest payment date on which any such deposit is made;

(ii) On the first day of each month, remit to the Bond Commission for deposit in the Sinking Fund, or in the Redemption Account therein if the Nonrefunded Prior Bonds next maturing are Term Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Nonrefunded Prior Bonds on the next ensuing principal payment or mandatory redemption date and which will not be paid from the Escrow Fund, less any investment earnings on sums previously deposited in the Sinking Fund for the purpose of making principal payments; provided, that "next ensuing principal payment or mandatory redemption date" shall not refer to the principal payment or mandatory redemption date on which any such deposit is made;

(iii) On the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment of the Series 1988 Bonds, remit to the Bond Commission for deposit in the Series 1988 Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on the Series 1988 Bonds on the next ensuing principal payment date, less any investment earnings on sums previously deposited in the Series 1988 Bonds Sinking Fund for the purpose of making principal payments; provided, that "next ensuing principal payment or mandatory redemption date" shall not refer to the principal payment or mandatory redemption date on which any such deposit is made; and

(iv) On the first day of each month, remit to the Escrow Agent, the amounts due in accordance with the Escrow Deposit Agreement and the Investment Purchase Agreement.

(3) The City shall also, from the Revenue Fund, remit to the Bond Commission on such dates or at such other times, as the Bond Commission shall require, such additional sums as shall be necessary to pay the fiscal agency charges due for paying the Bonds and the interest thereon.

(4) Moneys in the Series 1988 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1988 Bonds as the same shall become due. Pending such use, such moneys shall be invested in accordance with Article V.

(5) The City shall not be required to make any further payments into the Series 1988 Bonds Sinking Fund when the aggregate amount of funds in the Series 1988 Bonds Sinking Fund is at least equal to the aggregate principal amount of Series 1988 Bonds issued pursuant to this Supplemental and Amendatory Ordinance then Outstanding, plus the amount of interest due or thereafter to become due on the Series 1988 Bonds then Outstanding.

(6) The payments into the Series 1988 Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Supplemental and Amendatory Ordinance.

(7) Except as expressly changed herein, all provisions of Article IV of the Prior Ordinance shall remain in full force and effect.

(8) If on any monthly payment date the Revenues of the System are insufficient to make the required deposits as described in Section 4.03(A)(2) hereof, the deficiency shall be incurred and made up on a parity basis on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made on such ensuing payment dates.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1988 Bonds Sinking Fund created hereunder, and all amounts required for said Series 1988 Bonds Sinking Fund shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Series 1988 Bonds, as provided in Section 3.11, by the City at the times provided herein. All remittances made by the City to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The moneys on deposit in the Revenue Fund in excess of the sum insured by the maximum amounts insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of municipal funds under the laws of the State.

D. Anything to the contrary herein notwithstanding, when the aggregate sum in the Series 1988 Bonds Sinking Fund is sufficient to pay and redeem all the Series 1988 Bonds Outstanding and all interest accrued and to accrue thereon and any applicable redemption premiums, the City shall cause all the Series 1988 Bonds to be paid or called and redeemed at the earliest practicable date permitted pursuant to the provisions hereof as to redemption of Series 1988 Bonds.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The City shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Supplemental and Amendatory Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Supplemental and Amendatory Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The City 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 City may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. With respect to all funds and accounts, valuation shall occur monthly.

(B) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 1988 Bonds and invested only in cash or Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(C) "Value," as used in this Section 5.01, means the value of any Qualified Investments calculated as follows:

(i) As to Qualified Investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such Qualified Investments so published on or most recently prior to such time of determination;

(ii) As to Qualified Investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such Qualified Investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such Qualified Investments or the bid price published by a nationally recognized pricing service;

(iii) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(iv) As to any Qualified Investment not specified above: the value thereof established by prior agreement between the Issuer and AMBAC Indemnity.

Section 5.02. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Series 1988 Bonds in such manner and to such extent as may be necessary, so that such Series 1988 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Series 1988 Bonds and continued compliance after the date of issuance of the Series 1988 Bonds with the requirements of Section 148 of the Code and Regulations thereunder) so that the interest on such Series 1988 Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(C) of the Code, the City covenants that it is a governmental unit with general taxing powers; that the Series 1988 Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the

Net Proceeds of the Series 1988 Bonds are to be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the City during the calendar year in which the Series 1988 Bonds are issued will not exceed $5,000,000, determined in accordance with Section 148(f)(4)(C) of the Code and the Regulations promulgated thereunder. For purposes of this Section 5.03 and for purposes of applying Section 148(f)(4)(C) of the Code, the City and all entities which issue obligations on behalf of the City shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this Section 5.03 and Section 148(f)(4)(C) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(C) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the City is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the City shall take the following actions:

A. EARNINGS FUND AND REBATE FUND. All interest earnings and profits on amounts in all funds and accounts established under this Supplemental and Amendatory Ordinance, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than $100,000 which shall be retained in the fund or account from which such earnings or profits arose to the extent not otherwise provided herein, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the City shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such day is not a business day (or such earlier date as may be required by the Code), the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on

the next interest payment date and for such purpose, Debt Service due from the City on such date shall be credited by an amount equal to the amount so transferred. Notwithstanding the foregoing, the City shall withdraw moneys from the Earnings Fund, if needed for the purpose of paying Debt Service or principal of or interest on the Series 1988 Bonds. In the event of withdrawal of any moneys from the Earnings Fund the City shall restore such withdrawal from the first Gross Revenues available therefor, after payment of Debt Service or principal of or interest on the Series 1988 Bonds.

B. DUTIES OF CITY IN GENERAL. The City shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 30 days following the last day of the first Bond Year, the City shall calculate, and shall provide written notice to the Original Purchaser and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 30 days following the last day of each Bond Year and within 30 days following the maturity date of the Series 1988 Bonds, the City shall calculate, and shall provide written notice to the Original Purchaser and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the City in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) of the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Series 1988 Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Series 1988 Bonds shall be determined based on the actual Yield of the Series 1988 Bonds during the period between the Closing Date of the Series 1988 Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Series 1988 Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than $100,000.

D. PAYMENT TO THE UNITED STATES. The City shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The City shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Series 1988 Bonds, the City shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any

amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor.

E. FURTHER OBLIGATIONS OF ISSUER. The City shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the City shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The City shall keep, and retain for a period of 6 years following the retirement of the Series 1988 Bonds, records of the determinations made pursuant to this Section 5.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 5.03, the City and the Depository Bank (at the expense of the City) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the City further covenants to comply with all Regulations from time to time in effect and applicable to the Series 1988 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and to the extent necessary to comply with such Regulations, to take such actions, or refrain from taking such actions as may be necessary, regardless of whether such actions may be contrary to any of the provisions of this Section 5.03.

ARTICLE VI

ADDITIONAL COVENANTS OF THE CITY

Section 6.01. General Covenants of the City. All the covenants, agreements and provisions of this Supplemental and Amendatory Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1988 Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Supplemental and Amendatory Ordinance, the City hereby covenants and agrees with the Holders of the Series 1988 Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Series 1988 Bonds, or the interest thereon, is Outstanding and unpaid.

Section 6.02. Series 1988 Bonds not to be Indebtedness of the City. The Series 1988 Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Revenues of the System, the moneys in the Series 1988 Bonds Sinking Fund or the unexpended proceeds of the Series 1988 Bonds all as herein provided. No Holder or Holders of any Series 1988 Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay said Series 1988 Bonds or the interest thereon.

Section 6.03. Series 1988 Bonds Secured by Pledge of Net Revenues on Parity with Prior Bonds. The payment of the debt service of all of the Series 1988 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, to the extent necessary to make the payments required under Section 4.03 but on a parity with respect to lien on and sources of and security for payment with the Prior Bonds (including payments to be made pursuant to the Investment Purchase Agreement). The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Series 1988 Bonds herein authorized, and to make the payments into the Series 1988 Bonds Sinking Fund, and all other payments provided for in this Supplemental and Amendatory Ordinance, are hereby irrevocably pledged in the manner provided in this Supplemental and Amendatory Ordinance to the payment of the principal of the Series 1988 Bonds herein authorized as the same becomes due and for the other purposes provided in this Supplemental and Amendatory Ordinance.

Section 6.04. Tax Covenants. The City hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The City shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1988 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 1988 Bonds during the term thereof is, under the terms of the Series 1988 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 City, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1988 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 1988 Bonds during the term thereof is, under the terms of the Series 1988 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 City, 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 1988 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 1988 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.

B. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1988 Bonds or $5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The City 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 1988 Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1988 Bonds and the interest thereon,

including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The City will take all actions that may be required of it so that the interest on the Series 1988 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.05. Designation of Series 1988 Bonds as Qualified Tax-Exempt Obligations. The City and all subordinate entities do not reasonably expect to issue more than $10,000,000 of tax-exempt obligations during the calendar year 1988 and hereby designates the Series 1988 Bonds as "qualified tax-exempt obligations," as defined in Section 265(b)(3)(B) of the Code.

Section 6.06. Covenants Relating to Municipal Bond Insurance Policy. In order to obtain a Municipal Bond Insurance Policy from AMBAC Indemnity and therefore, lower interest rates on the Series 1988 Bonds, the Issuer hereby further covenants, at the request of AMBAC Indemnity, such covenants to be controlling, notwithstanding any other provision of this Supplemental and Amendatory Ordinance, as follows:

A. CONSENT OF AMBAC INDEMNITY. Any provision of this Supplemental and Amendatory Ordinance expressly recognizing or granting rights in or to AMBAC Indemnity may not be amended in any manner which affects the rights of AMBAC Indemnity hereunder without the prior written consent of AMBAC Indemnity.

B. CONSENT OF AMBAC INDEMNITY IN ADDITION TO BONDHOLDER CONSENT. Unless otherwise provided in this Section 6.05, AMBAC Indemnity's consent shall be required in addition to Bondholder consent, when required, for the purposes of execution and delivery of any supplemental ordinance or any other action requiring Bondholder consent under this Supplemental and Amendatory Ordinance.

C. CONSENT OF AMBAC INDEMNITY UPON DEFAULT. Anything in this Supplemental and Amendatory Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, AMBAC Indemnity shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders, including, without limitation, acceleration of the principal of the Bonds as described in this Supplemental and Amendatory Ordinance and the right to annul any declaration of

acceleration, and AMBAC Indemnity shall also be entitled to approve all waivers of Events of Default.

D. ACCELERATION. Upon the occurrence of an Event of Default, any Bondholder may, with the consent of AMBAC Indemnity, and the Bondholders shall, at the direction of AMBAC Indemnity, by written notice to the Issuer and AMBAC Indemnity, declare the principal of the Series 1988 Bonds to be immediately due and payable, whereupon that portion of the principal of the Series 1988 Bonds thereby coming due and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Supplemental and Amendatory Ordinance, or in the Series 1988 Bonds to the contrary notwithstanding.

E. NOTICES TO BE GIVEN TO AMBAC INDEMNITY. While the Municipal Bond Insurance Policy is in effect, the Issuer shall furnish to AMBAC Indemnity:

(i) As soon as practicable after the filing thereof, a copy of any financial statement of the Issuer and a copy of any audit and annual report of the Issuer;

(ii) A copy of any notice to be given to the registered owners of the Series 1988 Bonds, including, without limitation, notice of any redemption of or defeasance of Series 1988 Bonds, and any certificate rendered pursuant to this Supplemental and Amendatory Ordinance, relating to the security for the Series 1988 Bonds; and

(iii) Such additional information it may reasonably request.

The Issuer will permit AMBAC Indemnity to discuss the affairs, finances and accounts of the Issuer or any information AMBAC Indemnity may reasonably request regarding the security for the Series 1988 Bonds with appropriate officers of the Issuer. The Issuer will permit AMBAC Indemnity to have access to and to make copies of all books and records relating to the Series 1988 Bonds at any reasonable time.

AMBAC Indemnity shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within 30 days after

receipt of written notice of the direction from AMBAC Indemnity shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Series 1988 Bonds.

Notwithstanding any other provision of this Supplemental and Amendatory Ordinance, the Issuer shall immediately notify AMBAC Indemnity if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default hereunder.

F. PAYMENT PROCEDURE PURSUANT TO MUNICIPAL BOND INSURANCE POLICY. As long as the Municipal Bond Insurance Policy shall be in full force and effect, the Issuer and any Paying Agent agree to comply with the following provisions:

(a) If 5 days prior to an interest payment date the Paying Agent determines that there will be insufficient funds in the funds and accounts established under the Ordinance to pay the principal of or interest on the Series 1988 Bonds on such interest payment date, the Paying Agent shall so notify AMBAC Indemnity. Such notice shall specify the amount of the anticipated deficiency, the Series 1988 Bonds to which such deficiency is applicable and whether such Series 1988 Bonds will be deficient as to principal or interest, or both. If the Paying Agent has not so notified AMBAC Indemnity 5 days prior to an interest payment date, AMBAC Indemnity will make payments of principal or interest due on the Series 1988 Bonds on or before the 5th business day next following the date on which AMBAC Indemnity shall have received notice of nonpayment from the Paying Agent.

(b) The Paying Agent shall, after giving notice to AMBAC Indemnity as provided in (a) above, make available to AMBAC Indemnity and, at AMBAC Indemnity's direction, to the United States Trust Company of New York, as insurance trustee for AMBAC Indemnity or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer maintained by the Registrar or Paying Agent and all records relating to the funds and accounts maintained under the Ordinance.

(c) The Paying Agent shall provide AMBAC Indemnity and the Insurance Trustee with a list of registered owners of Series 1988 Bonds entitled to receive principal or interest payments from AMBAC Indemnity under the terms of the Municipal Bond Insurance Policy, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of Series 1988 Bonds entitled to receive full or partial interest payments from AMBAC Indemnity and (ii) to pay principal upon Series 1988 Bonds surrendered to the Insurance Trustee by the registered owners of Series 1988 Bonds entitled to receive full or partial principal payments from AMBAC Indemnity.

(d) The Paying Agent shall, at the time it provides notice to AMBAC Indemnity pursuant to (a) above, notify registered owners of Series 1988 Bonds entitled to receive the payment of principal or interest thereon from AMBAC Indemnity (i) as to the fact of such entitlement, (ii) that AMBAC Indemnity will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment, (iii) that should they be entitled to receive full payment of principal from AMBAC Indemnity, they must surrender their Series 1988 Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Series 1988 Bonds to be registered in the name of AMBAC Indemnity) for payment to the Insurance Trustee, and not the Trustee or Paying Agent, if any, and (iv) that should they be entitled to receive partial payment of principal from AMBAC Indemnity, they must surrender their Series 1988 Bonds for payment thereon first to the Trustee or Paying Agent, if any, who shall note on such Series 1988 Bonds the portion of the principal paid by the Paying Agent, and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

(e) In the event that the Paying Agent has notice that any payment of principal of or interest on a Series 1988 Bond which has become due for payment and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in

bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Paying Agent shall, at the time AMBAC Indemnity is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from AMBAC Indemnity to the extent of such recovery if sufficient funds are not otherwise available, and the Paying Agent shall furnish to AMBAC Indemnity its records evidencing the payments of principal of and interest on the Series 1988 Bonds which have been made by the Paying Agent and subsequently recovered from registered owners and the dates on which such payments were made.

(f) In addition to those rights granted AMBAC Indemnity under this Supplemental and Amendatory Ordinance, AMBAC Indemnity shall, to the extent it makes payment of principal of or interest on Series 1988 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policy, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Registrar or Paying Agent shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Registrar or Paying Agent upon receipt from AMBAC Indemnity of proof of the payment of interest thereon to the registered owners of the Series 1988 Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Registrar or Paying Agent shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Registrar or Paying Agent upon surrender of the Series 1988 Bonds by the registered owners thereof together with proof of the payment of principal thereof.

Section 6.07. Rates. Prior to the enactment of this Supplemental and Amendatory Ordinance, just and equitable rates or charges for the use of the services and facilities of the System have been fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the clerk of the City, which copy will be open to inspection by all interested parties. The schedule or rates and charges shall at all times be adequate to produce Net Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder and to pay Operating Expenses. Such schedule of rates and charges shall be revised from time to time, 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 City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 125% of (i) the maximum annual debt service on the Bonds; and (ii) the amount due under the Investment Purchase Agreement, in each Fiscal Year. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

The Issuer hereby covenants to increase the rates and charges for the services and facilities of the System within 90 days, in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 1988 Bonds:

(A) If default occurs in the due and punctual payment of the principal of any Series 1988 Bond (including that portion representing interest accreted thereon at maturity);

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part in this Supplemental and Amendatory Ordinance or any Supplemental Resolution or in the Series 1988 Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by any Series 1988 Bondholder; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Series 1988 Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Series 1988 Bondholders, including the right to require the City to perform its duties under the Act and this Supplemental and Amendatory Ordinance;

(C) Bring suit upon the Series 1988 Bonds;

(D) By action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Series 1988 Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Supplemental and Amendatory Ordinance or the rights of the Series 1988 Bondholders.

No remedy by the terms of this Supplemental and Amendatory Ordinance conferred upon or reserved to the Series 1988 Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Series 1988 Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Series 1988 Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Series 1988 Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Series 1988 Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Supplemental and Amendatory Ordinance and the Act.

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

Whenever all that is due upon the Series 1988 Bonds issued pursuant to this Supplemental and Amendatory Ordinance and interest thereon and under any covenants of this Supplemental and Amendatory Ordinance for reserve, sinking or other funds and accounts 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 Supplemental and Amendatory Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any Series 1988 Bondholder 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, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the City and for the joint protection and benefit of the City and the Holders of the Series 1988 Bonds issued pursuant to this Supplemental and Amendatory Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and the Series 1988 Bondholders, and the curing and making good of any default under the provisions of this Supplemental and Amendatory Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of City and Series 1988 Bondholder. In case any Series 1988 Bondholder shall have proceeded to enforce any right under this Supplemental and Amendatory Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the City and such Series 1988 Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Series 1988 Bondholder shall continue as if no such proceedings had been taken.

ARTICLE VIII

REGISTRAR; PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 1988 Bonds shall be appointed pursuant to the Supplemental Resolution. The city manager of the City is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Registrar. The recitals of fact in the Series 1988 Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Series 1988 Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Series 1988 Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Supplemental and Amendatory Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Series 1988 Bonds and the exchange of Series 1988 Bonds in the event of partial redemption, incurred in the performance of its duties hereunder. The City shall indemnify and save the Registrar harmless against any liabilities which it may incur in the exercise and performance of its powers and duties and which are not due to its own negligence, default or willful misconduct.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Series 1988 Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Series 1988 Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 1988 Bonds or this Supplemental and Amendatory Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Series 1988 Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Supplemental and Amendatory Ordinance by giving not less than 60 days' written notice to the City and publishing notice, specifying the date when such resignation shall take effect, in an Authorized Newspaper within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a Series 1988 Bond. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the City or by the Holders of a majority in principal amount of the Series 1988 Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City or by such Series 1988 Bondholders or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Series 1988 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Series 1988 Bondholders or their attorneys duly authorized in writing and delivered to the City and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the City shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Series 1988 Bondholders. The City shall publish notice of any such appointment in an Authorized Newspaper within

20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a Series 1988 Bond. Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Series 1988 Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the City written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Series 1988 Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Supplemental and Amendatory Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Series 1988 Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Series 1988 Bonds so authenticated, and, in case any Series 1988 Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Series 1988 Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar shall also serve as the Paying Agent. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 8.02 shall also include the trusts and the duties of Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Supplemental and Amendatory Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and

obligations imposed upon it pursuant hereto by executing and delivering to the City a written acceptance thereof.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Supplemental and Amendatory Ordinance. If the position of Paying Agent shall become vacant for any reason, the City shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the City shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Series 1988 Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Supplemental and Amendatory Ordinance, be held in trust for the purposes for which they were received.

ARTICLE IX

DEFEASANCE; DISCHARGE OF PLEDGE OF SUPPLEMENTAL AND AMENDATORY ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Supplemental and Amendatory Ordinance. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1988 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Supplemental and Amendatory Ordinance, this Supplemental and Amendatory Ordinance and the pledges of the Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the Holders of the Series 1988 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1988 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Series 1988 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1988 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of and interest due and to become due on said Series 1988 Bonds on and prior to the maturity date thereof. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Series 1988 Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and interest to become due on said Series 1988 Bonds on and prior to such maturity dates thereof, and interest

earned from such reinvestments shall be paid over to the City as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

In the event that the principal and/or interest due on the Series 1988 Bonds shall be paid by AMBAC Indemnity pursuant to the Municipal Bond Insurance Policy, the Series 1988 Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the Net Revenues and other moneys securing the Series 1988 Bonds in the several funds and accounts described herein, and all covenants, agreements and other obligations of the Issuer to the registered owners of the Series 1988 Bonds shall continue to exist and shall run to the benefit of AMBAC Indemnity, and AMBAC Indemnity shall be subrogated to the rights of such registered owners.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendment of Supplemental and Amendatory Ordinance. No materially adverse amendment or modification to this Supplemental and Amendatory Ordinance, or of any Supplemental Resolution, may be made without the written consents of the Holders of 60% in aggregate principal amount of the Series 1988 Bonds then Outstanding and AMBAC Indemnity, which must be filed with the Clerk of the City before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 1988 Bond without the express written consent of the Holder of such Series 1988 Bond, nor reduce the percentage of Series 1988 Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Series 1988 Bondholders and Ownership of Series 1988 Bonds. Any request, consent, revocation of consent or other instrument which this Supplemental and Amendatory Ordinance may require or permit to be signed and executed by Series 1988 Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Series 1988 Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Supplemental and Amendatory Ordinance if made in the following manner, or in any other manner satisfactory to the City or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Series 1988 Bondholder or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, trust company or financial firm or corporation satisfactory to the City or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Series 1988 Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of Series 1988 Bonds held by a person executing any instrument as a Series 1988 Bondholder, the date of his holding such Series 1988 Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Holder of any Series 1988 Bond shall bind all future Holders and owners of such Series 1988 Bond in respect of anything done or suffered to be done hereunder by the City or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Supplemental and Amendatory Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the City or any Series 1988 Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Supplemental and Amendatory Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Series 1988 Bonds. All Series 1988 Bonds purchased or paid shall, if surrendered to the City, be cancelled and delivered to the Registrar, or, if surrendered to the Registrar, be cancelled by it. No such Series 1988 Bonds shall be deemed Outstanding under this Supplemental and Amendatory Ordinance and no Series 1988 Bonds shall be issued in lieu thereof. All such Series 1988 Bonds shall be cancelled and upon order of the City shall be destroyed, and a certificate evidencing such destruction shall be delivered to the City.

Section 10.05. Failure to Present Series 1988 Bonds. Anything in this Supplemental and Amendatory Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Series 1988 Bonds which remain unclaimed for 1 year after the date on which such Series 1988 Bonds have become due and payable, whether

by maturity or upon call for redemption, shall at the written request of the City be paid by the Bond Commission or said Paying Agent to the City as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Series 1988 Bonds shall look only to the City for the payment of such Series 1988 Bonds; provided, however, that, before making any such payment to the City, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the City.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the City, the Registrar, the Original Purchaser or the Depository Bank shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY

City of Fairmont
City-County Complex
200 Jackson Street
Fairmont, West Virginia 26554

REGISTRAR

[Name and address to be set forth in Supplemental Resolution]

ORIGINAL PURCHASER

Butcher & Singer Inc.
211 South Broad Street, Ninth Floor
Philadelphia, Pennsylvania 19107

DEPOSITORY BANK

[Name and address to be set forth in Supplemental Resolution]

AMBAC INDEMNITY

AMBAC Indemnity Corporation
One State Street Plaza
New York, New York 10004

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the City shall be individually or personally liable for the payment of the principal of or the interest on any Series 1988 Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Supplemental and Amendatory Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Supplemental and Amendatory Ordinance and of all Series 1988 Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Supplemental and Amendatory Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the City, the Registrar, the Paying Agent, the Holders of the Series 1988 Bonds, AMBAC Indemnity and the Original Purchaser, any right, remedy or claim under or by reason of this Supplemental and Amendatory Ordinance. All the covenants, stipulations, promises and agreements contained in this Supplemental and Amendatory Ordinance by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar, the Paying Agent, the Holders of the Series 1988 Bonds, AMBAC Indemnity and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Supplemental and Amendatory Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Supplemental and Amendatory Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Supplemental and Amendatory

Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Supplemental and Amendatory Ordinance, which abstract has been determined to contain sufficient information to give notice of the contents of such Supplemental and Amendatory Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in The Fairmont Times - West Virginian, a newspaper published and having a general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that this Supplemental and Amendatory Ordinance has been adopted and that the City contemplates the issuance of the Series 1988 Bonds described in this Supplemental and Amendatory Ordinance and that any person interested may appear before the Council at the public hearing to be had at a public meeting of Council on the 11th day of October, 1988, at 7:00 p.m., in the meeting room of the Council in the City-County Complex of the City of Fairmont and present protests, and that a certified copy of this Supplemental and Amendatory Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all objections and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

This Ordinance shall become effective 30 days after enactment.

Passed on first reading:	September 27, 1988
Adopted following public hearing held:	October 11, 1988
Second public hearing held:	October 25, 1988
Effective, 30 days after adoption:	November 24, 1988

[SEAL]

Robert M. Drummond Jr.
Mayor

ATTEST:

Debra M. Bohan
City Clerk

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that Ordinance No. 796 entitled:

> SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 680 OF THE CITY OF FAIRMONT, ENACTED AUGUST 13, 1985; AUTHORIZING THE REFUNDING OF A PORTION OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1985, OF THE CITY OF FAIRMONT, WEST VIRGINIA; AUTHORIZING THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $13,500,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 680 TO PERMIT THE REFUNDING OF LESS THAN ALL OF SUCH SERIES 1985 BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE ADOPTION OF A SUPPLEMENTAL RESOLUTION AND THE FORM OF AND EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT AND OTHER INSTRUMENTS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS

was introduced at a regular meeting of Council of the City of Fairmont, West Virginia, held September 27, 1988. The Ordinance being lengthy and technical in nature and there being no request by the majority of councilmembers present that the proposed Ordinance be read in its entirety, the Clerk read a synopsis of the Ordinance prepared by Bond Counsel in accordance with Ordinance No. 614 adopted November 15, 1983, amending the City Charter. Notice was published in The Fairmont Times - West Virginian, on September 30, 1988, pursuant to Charter provision Section 2.13(d) and a public hearing was held October 11, 1988. There being no request that said proposed Ordinance be read in its entirety, the Clerk publicly read the title only and copies were available to the public as required by Ordinance No. 499. Said Ordinance was duly passed and adopted by the Council of said City on October 11, 1988.

The abstract and notice of public hearing that Ordinance No. 796 was adopted on October 11, 1988, were published in The Fairmont Times - West Virginian on October 12, 1988, and a second abstract and notice of public hearing was published in said

newspaper on October 19, 1988. The public hearing was held October 25, 1988. There being no objections to the Ordinance being put into effect, it was signed by the undersigned officials and filed in the Office of the Clerk of said City of Fairmont, West Virginia.

Adopted by Council of the City of Fairmont, October 25, 1988.

Robert M. Timmons Jr.
Mayor

ATTEST:

Debra M. Bowan
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

James C. Watkins Jr.
Attorney for the Sanitary Sewer Board of the City of Fairmont

APPROVED AS TO FORM:

Kenneth A. Egan
City Attorney

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the City Council of the CITY OF FAIRMONT at a regular meeting of the City Council held at 7:00 p.m., on October 25, 1988, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper published and of general circulation in the City of Fairmont, the first publication having been not less than 10 days prior to such public hearing.

Dated this 30th day of November, 1988.

[SEAL]

DEBRA M. BOWAN
City Clerk

EXHIBIT A

[FRONT OF BOND]

No. R-_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BOND,
SERIES 1988

Yield to Maturity	Maturity Date	Bond Date	CUSIP NO.

Registered Owner: _____

Stated Value at Maturity: _____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Stated Value at Maturity specified above, which Stated Value at Maturity includes the principal of and interest on this Bond, at the Yield to Maturity specified above. The Stated Value at Maturity of this Bond is payable in any coin or currency which, on the date of payment thereof, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender of this Bond at the office of _____, _____, _____, as Paying Agent and Registrar (the "Registrar").

This Bond is one of a series of bonds, in the aggregate Stated Value at Maturity of $_____ (the "Bonds"), of like tenor and effect, except as to number, denomination, yield and date of maturity, dated _____, 1988, issued to (i) refund a portion of the City's Sewerage System Refunding Revenue Bonds,

Series 1985, outstanding in the total aggregate principal amount of $_____ (the "Prior Bonds"), which Prior Bonds were issued to finance or refinance the cost of construction of certain additions, betterments and improvements to the sewerage system of the City (hereinafter referred to as the "System"); (ii) to pay a portion of the costs of certain additions, betterments and improvements for the System (as hereinafter defined); and (iii) to pay costs of issuance of the Bonds and costs relating to such refunding. 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 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the City Council of the City on August 13, 1985, supplemented and amended by a supplemental resolution adopted September 17, 1985, a supplemental and amendatory ordinance enacted October 25, 1988, and a supplemental resolution adopted October 25, 1988 (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

The Bonds are not subject to redemption prior to maturity.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HEREIN.

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

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

Registrar duly executed by the Registered Owner or its attorney duly authorized in writing.

This Bond, under the provisions 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, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Ordinance.

This Bond shall not be entitled to any benefit under the Ordinance or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

This Bond is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

All provisions of the Ordinance and the 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 its City Manager, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Facsimile Signature)
Mayor

(Facsimile Signature)
City Manager

ATTEST:

(Facsimile Signature)
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION
AND REGISTRATION

This Bond is one of the Bonds of the Series designated therein, described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above on the date set forth below. Imprinted on the reverse hereof is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: _____, _____.

_____,
as Registrar

By _____
Its Authorized Officer

[REVERSE OF BOND]

The Bonds are payable only from and are secured on a parity in all respects with the Prior Bonds outstanding, including payments to be made pursuant to the Investment Purchase Agreement, as defined in the Ordinance, by (i) the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System; (ii) all moneys in the Series 1988 Bonds Sinking Fund established under the Ordinance; and (iii) unexpended proceeds of the Bonds, and the City hereby and in the Ordinance pledges such revenues and moneys to such payment. Said Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1988 Bonds Sinking Fund and said unexpended Bond proceeds. Neither the credit nor the taxing power of the City or any political subdivision thereof is pledged for the payment of the principal of or interest on this Bond. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to produce revenues net of such operating expenses equal to at least 125% of (i) the maximum annual debt service on the Bonds, the Prior Bonds outstanding and any additional bonds hereafter issued on a parity with the Bonds; and (ii) the amount due under the Investment Purchase Agreement in each fiscal year. Such required payments on behalf of the Bonds and the Investment Purchase Agreement shall constitute a first charge upon all the revenues of the System, but on parity with respect to lien and sources of and security for payment with each other and the nonrefunded Prior Bonds. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is hereby made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon (if any) shall be applied solely to the purposes set forth above, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the registered owners of the Bonds.

(Form of)

ASSIGNMENT

For value received, the undersigned hereby 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 with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

The Registrar will not affect transfer of this Bond unless the information concerning the transferee requested below is provided. The transferor should complete whichever of the following is applicable.

INDIVIDUAL:

Name and Address:

_____

_____

_____

Social Security Number: _____
(Include information for all joint owners if the Bond is held by joint account)

CORPORATION OR PARTNERSHIP:

Name and Address:

_____

_____

_____

Tax Identification Number: _____

TRUST:

Name of Trust:

_____

_____

_____

Name and Address of Settlor:

_____

_____

_____

Name and Address of Trustee:

_____

_____

_____

Tax Identification Number of Trust: _____

Tax Identification Number or Social Security Number of Settlor: _____

NOMINEE:

Name and Address:

_____

_____

_____

Tax Identification Number or Social Security Number: _____

(If the Bond is to be registered in nominee name, then include information for the principal.)

11/21/88
FMTSR2/3-A/A

CITY OF FAIRMONT

$11,065,000 Sewerage System Refunding Revenue
Capital Appreciation Bonds, Series 1988

SUPPLEMENTAL RESOLUTION PROVIDING AS TO AMOUNT, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY; AUTHORIZING AND APPROVING A BOND PURCHASE PROPOSAL, AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT, A REGISTRAR'S AGREEMENT AND AN OFFICIAL STATEMENT RELATING TO THE BONDS; DETERMINING THAT A NET SAVINGS IS TO BE ACHIEVED BY SUCH REFUNDING; APPOINTING A REGISTRAR, PAYING AGENT, ESCROW AGENT, SECURITIES PROVIDER AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND THE REFUNDING.

WHEREAS, the City of Fairmont (the "Issuer"), in the County of Marion, State of West Virginia, is a municipal corporation of said State, the governing body of which is its Council;

WHEREAS, this Council has duly and finally enacted on October 25, 1988, a Supplemental and Amendatory Ordinance (the "Supplemental and Amendatory Ordinance") entitled:

SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 680 OF THE CITY OF FAIRMONT, ENACTED AUGUST 13, 1985; AUTHORIZING THE REFUNDING OF A PORTION OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1985, OF THE CITY OF FAIRMONT, WEST VIRGINIA; AUTHORIZING THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $13,500,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 680 TO PERMIT THE

REFUNDING OF LESS THAN ALL OF SUCH SERIES 1985 BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE ADOPTION OF A SUPPLEMENTAL RESOLUTION AND THE FORM OF AND EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT AND OTHER INSTRUMENTS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS

providing for the issuance of its Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988 (the "Series 1988 Bonds"), in an aggregate principal amount not to exceed $13,500,000, for the purpose of refunding a portion of the Issuer's outstanding Sewerage System Refunding Revenue Bonds, Series 1985, dated September 15, 1985, issued in the original aggregate principal amount of $7,370,000 (the "Prior Bonds"), of which $7,185,000 principal amount is now outstanding, pursuant to an ordinance enacted August 13, 1985, and a supplemental resolution adopted September 17, 1985 (collectively, the "Prior Ordinance"), and the Supplemental and Amendatory Ordinance is supplementary to and amendatory of the Prior Ordinance and is herein called, together with the Prior Ordinance, the "Ordinance," all in accordance with Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, in accordance with the Charter of the Issuer, the Supplemental and Amendatory Ordinance shall become effective on November 24, 1988, being 30 days following the date of adoption thereof, which occurred on October 25, 1988;

WHEREAS, the Supplemental and Amendatory Ordinance provides that the exact principal amount of the Series 1988 Bonds to be sold and the exact maturities, interest rates, redemption provisions and the price of the Bonds be established, that a determination that issuance of the Series 1988 Bonds results in a net savings to the Issuer be made, that a Paying Agent, Registrar, Depository Bank, Escrow Agent and Securities Provider be designated and that an Escrow Deposit Agreement, Investment Purchase Agreement and Registrar's Agreement be provided for by resolution of this Council upon receipt of a Bond Purchase Proposal acceptable to this Council;

WHEREAS, the Series 1988 Bonds are proposed to be purchased by Butcher & Singer, Inc. (the "Original Purchaser"),

pursuant to a Bond Purchase Proposal dated October 25, 1988 (the "Proposal"); and

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Proposal, the Escrow Deposit Agreement, the Investment Purchase Agreement and the Registrar's Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 1988 Bonds, hereinafter described, be approved, that the price of the Series 1988 Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amount of the Series 1988 Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 1988 Bonds be herein provided for;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRMONT HEREBY RESOLVES:

Section 1. Pursuant to the Ordinance and the Act, this Resolution is adopted and there are hereby authorized and ordered to be issued the Series 1988 Bonds in the aggregate principal amount (stated value at maturity) of $11,065,000, with a stated value at issuance of $3,680,320.50. The Series 1988 Bonds shall be dated November 30, 1988, upon original issuance, shall bear interest (expressed as "Yield to Maturity"), payable only at maturity, and shall mature on November 1, of each of the years as follows:

Maturity	Stated Value at Issuance	Stated Value at Maturity	Yield to Maturity	Maturity	Stated Value at Issuance	Stated Value at Maturity	Yield to Maturity
1996	$298,975	$500,000	6.60%	2004	$239,020	$760,000	7.40%
1997	277,770	500,000	6.70	2005	217,229	755,000	7.50
1998	257,570	500,000	6.80	2006	198,354	755,000	7.60
1999	238,380	500,000	6.90	2007	180,770	755,000	7.70
2000	328,091	745,000	7.00	2008	166,017	755,000	7.75
2001	306,538	755,000	7.10	2009	154,880	760,000	7.75
2002	282,060	755,000	7.20	2010	142,597	755,000	7.75
2003	259,041	755,000	7.30	2011	133,030	760,000	7.75

Section 2. The Series 1988 Bonds shall not be subject to optional or mandatory redemption prior to maturity.

Section 3. All other provisions relating to the Series 1988 Bonds shall be as provided in the Ordinance, and the

Series 1988 Bonds shall be in substantially the form provided in the Ordinance.

Section 4. The Proposal between the Original Purchaser and the Issuer, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager on this day of the Proposal on behalf of the Issuer are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Proposal with such changes, insertions and omissions as may be approved by the Mayor and City Manager. Execution of the Proposal by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section. The price of the Series 1988 Bonds, pursuant to the Proposal, shall be $3,606,714.09 (which represents the principal amount of the Series 1988 Bonds less the Original Purchaser's discount of $73,606.41 and original issue discount of $7,384,679.50), there being no interest accrued on the Series 1988 Bonds.

Section 5. The Escrow Deposit Agreement by and between the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent, to be dated as of the date of delivery of the Series 1988 Bonds, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor and City Manager shall execute and deliver the Escrow Deposit Agreement with such changes, insertions and omissions as may be approved by the Mayor and City Manager. Execution of the Escrow Deposit Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 6. The Investment Purchase Agreement, by and among the Issuer, the Escrow Agent and First Fidelity Bank, N.A., New Jersey to be dated as of the date of delivery of the Series 1988 Bonds, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor and City Manager shall execute and deliver the Investment Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor and the City Manager. The execution of the Registrar's Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 7. The Official Statement dated October 25, 1988, to be substantially in the form of the Draft Official Statement described below, and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor and City Manager shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Mayor and the City Manager. The execution of the Official Statement by the Mayor and City Manager shall be conclusive

evidence of any approval required by this Section. The distribution by the Original Purchaser of the Draft Official Statement dated October 20, 1988, substantially in the form submitted to this meeting is hereby ratified and approved.

Section 8. The Registrar's Agreement to be dated as of the date of delivery of the Series 1988 Bonds, by and between the Issuer and the Registrar designated herein, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor and City Manager shall execute and deliver the Registrar's Agreement with such changes, insertions and omissions as may be approved by the Mayor and the City Manager. The execution of the Registrar's Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 9. The Issuer does hereby appoint and designate (i) City National Bank of Fairmont, Fairmont, West Virginia, for the purpose of serving in the capacities of Registrar, Paying Agent and Depository Bank; and (ii) the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Escrow Agent under and pursuant to the Escrow Deposit Agreement and the Ordinance.

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 Series 1988 Bond issue, hereby and by the Ordinance approved and provided for, including, if needed, subscription forms for the purchase of United States Government Securities, a commitment for the Municipal Bond Insurance Policy and other documents to the end that the Series 1988 Bonds may be delivered at the earliest practical date to the Original Purchaser, pursuant to the Proposal.

Section 11. Under the provisions of the Act, and as provided in the Ordinance and the Series 1988 Bonds, the Series 1988 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely from the revenues derived from the operation of the sewerage system of the Issuer and the funds and accounts established by the Ordinance and neither the credit nor the taxing power of the Issuer is pledged for, and no tax shall ever be levied for, payment of the Bonds and the interest thereon.

Section 12. Based upon the actual principal amount, maturity schedule and interest rates for the Series 1988 Bonds, as set forth in Paragraph (1) hereof, it is hereby determined that the Series 1988 Bonds show a net savings to the Issuer after deducting

all expenses of the refunding. Prior to delivery of the Series 1988 Bonds, the Issuer shall have obtained from an independent certified public accountant a certification that the amount of savings stated to be achieved by the refunding shall in fact be correct, based upon his review, comparison and analysis of the net interest cost in dollars of the Series 1988 Bonds and the net interest cost in dollars of the Prior Bonds being refunded. The City Manager is hereby authorized and directed to employ an independent certified public accountant satisfactory to the Original Purchaser to supply the certification required herein and to take other actions required in connection with the refunding.

Section 13. The net proceeds of the Series 1988 Bonds shall be deposited in accordance with the Supplemental Ordinance as follows:

Deposit to Escrow Fund	$3,158,700.00
Bond Insurance Premium	75,592.17
Deposit to Cost of Issuance Fund	75,000.00
Deposit to Construction Fund	297,421.92
Total Net Proceeds	$3,606,714.09

Section 14. The City Manager, Mayor, City Clerk and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all further actions necessary to cause the Series 1988 Bonds to be insured by AMBAC Indemnity Corporation or such other municipal bond insurance company as is acceptable to the Original Purchaser. Any rebate received by the Issuer in connection with municipal bond insurance on the Prior Bonds shall be deposited by the Issuer in accordance with the Escrow Deposit Agreement.

Section 15. This Resolution shall be effective on November 24, 1988, being 30 days following the date of enactment of the Ordinance.

Adopted this 25th day of October, 1988.

[SEAL]

Mayor, City of Fairmont

City Manager, City of Fairmont

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

11/21/88
FMTSR1-I

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

BOND ORDINANCE

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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

CHS91994.1

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. Kellen
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

October 11, 2007

City of Fairmont
Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Gary K. Bennett, CPA, independent certified public accountant, and the opinion of Steptoe & Johnson PLLC, bond counsel, stating that the parity and coverage tests have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the West Virginia Department of Environmental Protection and the Authority, the registered owner of the entire outstanding aggregate principal amount of the 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 "Series 2003 A Bonds") of the City of Fairmont, West Virginia (the "Issuer"), hereby consents to the issuance of the Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), in the original aggregate principal amount of $5,577,760 (the "Bonds"), by the Issuer, under the terms of the ordinance authorizing the Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Series 2003 A Bonds. The Series 2003 A Bonds and the Bonds shall initially be junior and subordinate as to liens, pledge, source of and security for payment to the Issuer's outstanding 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 "Series 1988 Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased, at which time the Bonds and the Series 2003 A Bonds shall automatically upgrade to a parity first lien position.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Authorized Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 26 2006

CERTIFIED MAIL

Mr. Bruce McDaniel
City Manager
City of Fairmont
200 Jackson Street
Fairmont, WV 26554

Re: XP-973559-01-0

Dear Mr. McDaniel:

The Agency has approved an assistance application and award of $962,200 in support of the project entitled *Sanitary Sewer Improvement Project.*

This award is made subject to the terms and conditions of the enclosed assistance agreement. Three originals of the assistance agreement are enclosed. Please sign all of them. Return one to Kathleen M. Blinebury, Grants Management Officer, Grants and Audit Management Branch (3PM70), within twenty-one days of your receipt. The West Virginia Department of Environmental Protection is assisting with the management of this project. Mail one to Ms. Rosalie Brodersen, West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, WV 25304 and retain one for your organization.

A Region III website is available to provide you with a better understanding of the requirements associated with your assistance agreement and with information that will help you to manage your grant. The website can be found at: **www.epa.gov/region3/grants/index.htm.**

Your contact at EPA is Mr. Bruce Smith. You can reach him at 215-814-5770.

Sincerely,

for Andrew Carlin
James W. Newsom
Assistant Regional Administrator
for Policy and Management

Enclosures

cc: R. Brodersen, WVDEP

U.S. ENVIRONMENTAL PROTECTION AGENCY

Grant Agreement

ASSISTANCE ID NO.			DATE OF AWARD
PRG	DOC ID	AMEND#	JUN 19 2006
XP -	97355901	- 0	
TYPE OF ACTION: New			MAILING DATE: JUN 26 2006
PAYMENT METHOD: Reimbursement			ACH# 33736

RECIPIENT TYPE: Municipal	**Send Payment Request to:** West Virginia Dept. of Environmental Protection
RECIPIENT: City of Fairmont, 200 Jackson St, Fairmont, WV 26554, EIN: 55-6000171	**PAYEE:** City of Fairmont, 200 Jackson St, Fairmont, WV 26554

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Mr. David Sago 200 Jackson St Fairmont, WV 26554 E-Mail: davidsago@aol.com Phone: 304-366-5679	BruceA Smith 1650 Arch Street, 3WP21 Philadelphia, PA 19103-2029 E-Mail: Smith.Brucea@epamail.epa.gov Phone: 215-814-5770	Nancy Schruby Grants and Audit Management Branch, 3PM70 E-Mail: Schruby.Nancy@epamail.epa.gov Phone: 215-814-5414

PROJECT TITLE AND DESCRIPTION

SANITARY SEWER IMPROVEMENT PROJECT

This award is for the purpose of providing funds for the construction of improvements that will reduce Combined Sewer Overflow conditions in the area known as the Route 250 sewer system, as well as separate the sanitary sewer flow from the storm sewer flow in two areas known as Marion Street and Pennsylvania Avenue in the City of Fairmont.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
07/01/2006 - 12/31/2007	07/01/2006 - 12/31/2007	$1,749,455.00	$1,749,455.00

NOTE: The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.

OFFER AND ACCEPTANCE

The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the City of Fairmont for 55.00 % of all approved costs incurred up to and not exceeding $962,200 for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed 08/22/2005 included herein by reference.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
US EPA Region 3, 3PM70 1650 Arch Street Philadelphia, PA 19103-2029	U.S. EPA, Region 3 Water Protection Division 3WP00 1650 Arch Street Philadelphia, PA 19103-2029

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
Andrew Carlin for	James W. Newsom, ARA for Policy and Management	JUN 19 2006

This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
Bruce McDaniel	Bruce McDaniel, City Manager	6/29/06

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 962,200	$ 962,200
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$ 787,255	$ 787,255
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 1,749,455	$ 1,749,455

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.202 - Congressionally Mandated Projects	Consolidated Appropriations Act of 2005 (PL 108-447)	40 CFR PART 31

Fiscal

Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	LL0123	2006	E4C	0300GQ1	202B51E	4183	-	-	962,200
									962,200

Approved Budget	
Program Element Classification (Construction)	Approved Allowable Budget Period Cost
1. Administration Expense	$0
2. Preliminary Expense	$0
3. Land Structure, Right Of Way	$0
4. Architectural Engineering Basic Fees	$0
5. Other Architectural Engineering Fees	$0
6. Project Inspection Fees	$0
7. Land Development	$0
8. Relocation Expenses	$0
9. Relocation Payments to Individuals & Bus.	$0
10. Demolition and Removal	$0
11. Construction and Project Improvement	$1,749,455
12. Equipment	$0
13. Miscellaneous	$0
14. Total (Lines 1 thru 13)	$1,749,455
15. Estimate Income	$0
16. Net Project Amount (Line 14 minus 15)	$1,749,455
17. Less: Ineligible Exclusions	$0
18. Add: Contingencies	$0
19. Total (Share: Recip 45.00% Fed 55.00%)	$1,749,455
20. TOTAL APPROVED ASSISTANCE AMOUNT	$962,200

Administrative Conditions

1. The recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act of 1990.

2. Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

3. The recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The recipient may access the Excluded Parties List System at http://epls.arnet.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

4. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

5. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, Lobbying and Litigation Certificate, with the final payment request.

The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

6. In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

7. If a contract is awarded under this assistance agreement, the recipient agrees and is required to utilize the following affirmative steps:

9. In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the report to:

Federal Audit Clearinghouse
1201 East 10th Street
Jeffersonville, IN 47132

10. EPA participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2006, the limit is $550.00 per day and $68.75 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j)(2) or 30.27(b), as applicable.

Programmatic Conditions

1. Procurement

a. The recipient agrees to procure all services, supplies, and construction awarded under this grant in accordance with 40 CFR Part 31.

b. A copy of all proposed subagreements for services and supplies over $100,000 shall be submitted to the West Virginia Department of Environmental Protection (WV DEP), for review and pre-award approval, as appropriate, under 40 CFR Part 31. The submittal of the proposed subagreements shall include procurement records. Also, the contract cost and price data shall be submitted on EPA Form 5700-41, or on a form which contains similar information.

c. A copy of all proposed subagreements for construction shall be submitted to the WV DEP, for review and pre-award approval, as appropriate, under 40 CFR Part 31. The submittal of the proposed subagreements shall include procurement records.

2. Grant Payments

The recipient agrees that:

a. Payments are on a reimbursable basis. Requests for payments should be submitted to the WV DEP, using Standard Form 271.

b. Payment for professional services and construction will be limited to the Federal share of EPA approved contracts.

3. Project Performance Certification

Prior to the release of the final payment on the grant, the recipient agrees to certify that the project is capable of meeting the objectives for which it was planned, designed, and built. In addition, any remaining documentation of costs (invoice copies) and proof of payment (check copies) must be provided to WV DEP.

a. placing Small Businesses in Rural Areas (SBRAs) on solicitation lists;

b. ensuring that SBRAs are solicited whenever they are potential sources;

c. dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;

d. establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;

e. using the services of the Small Business Administration (SBA), the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce and the SBA PRO-Net Internet-based system http://pro-net.sba.gov, as appropriate; and

f. requiring the contractor to take the affirmative steps in subparagraphs a. through e. of this part if subcontracts are awarded.

8. The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements:

a. The recipient accepts the applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the **West Virginia Department of Environmental Protection,** as follows:

	MBE%	WBE%
Construction	1.75	2.50
Equipment	0.10	0.10
Services	1.25	1.50

b. The recipient agrees to ensure to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially or economically disadvantaged individuals, women and historically black colleges and universities.

c. The recipient agrees to include in its bid documents the applicable "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.

d. The recipient agrees to follow the six affirmative steps or positive efforts stated in 40 CFR 30.44(b), 40 CFR 31.36(e), or 40 CFR 35.6580, as appropriate, and retain records documenting compliance.

e. The recipient agrees to submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to R. Catherine King, Municipal Financial Assistance Branch (3WP21), within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30).

f. If race and/or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "fair share" objective.

EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

4. Project Changes

For any changes in the project which affect the grant amount, delay or accelerate the project or alter the project in other ways, the recipient must receive a formal grant amendment from EPA. Of particular interest is any change in completion of final design drawings and specifications, date of advertisement for bids, and the building completion date.

5. Land Acquisition

In the event the recipient procures land or relocates people, 49 CFR Part 24 applies.

6. Sites, Easements and Rights-of-Way

The recipient shall submit an acceptable legal opinion that the necessary sites and easements and/or rights-of-way have been obtained and that they are free of any restrictions or encumbrances that might restrict their use for the purpose intended. Said opinion shall be submitted to EPA no later than the time at which the recipient requests approval to award construction contracts.

7. Flood Insurance

The recipient agrees to acquire and maintain at his own cost any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, before the project is placed in operation. This condition shall not be applicable if, on the date of execution of this Grant Agreement by both parties, flood insurance was not available pursuant to the Flood Insurance Act of 1968, as amended, for property in the project location.

8. Review

The recipient recognizes that approval of any part of this grant, change orders, grant increase amendments, subagreements, any special items or allowableness of any other costs will be subject to final review, including project officer review, audit review, and final determination of the grant approving official.

9. Project Schedule

EPA's policy requires that projects be initiated, constructed, and placed in operation in a timely manner. For that reason, the schedule shown below, which was developed in conjunction with your grant application, is included as a condition.

Advertise for Bids	May 2006
Award Construction Contract	September 2006
Initiate Construction	September 2006
Complete Construction	November 2007
Submit Final Payment Request	December 2007

10. Environmental Review

The recipient agrees not to begin the preparation of plans and specifications (design), or to initiate construction, until such time as EPA determines that the project complies with the National Environmental Policy Act; 42 USC Subsection 4321 et seq., CFR Parts 6 and 1500 et seq.

The recipient agrees that upon completion of the NEPA review, design and construction shall be undertaken in accordance with the results of that review. EPA reserves the right to unilaterally terminate this grant in the event the recipient fails to comply with this condition, in accordance with 40 CFR 31.43.

11. Initiation of Construction

It is agreed that the WV DEP must approve the design before contracts are advertised for bids. Bids will be submitted to the WV DEP for approval prior to contract award.

12. Open Competition and Government Neutrality

The assistance recipient agrees to comply with Executive Order 13202 (February 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."

13. Performance Reports

In accordance with 40 C.F.R. § 31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas; 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

14. Outputs and Outcomes

EPA Order 5700.7, Environmental Results under EPA Assistance Agreements, requires that the award of grant assistance is tied to the accomplishment of agreed-upon products/activities and the effect of those products/activities, referred to as environmental "outputs" and "outcomes." The outputs and outcomes must be measurable and identified in the application work plan. The award of grant assistance constitutes EPA agreement with the outputs and outcomes identified in the application work plan.

EPA Order 5700.7 further requires that following the award of grant assistance, grant recipients must report on their progress in achieving the accepted environmental outputs and outcomes. The preceding Performance Reporting condition highlights this obligation.

Pursuant to EPA regulation 40 CFR 31.40(c), *Construction performance reports* , for the purpose of this grant award the recipient may satisfy the above Performance Reporting obligation by providing information on the interim status or completion of the project to the WV DEP during the course of interim and final project inspections.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/24/2007

RODUCER (304)592-5924 FAX: (304)592-6241
/esBanco Insurance Services, Inc.
129 Pike Street
).O. Box 39
Shinnston WV 26431

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: St. Paul Public Sector	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

NSURED
Sity Of Fairmont
Po Box 1428
Fairmont WV 26555-1428

OVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	GP09312792	7/1/2007	7/1/2008	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ $ 0 $ 1,000,000 $ 2,000,000 $ 2,000,000
		AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
		EXCESS/UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $ $ $ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
		OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER

WV Water Development Authority
180 Associate Drive
Charleston, WV 25311

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Bonnie Marstiller

CLOSING MEMORANDUM

To: Financing Team

From: John C. Stump, Esquire

Date: October 11, 2007

Re: City of Fairmont Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

---

1. DISBURSEMENTS TO THE CITY OF FAIRMONT

Payor:	West Virginia Department of Environmental Protection
Amount:	$747,669
Form:	Check
Payee:	City of Fairmont
Contact:	Rosalie Brodersen - (304) 926.0499 x 1608
Account:	Series 2007 A Bonds Construction Trust Fund

268460.00004

Rev. 10/01/04

PAYMENT REQUISITION FORM

1. LOAN RECIPIENT/VENDOR:

NAME: City of Fairmont

ADDRESS: P.O. Box 1428

Fairmont, WV 26555-1428

PHONE: 304.366.0540

FEIN: 55- 600-5216-001

2. SRF PROJECT C 544393

3. INVOICE NUMBER: 1

4. PERIOD COVERED BY THIS REQUEST:

FROM (MO/DAY/YR) 2/16/2005 TO (MO/DAY/YR) 10/9/2007

5. PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETION 0%

RECEIVED OCT 01 2007 SRF PROGRAM

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED TOTALS	C) THIS REQUEST	D) TOTAL COLUMNS B & C	E) AGENCY USE ONLY
1) CONSTRUCTION	4,254,837.00		0.00	0.00	
SSES	284,384.00		284,383.74	284,383.74	284,384
2) TECHNICAL SVC					
a. Basic	289,468.00		215,368.36	215,368.36	215,368
b. Engineering (Special Services)	195,727.00		195,727.30	195,727.30	195,727
c. Inspection	230,058.00		0.00	0.00	
3) Legal / Fiscal					
a. Fiscal	10,000.00		8,500.00	8,500.00	8500
b. Legal	20,000.00		13,189.55	13,189.55	13,190
4) ADMINISTRATIVE				0.00	
5) LAND			0.00	0.00	
6) R-O-W ACTIVITY			0.00	0.00	
7) LOAN REPAYMENT				0.00	
8) CONTINGENCY	262,786.00		0.00	0.00	
9) INT FINANCE COST			0.00	0.00	
10) RESERVE FUND	0.00		0.00	0.00	
11) CLOSING COST	30,500.00		30,500.00	30,500.00	30,500
12) SUBTOTAL	5,577,760.00		747,668.95	747,668.95	747,669
13) LESS PREVIOUSLY PAID					-0-
14) INVOICE AMOUNT					747,669

15) RECIPIENT AUTHORIZED SIGNATURE

DATE: 9/27/07

Bruce McDaniel, City Manager

TYPED OR PRINTED NAME AND TITLE

16) PERSON PREPARING FORM SIGNATURE

Date: 9-27-07

Sally Gower, Secretary/Treasurer

TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

PROJECT REVIEWER	DATE	AUTHORIZED OFFICER	DATE
John Rogers	10/3/07	R Bradley	10/4/07

ACCOUNTING CLASSIFICATION - DEP USE ONLY

ACCOUNTING NUMBER:	AMOUNT APPROVED:
350 - 1 (083-5)	$ 747,669
350 - 2	-0-

RF - 91

2007 OCT 4 AM 10 34

RECEIVED FISCAL SERVICES

AGENCY: ENVIRONMENTAL PROTECTION
TOTAL: $747,669.00

WARRANT #: 1004458384
DATE: 10/10/07

TRANSACTION ID	INVOICE NUMBER &	PAYEE REFERENCE	PURCHASE ORDER	AMOUNT
I008026110 1, C544393				$747,669.00

If you have questions concerning the above, please call 304-926-0499 Ext. 1581.

REMOVE DOCUMENT ALONG THIS PERFORATION

CTL# 21827271

THIS WARRANT HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD AND COUNTERFEITING
VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

State of West Virginia

Important remittance information on top panel
Remitter: ENVIRONMENTAL PROTECTION
Questions? Contact: MARK DOYLE at 304-926-0499 Ext. 1581

STATE WARRANT # 1004458384

PAYEE CITY OF FAIRMONT SANITARY BOARD

OCTOBER 10, 2007

**********$747,669.00**

1004458384

WEST VIRGINIA TREASURY

John D. Perdue
STATE TREASURER

Glen B Gainer III
STATE AUDITOR

⑈1004458384⑈ ⑆051902322⑆ 0005270537822⑈

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 10/11/07 Time 9:30 a.m. LGA City of Fairmont Program CWSRF

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Sammie Gee	Jackson Kelly PLLC	340 1318	340.1272	sygee@jacksonkelly.com
Bernie Yonkosky	WV WDA	558-3612	558-0299	byonkosky@wvwda.org
Ryan White	Jackson Kelly PLLC	340 1283	340 1272	srwhite@jacksonkelly.com
Rose Brodersen	WV DEP	926 0499 x1608	926 0496	rbrodersen@wvdep.org
John Stump	Steptoe & Johnson PLLC	353.8196	353.8181	john.stump@steptoe-johnson.com

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 David Sago, Manager Telephone 304.366.6211 E-Mail
Address P.O. Box 1428 Fairmont West Virginia 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.

AMENDMENT TO THE CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
Greater Paw Paw Sanitary District

This is an amendment to the contract for treatment by the City of Fairmont of sewage from Greater Paw Paw Sanitary Dist. dated September 2, 1986, between the City of Fairmont, hereinafter referred to as City, Sanitary Sewer Board of the City of Fairmont, hereinafter referred to as Board, and the Greater Paw Paw Public SErvice District, hereinafter referred to as District.

WITNESSETH THAT:

WHEREAS, the parties hereto have heretofore entered into a contract for the treatment by the City of Fairmont of sewage and wastewater from the District and its service area, dated January 26, 1993, and subsequent amendments thereto, if any, providing for the Board to accept, transport and treat sewage and wastewater from the District and for the District to compensate the Board for such service; and

WHEREAS, the City and Board are under mandate to implement and enforce a POTW Pretreatment Program under 40 CFR 403 and 46 CSR 2.14.4 upon all industrial and/or commercial users of its systems, and the City and Board are further solely responsible for the implementation of said program upon said users; and

WHEREAS, the parties hereto are in agreement that the rules and regulations imposed upon the City and Board with reference to the operation and maintenance of its sanitary sewer treatment and collection system should be extended to

the satellite systems and users of and contributors to said systems.

NOW THEREFORE in consideration of these recitals, the parties hereto mutually agree as follows:

That said contract dated September 2, 1986, and any subsequent amendments thereto are amended, modified and changed to include the following:

1. The District shall supply to the Board a current listing of the names and addresses of all industrial and/or commercial users on its system on or before December 31 of each calendar year.

2. The District shall notify the Board thirty (30) days prior to the approval and/or installation of any industrial and/or commercial sewer tap.

3. The District shall adopt Article 923 (Sewer Discharge Control) of the code of the City of Fairmont, a copy of which is attached hereto, within sixty (60) days from this date. Any amendments and modifications to said Article shall likewise be adopted by the District within sixty (60) days from the date of such amendment or modification by the City/Board.

4. In the event that the District seeks to amend and modify this contract, the District must notify the City/Board sixty (60) days prior the adoption of such amendment and modification to allow the City/Board to review and approve same.

5. In the event that the District accepts

sewage and wastewater from areas outside its service area, such outlying area shall enter into and be bound by the terms of the interjurisdictional agreement between the City/Board and District.

6. The District shall designate and authorize the Board to act as its agent in the implementation and enforcement of all provisions of any said ordinance relating to sewer discharge control.

IN WITNESS WHEREOF, the City of Fairmont, by resolution properly adopted, has caused this AMENDMENT to be signed on its behalf by Ed Thorne, City Manager, and its corporate seal to be affixed thereto by Janet Keller, its City Clerk; and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont, by resolution properly adopted, has caused this AMENDMENT to be signed on its behalf by Ed Thorne, its Chairman and its seal to be affixed thereto by Janet Shackelford, its Secretary; and

IN WITNESS WHEREOF, the District by resolution properly adopted, has caused this AMENDMENT to be signed by R.A. Yokley, its Chairman and its corporate seal to be affixed thereto by Leo DeMary, its Secretary.

This AMENDMENT is executed in three (3) copies with one (1) copy to each party hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT,
a Municipal Corporation

By: _____
City Manager

ATTEST:

Janet L. Keller
City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

By: _____
Chairman

ATTEST:

Janet Shackelford
Secretary

GREATER PAW PAW PUBLIC SERVICE DISTRICT

Robert Appleby

By: Chairman

ATTEST:

Lee De Mary
Secretary

Approved as to correctness of form and content for the City of Fairmont this the 12th day of February,

Frank V. Sansalone
City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 26th day of March, 1993.

James O. Watkins Jr.
Its Attorney

Approved as to correctness of form and content for the District this the 12th day of February, 1993.

Ronald R. Lewis
Its Attorney

CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
GREATER PAW PAW SANITARY DISTRICT

THIS CONTRACT made as of the 2nd day of Sept., 1986, by and between the CITY OF FAIRMONT, a municipal corporation, hereinafter designated as CITY, the SANITARY SEWER BOARD OF THE CITY OF FAIRMONT, hereinafter designated as BOARD, and GREATER PAW PAW SANITARY DISTRICT, a political subdivision of Marion County, State of West Virginia, hereinafter designated as DISTRICT.

WITNESSETH THAT:

WHEREAS, the State of West Virginia has ordered and directed the CITY to install secondary treatment facilities and necessary interceptors and pumping facilities in connection therewith; and

WHEREAS, the CITY, acting through the BOARD, has upgraded its facilities so as to provide secondary treatment to meet State and Federal requirements of eligibility for construction grant aid as set forth in PL 92-500, Title 40, Chapter 1, Subchapter B, Part 35, State and Local Assistance, and amendments thereto; and

WHEREAS, the DISTRICT is presently in the process of planning a sewer system to abate the discharge of sewage into streams in the DISTRICT and its area of service and,

WHEREAS, the DISTRICT desires to connect to the sewer system of the CITY at mutually agreed upon locations along Monongahela River, and to have its sewage treated by the CITY in accordance with applicable water quality standards; and

WHEREAS, it is the intent of the parties hereto, that the CITY shall accept sewerage from the DISTRICT and transport it to the CITY'S treatment plant for treatment in accordance with the standards established in the CITY'S NPDES permit and in such a manner that the DISTRICT will be held harmless in any second party action relating to effluent quality, and

WHEREAS, it is the intent and purpose of the parties hereto to comply with all regulations to abate pollution in their respective areas and to cooperate with each other, and with the State and Federal Authorities to reduce and prevent pollution of the streams and waterways, thereby protecting the health of the Inhabitants and serving the public health and welfare of all;

NOW THEREFORE, in consideration of these recitals, the parties hereto agree to proceed in cooperation with each other, and to use their best efforts to plan, finance, construct and operate sewage facilities which will accomplish the aforesaid objectives according to the following terms, conditions and considerations:

1. All acts required of the CITY by reason of this CONTRACT shall be performed for and on behalf of the CITY by the BOARD which shall have sole authority over the construction and operation of the CITY'S sewage facilities. The BOARD shall perform all acts and make all such rules and regulations as may be necessary from time to time for the proper and efficient operation of the sewage facilities for the benefit of the CITY, the DISTRICT and other users.

2. The DISTRICT intends to plan and cause to be constructed at its sole cost, and interceptor and collector sewer system meeting generally accepted sanitary sewage (without infiltration and inflow of surface drainage that exceeds 1,500 gallons per inch diameter mile) to the CITY'S sanitary sewer system, all in accordance with current and future guide lines as promulgated by Federal and State Authorities. It is the present intention of the parties that the DISTRICT will be responsible for the maintenance and operation of its sewer system and that the DISTRICT will establish user charges sufficient at all times to pay when due, proper charges for service rendered by the CITY to the DISTRICT.

3. The BOARD intends to receive, treat and dispose of the sanitary sewage delivered to it by the DISTRICT at points to be mutually agreed upon, which sewage is to be metered at the sole cost of the DISTRICT in a manner and with equipment satisfactory to the BOARD. Said meter will be tested and calibrated on an annual basis.

4. The charges made to the DISTRICT by the BOARD for providing the services contemplated hereunder shall be, in the first instance established by the BOARD in accordance with fair cost accounting and allocation principles, with the objective that the BOARD will recover from the DISTRICT its costs, both capital (including required bond service coverages) and operating, incurred in making service available and providing service to the DISTRICT, without requiring other users of the CITY sewer system to subsidize capital or operating costs incurred by the BOARD for the purpose of serving the DISTRICT. Initially, rates charged by the BOARD to the DISTRICT will be established and subsequently amended from time to time as necessary pursuant to the provisions of Chapter 16, Article 13 and Chapter 24, Article 2 of the West Virginia Code, as amended. All such rates, when established in accordance with procedures promulgated by the Legislature of the State of West Virginia, and of any regulating or other agency or authority having jurisdiction in such matters, shall automatically, upon proper adoption and notice to the DISTRICT, become an amendment to this CONTRACT without further action by the parties hereto.

In determining said charges, the following provisions shall apply:

a. The DISTRICT will pay a proportionate share of the capital costs (including bond service coverages) for the treatment plant. The DISTRICT shall pay capital costs based on design flows as a percentage of plant capacity.

b. The reserved capacity and percentage for capital cost sharing between all parties using the plant shall be done as follows:

Parties	Reserved	Actual Percentage	Cost Sharing Percentage
Fairmont	4.43	73.84	79.5
Barrackville	0.24	4.00	3.1
Kingmill Valley	0.57	9.50	7.5
Whitehall P.S.D.	0.26	4.33	3.4
Paw Paw S.D.	0.50	8.33	6.5
	6.00	100.00%	100.00%

c. The proportionate share paid by the DISTRICT for operation and maintenance costs will be based on actual sewage flows. The DISTRICT'S flow will be metered and compared to the total flow treated at the BOARD'S treatment plant. Said operating costs are defined as the cost of all labor, power, chemicals, vehicle expenses, maintenance, repair, replacement, improvement and administrative expenses.

d. The BOARD will bill the DISTRICT on a monthly basis for these services. The amount of this bill will initially be based on projected flows until actual flow data is available.

e. The total annual cost paid by the DISTRICT to the BOARD will be adjusted at the end of the first year to account for actual vs. projected flows and actual vs. projected costs.

f. The BOARD will provide the DISTRICT with financial reports verifying the costs of operation and maintenance items and the flows treated at the plant.

g. The account number used in calculating Barrackville's share of treatment expense shall be:

228 - Taxed Accrued
741 - Operation, Supervision & Engineering
742 - Operation Labor
743-1 - Supplies & Expenses
743-2 - Chemical Treatment Expenses
744 - Maintenance Supervision & Engineering
745 - Maintenance of Structures & Improvement
746 - Maintenance of Treatment & Disposal System Equipment
795 - Special Services
797 - Regulatory Commission Expenses
798 - Insurance
799 - Injuries & Damages
800-1 - Employee's Welfare Expenses
800-2 - Pensions

h. Any adjusted amount due or receivable upon completion of the annual review of expenses shall be prorated over three months.

i. The CITY and the BOARD will, after service to the DISTRICT is in effect, provide the DISTRICT, at least annually, with:

(I) A copy of the BOARD'S annual report filed with the Public Service Commission of West Virginia.

(II) A copy of audited financial statements as the CITY provides for holders of revenue bonds issued by the CITY, payable from revenues of its sewer system.

(III) A copy of all reports of audit of the BOARD'S records prepared by the BOARD'S auditors or by State or Federal Auditors.

The cost of preparing these documents will be allocated to the DISTRICT and to other users of the CITY'S sewer system in accordance with sound public utility accounting principles. Upon the request of the DISTRICT, the BOARD will cause to be made usch other and additional financial information as the DISTRICT may reasonably request, but at the sole cost of the DISTRICT.

5. Each of the parties intend to proceed to cause plans and specifications to be developed for its respective facilities, in cooperation with each other; to seek appropriate regulatory approvals; to seek such federal or other grants and aid as may be available; to plan for the financing of capital costs which are not met by grants in aid; and, at the appropriate time, to seek a Certificate of Vonvenience and Necessity from the Public Service Commission of West Virginia and such approval of rates as may be necessary to finance these projects and to provide monies for the operating and maintenance costs which will be associated therewith so as to provide service as follows:

(I) By the DISTRICT to its customers.

(II) By the BOARD to its customers, including the DISTRICT.

6. It is recognized by the parties hereto that the BOARD will be operating the BOARD'S major pumping and treatment facilities for its own benefit and for the benefit of the DISTRICT and other users of the BOARD'S facilities, and, therefore, the parties hereto further agree that the following rights and duties shall be imposed upon the BOARD and the DISTRICT to insure the harmonious coordination of the two projects and to provide the BOARD with the necessary means by which it can verify the proper construction of all facilities contributing sewerage to its treatment plant, regulate the quality of sewage being delivered to the BOARD for treatment, prohibit the introduction of unacceptable wastes into its system, and to require the DISTRICT to immediately take such corrective action as may be necessary to bring it to compliance with the BOARD'S rules, regulations and quality standards:

(I) Riles-the BOARD shall from time to time promulgate rules and regulations regarding the quality of sewage. It will treat and the DISTRICT shall at all times comply with these regulations (including the Fairmont Sanitary Board's Pretreatment Program and City of Fairmont Ordinance 602); provided, however, that the BOARD shall adopt no quality standard that discriminates against the DISTRICT or which is more restrictive than is necessary for the proper operation of its plant within its limits of design.

(II) Inflow and Infiltration - the DISTRICT shall conduct a Sewer System Evaluation Survey (SSES) of its existing sewers, and, to the extent that such survey shows it to be cost effective to do so, all inflow from roof drains, surface drains, storm sewers, catch basins and other structures which may be a source of inflow into the DISTRICT'S system shall be excluded therefrom.

(III) Review of plans and specifications-the DISTRICT shall coordinate its design with the BOARD'S engineer. At the time it submits its plans to the reviewing agencies for review, the DISTRICT shall provide the BOARD with one set of its plans and specifications pertaining to the points of connection to the BOARD'S system including metering facilities for the BOARD'S review and comment, and shall conform to the BOARD'S design requirements pertaining to the construction and operation thereof.

(IV) Connection to the BOARD'S sewer system - the DISTRICT shall connect the DISTRICT'S system to the CITY'S system and provide suitable facilities for metering the flow of sewage from the DISTRICT into the CITY'S system at the DISTRICT'S expense.

(V) Inspection - The BOARD shall, from time to time as it deems necessary, and at the BOARD'S own proper expense, have the right to inspect the DISTRICT'S facilities for the purpose of determining that the DISTRICT'S facilities are being constructed and operated in such a way as to minimize infiltration, to eliminate illegal sources of inflow into the system, to insure that excessive infiltration does not become a future problem and that sources of inflow are not illegally connected at some future time. Upon being advised by the BOARD of the presence of excessive inflow or infiltration originating in the DISTRICT'S system, or of the presence of sewage in the DISTRICT'S system which is detrimental to the operation of the BOARD'S facilities. The DISTRICT shall immediately proceed to correct such deficiencies in the most expeditious manner available.

(V) (a) If additional sewage flow from any additional utilities is added to the BOARD's treatment facility, the Parties hereto agree to negotiate changes in the percentages shown in Table 4 (b) of this agreement, if said changes are necessary.

(VI) Review of operating rules and regulations- The DISTRICT shall submit its rules and regulations and operating procedures to the BOARD for review, and shall adopt no such rules, regulation or operating procedure, which, in the BOARD'S opinion, would affect the operation of the BOARD'S facilities to the detriment of the CITY, the DISTRICT, and the other users of the CITY'S facilities. The DISTRICT shall provide the BOARD with advance copies of any proposed change in its rules and regulations, and the BOARD shall provide the DISTRICT with copies of its rules, regulations and operating procedures for the DISTRICT'S guidance.

7. Approval of contract and tarrif- The parties hereto agree that at the appropriate time the Public Service Commission will be asked to approve this CONTRACT and appropriate tarrif provisions establishing reasonable rules and regulations for the rendering of the services herein contemplated by the BOARD to the DISTRICT, and of rates and fees to be charged by the BOARD for such services and to be charged by the DISTRICT to provide monies to pay for such services, it being agreed between the parties hereto that each shall take all legislative and relating thereto, and that all such action (including future rate orders) shall be deemed an amendment to this CONTRACT without further action by the parties hereto.

8. BOARD to act under contract-The CITY, the DISTRICT and the BOARD agree that the BOARD is empowered to act for and on behalf of the CITY in all matters relating to this CONTRACT. It is further agreed by all parties hereto that necessary amendments hereto will be promptly made at the appropriate times when Federal and State regulations make such amendments necessary.

9. Points of connection-The BOARD, as part of its construction contract shall construct the necessary gravity sewers, pump stations and force mains, to extend its interceptor system to any point at which the DISTRICT is to connect to the CITY'S system. The DISTRICT'S sewer shall be connected to the CITY'S sewer system at mutually agreed to points along the Monongahela, all at the DISTRICT'S expense and in accordance with the plans and specifications as approved by the BOARD.

10. The DISTRICT shall not accept sewage from, nor shall it extend or allow its facilities to be extended to, any area outside of its service area unless it first obtains the BOARD'S written authorization to do so, which authorization will be forthcoming only after the DISTRICT has first provided the BOARD with full written disclosure of the extent of all such proposed extensions of service and the maximum flow which will be generated thereby.

11. The DISTRICT and the BOARD each agree to compensate the other for their prorata share of the local share of the cost, including interest charges, of all betterments in the other's system required to permit the other to accept, transport and treat the other's sewage which sums shall be recovered as a part of the respective monthly charges to be made for sewage metered into each system.

12. DISTRICT may cancel- The DISTRICT, upon one (1) years advance written notice to the BOARD, may, if it deems it to be to the DISTRICT'S benefit to do so, terminate and withdraw from this CONTRACT after it has fully compensated the CITY for the then undepreciated cost, as determined by Public Service Commission accounting methods, of all betterments constructed by the CITY for the DISTRICT'S benefit, but the DISTRICT shall not be entitled to recover any property, or to receive any credit for unused capacities in the BOARD'S system or for betterments which the DISTRICT made for the BOARD'S benefit, by reason of such action by the DISTRICT, nor shall ir retain any rights to such betterments nor to a renewal of this CONTRACT.

13. Term of contract- Unless terminated as hereinbefore provided, this CONTRACT shall run for twenty (20) years and may be renewed thereafter in ten (10) year increments for an additional twenty (20) years at the DISTRICT'S option, which renewals shall be deemed automatic unless the DISTRICT notifies the BOARD of its desire not to renew, such notice to be given in writing at a regular meeting of the BOARD during the six (6) months preceeding the effective date of each ten (10) year renewal. In the event of notice not to renew, the DISTRICT shall compensate the BOARD for undepreciated betterments as specified in item 15 next above.

Thereafter, the CONTRACT may be extended by mutual agreement or renegotiated as may be dictated by the then existing needs of the parties hereto.

14. Plant effluent quality- It shall be the duty of the BOARD in the operation of its plant to treat all wastes in such a manner as to produce a plant effluent which is in conformance with the effluent discharge requirement of its NPDES permit, and it is agreed between the parties hereto that the DISTRICT will be held harmless by the CITY and the BOARD in any second party action related to effluent quality, it being understood and agreed between the parties hereto that the DISTRICT shall have no authority or control over the operation of the plant or the quality of the plant's effluent being discharged into the river.

15. DISTRICT ICR and user charge- The DISTRICT agrees that it will comply with all EPA policies pertaining to user charges and industrial cost recovery (ICR) charge, and that it will hold the CITY and the BOARD harmless for any damages which may be proved to have been caused by reason of the DISTRICT'S noncompliance with such policies.

16. Resolution of Controversy- All matters of controversy which may arise concerning compliance of the parties hereto with the provisions of this CONTRACT shall be resolved as follows:

(I) In the event of controversy arising by reason of an illegal discharge, or other illegal act by the DISTRICT, which may place the BOARD'S facilities or treatment process in jeopardy to the extent that substantial damages will result to the BOARD'S facilities, or that the BOARD will not be able to render treatment to the degree required by its discharge permit, the BOARD shall first notify the DISTRICT orally followed immediately by notice in writing hand delivered to the DISTRICT of the nature of the problem and of its potential impact on the BOARD'S operation, and requesting an immediate response as to what remedial action will be taken. Thereafter the BOARD may:

(a) If time permits, obtain a court order requiring the DISTRICT to immediately discontinue such illegal discharge or other act, or

(b) If the BOARD deems that time is of the essence in preventing extensive damage to its facilities or the disruption of its treatment process, the BOARD may then, after first norifying the DISTRICT by person and in writing, of its intentions and the reason therefor, stop the flow of sewage from the

DISTRICT into the BOARD'S system, it being further agreed that

(c) The DISTRICT shall pay all of the cost of correction of any damage which the BOARD can show to have been the result of such illegal flow or other illegal act by the DISTRICT.

(II) In the event of a controversy pertaining to rates and charges, such matters shall be resolved in accordance with the rules of the U.S. Environmental Protection Agency and of the West Virginia Public Service Commission as they may pertain thereto.

17. The CITY agrees, that at the DISTRICT'S request, it will attend to the operation, maintenance, meter readings, billing and collections for the DISTRICT, under a management contract, lease or other arrangement, with the cost of said services to be paid by the DISTRICT to the CITY, any such management contract, lease or other arrangements being deemed an amendment hereto.

IN WITNESS WHEREOF, the CITY of Fairmont has caused this CONTRACT to be signed on its behalf by Edwin C. Daley, City Manager, and its corporate seal to be affixed thereto by Bettie M. Hogan, its City Clerk, by authority of a resolution of the City Council of the City of Fairmont duly adopted on the 16th day of September, 1986, and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont has caused this CONTRACT to be signed on its behalf by Edwin C. Daley, its Chairman and its seal to be affixed thereto by Frances C. Schapperle, its Secretary, by authority of a resolution of the Sanitary Sewer Board adopted on the 2nd day of Septaber, 1986, and

IN WITNESS WHEREOF, the Greater Paw Paw Sanitary District has caused this CONTRACT to be signed by Richard D. Valentine, its Chairman, and its corporate seal to be affixed thereto by Robert D. Cunningham, its Secretary, by authority of a resolution of the DISTRICT BOARD duly adopted on the 17th day of Septaber, 1986.

This CONTRACT is executed in three (3) copies with one (1) copy to each party hereto, each copy of which shall be deemed on original for all purposes.

THE CITY OF FAIRMONT
a Municipal Corporation

SEAL

By: Edwin C. Daley
Edwin C. Daley, City Manager

ATTEST:
Bettie M. Hogan
Bettie M. Hogan, City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

By: Edwin C. Daley
Edwin C. Daley, Chairman

SEAL

ATTEST:
Frances C. Schapperle
Frances C. Schapperle

GREATER PAW PAW SANITARY DISTRICT

By: Richard D. Valentine
Richard D. Valentine

SEAL

ATTEST:
Robert D. Cunningham
Robert D. Cunningham

Approved as to correctness of form ~~and content~~ for the City of Fairmont this the 29th day of Sept, 1986.

George R. Higinbotham, City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 29th day of September, 1986.

James O. Watkins, Jr.
James O. Watkins, Jr.

Approved as to correctness of form and content for the Greater Paw Paw Sanitary District this the 29 day of September, 1986.

Roderick A. Devison, Its Attorney

STATE OF WEST VIRGINIA

COUNTY OF MARION, TO-WIT:

I, a Notary Public in and for the State and County aforesaid, certify that Edwin C. Daley, Bettie M. Hogan, Frances C. Schapperle, Richard D. Valentine, Robert D. Cunningham, George R. Higinbotham, James O. Watkins, Jr. and Roderick A. Devison, whose names are signed to the CONTRACT FOR TREATMENT BY THE CITY OF FAIRMONT OF SEWAGE FROM GREATER PAW PAW SANITARY DISTRICT, Marion County, West Virginia, entered into by the City of Fairmont, the Sanitary Sewer Board of the City of Fairmont and Greater Paw Paw Sanitary District, and dated the 2nd day of September, 1986, have acknowledged the same before me in my said County this the 29th day of September, 1986.

Lorna R. Stewart
Notary Public

My Commission Expires:

1/20/92

SECOND ADDENDUM TO CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
KINGMILL VALLEY PUBLIC SERVICE DISTRICT

This is the Second Addendum to the contract for treatment by the City of Fairmont of sewage from Kingmill Valley Public Service District dated June 1, 1981, by and between the City of Fairmont, hereinafter sometimes referred to as City, and the Sanitary Sewer Board of the City of Fairmont, hereinafter sometimes referred to as Board, and Kingmill Valley Public Service District, hereinafter sometimes referred to as District.

WITNESSETH:

WHEREAS, pursuant to paragraph 6(iv) of the Contract dated June 1, 1981, by and between the City of Fairmont, a municipal corporation, the Sanitary Sewer Board of the City of Fairmont, and the Kingmill Valley Public Service District, a political subdivision of the State of West Virginia, the District shall "provide suitable facilities for metering the flow of sewage from the District into the City's system at the District's expense."

WHEREAS, pursuant to paragraph 14 of said Contract, the District agreed to pay monthly sums for sewage metered into the City of Fairmont system.

WHEREAS, the flow meters purchased and operated by the Kingmill Valley Public Service District are not and have not been operating correctly, even though all necessary measures have been taken in order to place the flow meters into accurate operation.

WHEREAS, the said Contract paragraph 6(iv) requires the District to provide flow metering equipment of a type acceptable to the City and for the equipment to be maintained in a manner that provides for accurate flow measurement of wastewater flows.

WHEREAS, existing equipment does not comply with this provision of the contract and it must be replaced at a cost of approximately $40,000.

WHEREAS, the parties to this agreement desire to modify the terms of this contract regarding purchase of new flow meters and the payment of said flow meters.

NOW THEREFORE, in consideration of these recitals, the parties to this contract do hereby mutually agree as follows:

That said Contract dated June 1, 1981, as amended, is modified to include the following:

1. The Sanitary Sewer Board of the City of Fairmont shall purchase four (4) new flow meters at a cost of approximately $40,000.

2. The Board shall credit the District in the amount of $24,566.14, which is an amount determined by the Board and the District which is to be credited to the District due to the overbilling for treatment costs during the months of 1 January, 1990 through 28 February, 1991.

3. The cost difference of approximately $15,000 would be the responsibility of the District to pay; the said amount shall be financed by the Board over the eighteen (18) years remaining on the Board's Bond issue and paid back monthly to the Board along with the District's payment of its capital cost share. The District's current capital bond share is $4,030 per month and will increase by approximately One-Hundred, Thirty Dollars ($130.00) per month).

4. The Board shall be the owner of the four (4) new flow meters and the Board shall be responsible for the continued operation and maintenance of the said flow meters

along with future replacements as required.

IN WITNESS WHEREOF, the City of Fairmont, by resolution properly adopted, has caused this ADDENDUM to be signed on its behalf by _____, its City Manager and its corporate seal to be affixed thereto by Janet L Keller, its City Clerk; and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont, by resolution properly adopted, has caused this ADDENDUM to be signed on its behalf by _____, its Chairman and its seal to be affixed thereto by _____, its Secretary; and

IN WITNESS WHEREOF, the Kingmill Valley Public Service District, by resolution properly adopted, has caused this ADDENDUM to be signed on its behalf by _____, its Chairman and its seal to be affixed thereto by _____, its Secretary.

This ADDENDUM is executed in three copies with one copy to each party hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT,
A Municipal Corporation

BY: _____
City Manager

ATTEST:

Janet L. Keller
City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

BY: _____
Chairman

ATTEST:

Janet Shaberford
Secretary

KINGMILL VALLEY PUBLIC SERVICE DISTRICT

BY: _____

ATTEST:

Betty Waggoner
Secretary

Approved as to correctness of form and content for the City if Fairmont this the 15th day of April, 1994.

Kevin Hansalon
City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 8th day of March, 1994.

James O. Wallace Jr.
Board's Attorney

Approved as to correctness of form and content for the Kingmill Valley Public Service District this the 13th day of June, 1994.

Frances C. Whitman
District's Attorney

AMENDMENT TO THE CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
Kingmill Valley Public Service District

This is an amendment to the contract for treatment by the City of Fairmont of sewage from Kingmill Valley P.S.D., dated June 1, 1981, between the City of Fairmont, hereinafter referred to as City, Sanitary Sewer Board of the City of Fairmont, hereinafter referred to as Board, and the Kingmill Valley P.S. D., hereinafter referred to as District.

WITNESSETH THAT:

WHEREAS, the parties hereto have heretofore entered into a contract for the treatment by the City of Fairmont of sewage and wastewater from the District and its service area, dated June 1, 1981, and subsequent amendments thereto, if any, providing for the Board to accept, transport and treat sewage and wastewater from the District and for the District to compensate the Board for such service; and

WHEREAS, the City and Board are under mandate to implement and enforce a POTW Pretreatment Program under 40 CFR 403 and 46 CSR 2.14.4 upon all industrial and/or commercial users of its systems, and the City and Board are further solely responsible for the implementation of said program upon said users; and

WHEREAS, the parties hereto are in agreement that the rules and regulations imposed upon the City and Board with reference to the operation and maintenance of its sanitary sewer treatment and collection system should be extended to

the satellite systems and users of and contributors to said systems.

NOW THEREFORE in consideration of these recitals, the parties hereto mutually agree as follows:

That said contract dated June 1, 1981, and any subsequent amendments thereto are amended, modified and changed to include the following:

1. The District shall supply to the Board a current listing of the names and addresses of all industrial and/or commercial users on its system on or before December 31 of each calendar year.

2. The District shall notify the Board thirty (30) days prior to the approval and/or installation of any industrial and/or commercial sewer tap.

3. The District shall adopt Article 923 (Sewer Discharge Control) of the code of the City of Fairmont, a copy of which is attached hereto, within sixty (60) days from this date. Any amendments and modifications to said Article shall likewise be adopted by the District within sixty (60) days from the date of such amendment or modification by the City/Board.

4. In the event that the District seeks to amend and modify this contract, the District must notify the City/Board sixty (60) days prior the adoption of such amendment and modification to allow the City/Board to review and approve same.

5. In the event that the District accepts

sewage and wastewater from areas outside its service area, such outlying area shall enter into and be bound by the terms of the interjurisdictional agreement between the City/Board and District.

6. The District shall designate and authorize the Board to act as its agent in the implementation and enforcement of all provisions of any said ordinance relating to sewer discharge control.

IN WITNESS WHEREOF, the City of Fairmont, by resolution properly adopted, has caused this AMENDMENT to be signed on its behalf by Edwin J. Thorne, City Manager, and its corporate seal to be affixed thereto by Janet Keller, its City Clerk; and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont, by resolution properly adopted, has caused this AMENDMENT to be signed on its behalf by Edwin J. Thorne, its Chairman and its seal to be affixed thereto by Janet Shackelford, its Secretary; and

IN WITNESS WHEREOF, the District by resolution properly adopted, has caused this AMENDMENT to be signed by Harry Matthews, its Chairman and its corporate seal to be affixed thereto by Betty Waggoner, its Secretary.

This AMENDMENT is executed in three (3) copies with one (1) copy to each party hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT,
a Municipal Corporation

By: _____
City Manager

ATTEST:

Janet L. Keller
City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

By: _____
Chairman

ATTEST:

Janet Shackelford
Secretary

x Harry J. Moore
By: Chairman
Kingmill Valley P.S.D.

ATTEST:

x Betty V. Waggoner
Secretary, Kingmill Valley P.S.D.

Approved as to correctness of form and content for the City of Fairmont this the 7th day of April, 1993.

Frank V. Sansone
City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 26th day of March, 1993.

James O. Watkins
Its Attorney

Approved as to correctness of form and content for the District this the 12th day of April, 1993.

Frances C. Whiteman
Its Attorney

CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
KINGMILL VALLEY PUBLIC SERVICE DISTRICT

THIS CONTRACT made as of the 1st day of June, 1981, by and between the CITY OF FAIRMONT, a municipal corporation, hereinafter designated as CITY, the SANITARY SEWER BOARD OF THE CITY OF FAIRMONT, hereinafter designated as BOARD, and KINGMILL VALLEY PUBLIC SERVICE DISTRICT, a policital subdivision of Marion County, State of West Virginia, hereinafter designated as DISTRICT,

WITNESSETH THAT:

WHEREAS, the State of West Virginia has ordered and directed the CITY to install secondary treatment facilities and necessary interceptors and pumping facilities in connection therewith; and

WHEREAS, the CITY, acting through the BOARD, is in the process of upgrading its facilities so as to provide secondary treatment to meet State and Federal requirements of eligibility for construction grant aid as set forth in PL 92-500, Title 40, Chapter 1, Subchapter B, Part 35, State and Local Assistance, and amendments thereto; and

WHEREAS, the DISTRICT is presently in the process of planning a sewer system to abate the discharge of sewage into streams in the DISTRICT and its area of service, and

WHEREAS, the DISTRICT desires to connect to the sewer system of the CITY at mutually agreed upon locations along the Tygart Valley and Monongahela Rivers, and to have its sewage treated by the CITY in accordance with applicable water quality standards; and

WHEREAS, the CITY, acting through the BOARD, intends to construct new secondary sewage treatment facilities with a capacity reserved for treatment of the DISTRICT'S sewage, and

WHEREAS, it is the intent of the parties hereto, that the CITY shall accept sewerage from the DISTRICT and transport it to the CITY'S treatment plant for treatment in accordance with the standards established in the CITY'S NPDES permit and in such a manner that the DISTRICT will be held harmless in any second party action relating to effluent quality, and

WHEREAS, it is the intent and purpose of the parties hereto to comply with all regulations to abate pollution in their respectiye areas and to cooperate with each other, and with the State and Federal Authorities to reduce and prevent pollution of the streams and waterways, thereby protecting the health of the inhabitants and serving the public health and welfare of all;

NOW THEREFORE, in consideration of these recitals, the parties hereto agree to proceed in cooperation with each other, and to use their best efforts to plan, finance, construct and operate sewage facilities which will accomplish the aforesaid objectives according to the following terms, conditions and considerations:

1. All acts required of the CITY by reason of this CONTRACT shall be performed for and on behalf of the CITY by the BOARD which shall have sole authority over the construction and operation of the CITY'S sewage facilities. The BOARD shall perform all acts and make all such rules and regulations as may be necessary from time to time for the proper and efficient operation of the sewage facilities for the benefit of the CITY, the DISTRICT and other users.

2. The DISTRICT intends to plan and cause to be constructed at its sole cost, an interceptor and collector sewer system meeting generally accepted sanitary engineering standards, which will collect from its area and transmit sanitary sewage (without excessive infiltration and inflow of surface drainage) to the CITY'S sanitary sewer system, all in accordance with current and future guidelines as promulgated by Federal and State Authorities. It is the present intention of the parties that the DISTRICT will be responsible for the maintenance and operation of its sewer system and that the DISTRICT will establish user charges sufficient at all times to pay when due, proper charges for services rendered by the CITY to the DISTRICT.

3. The BOARD intends to cause its secondary treatment facility to be designed with additional capacity of not less than five hundred seventy thousand gallons daily (0.570 MGD) reserved for treatment of the DISTRICT'S sewage, exclusive of any sewage delivered by the BOARD to the DISTRICT, and to receive, treat and dispose of the sanitary sewage delivered to it by the DISTRICT at points to be mutually agreed upon, which sewage is to be metered at the sole cost of the DISTRICT in a manner and with equipment satisfactory to the BOARD.

4. The charges made to the DISTRICT by the BOARD for providing the services contemplated hereunder shall be, in the first instance, established by the BOARD in accordance with fair cost accounting and allocation principles, with the objective that the BOARD will recover from the DISTRICT its costs, both capital (including required bond service coverages) and operating, incurred in making service available and providing service to the DISTRICT, without requiring other users of the system to subsidize capital or operating costs incurred by the BOARD for the purpose of serving the DISTRICT. Rates charged by the BOARD to the DISTRICT will be established and subsequently amended from time to time as necessary pursuant to the provisions of Chapter 16, Article 13 and Chapter 24, Article 2 of the West Virginia Code, as amended. All such rates, when established in accordance with procedures promulgated by the Legislature of the State of West Virginia, and of any regulating or other agency or authority having jurisdiction in such matters, shall automatically, upon proper adoption and notice to the DISTRICT, become an amendment to this CONTRACT without further action by the parties hereto. In the event the DISTRICT elects at any time to pay the BOARD

for all or any part of its share of the capital cost of facilities constructed to the DISTRICT'S benefit, the DISTRICT may do so and rates charged to the DISTRICT by the BOARD will be promptly adjusted accordingly.

The CITY and the BOARD will, after service to the DISTRICT is in effect, provide the DISTRICT, at least annually, with:

(i) A copy of the BOARD'S annual report filed with the Public Service Commission of West Virginia,

(ii) A copy of such audited financial statements as the CITY provides for holders of revenue bonds issued by the CITY, payable from revenues of its sewer system,

(iii) A copy of all reports of audit of the BOARD'S records prepared by the BOARD'S auditors or by State or Federal auditors.

The cost of preparing these documents will be allocated to the DISTRICT and to other users of the CITY'S sewer system in accordance with sound public utility accounting principles and will be recovered by the BOARD as a portion of rates charged for service. Upon request from the DISTRICT, the BOARD will cause to be made such other and additional financial information as the DISTRICT may reasonably request, but at the sole cost to the DISTRICT.

5. Each of the parties intend to proceed to cause plans and specifications to be developed for its respective facilities, in cooperation with each other; to seek appropriate regulatory approvals; to seek such federal or other grants and aid as may be available; to plan for the financing of capital costs which are not met by grants in aid; and, at the appropriate time, to seek a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia and such approval of rates as may be necessary to finance these projects and to provide monies for the operating and maintenance costs which will be associated therewith so as to provide service as follows:

(i) By the DISTRICT to its customers,

(ii) By the BOARD to its customers, including the DISTRICT.

6. It is recognized by the parties hereto that the BOARD will be operating the BOARD'S major pumping and treatment facilities for its own benefit and for the benefit of the DISTRICT and other users of the BOARD'S facilities, and, therfore, the parties hereto further agree that the following rights and duties shall be imposed upon the BOARD and the DISTRICT to insure the harmonious coordination of the two projects and to provide the BOARD with the necessary means by which it can verify the proper construction of all facilities contributing sewerage to its treatment plant, regulate the quality of sewage being delivered to the BOARD for treatment, prohibit the introduction of unacceptable wastes into its system, and to require the DISTRICT to immediately take such corrective action as may be necessary to bring it to compliance with the BOARD'S rules, regulations and quality standards:

(i) Rules - the BOARD shall from time to time promulgate rules and regulations regarding the quality of sewage it will treat and the DISTRICT shall at all times comply with these regulations, provided, however, that the BOARD shall adopt no quality standard that discriminates against the DISTRICT or which is more restrictive than is necessary for the proper operation of its plant within its limits of design.

(ii) Inflow and Infiltration - the DISTRICT shall conduct a Sewer System Evaluation Survey (SSES) of its existing sewers, and, to the extent that such survey shows it to be cost effective to do so, all inflow from roof drains, surface drains, storm sewers, catch basins and other structures which may be a source of inflow into the DISTRICT'S system shall be excluded therefrom. Infiltration into the DISTRICT'S system shall not exceed the maximum allowable for the CITY'S existing system as determined by the BOARD'S engineer. The DISTRICT shall maintain its system so that infiltration during operation does not exceed fifteen (15) gallons per capita per day or the initial amount of infiltration allowable at the time the DISTRICT'S system is completed, whichever is greater. Inflow and infiltration into new facilities constructed by the DISTRICT shall conform to levels for such flows established by the BOARD for its facilities.

(iii) Review of plans and specifications - the DISTRICT shall coordinate its design with the BOARD'S engineer. At the time it submits its plans to the reviewing agencies for review, the DISTRICT shall provide the BOARD with one set of its plans and specifications pertaining to the points of connection to the BOARD'S system including metering facilities for the BOARD'S review and comment, and shall conform to the BOARD'S design requirements pertaining to the construction and operation thereof.

(iv) Connection to the BOARD'S sewer system - the DISTRICT shall connect the DISTRICT'S system to the CITY'S system and provide suitable facilities for metering the flow of sewage from the DISTRICT into the CITY'S system at the DISTRICT'S expense.

(v) Inspection - The BOARD shall, from time to time as it deems necessary, and at the BOARD'S own proper expense, have the right to inspect the DISTRICT'S facilities for the purpose of determining that the DISTRICT'S facilities are being constructed and operated in such a way as to minimize infiltration, to eliminate illegal sources of inflow into the system, to insure that excessive infiltration does not become a future problem and that sources of inflow are not illegally connected at some future time, and to determine to the BOARD'S satisfaction that discharges from the DISTRICT do not contain industrial or other wastes which will detrimentally affect the CITY'S treatment process and facilities. Upon being advised by the BOARD of the presence of excessive inflow or infiltration originating in the DISTRICT'S system, or of the presence of sewage in the DISTRICT'S system which is detrimental to the operation of the BOARD'S facilities, all in accordance with EPA standards,

the DISTRICT shall immediately proceed to correct such deficiencies in the most expeditious manner available.

(vi) Review of operating rules and regulations - The DISTRICT shall submit its rules and regulations and operating procedures to the BOARD for review, and shall adopt no such rules, regulation or operating procedure, which, in the BOARD'S opinion, would affect the operation of the BOARD'S facilities to the detriment of the CITY, the DISTRCT, and the other users of the CITY'S facilities. The DISTRICT shall provide the BOARD with advance copies of any proposed change in its rules and regulations, and the BOARD shall provide the DISTRICT with copies of its rules, regulations and operating procedures for the DISTRICT'S guidance.

7. Approval of contract and tarrif - The parties hereto agree that at the appropriate time the Public Service Commission will be asked to approve this CONTRACT and appropriate tariff provisions establishing reasonable rules and regulations for the rendering of the services herein contemplated by the BOARD to the DISTRICT, and of rates and fees to be charged by the BOARD for such services and to be charged by the DISTRICT to provide monies to pay for such services, it being agreed between the parties hereto that each shall take all legislative and administrative action necessary to comply with the Commission's orders relating thereto, and that all such action (including future rate orders) shall be deemed an amendment to this CONTRACT without further action by the parties hereto.

8. BOARD to act under contract - The CITY, the DISTRICT and the BOARD agree that the BOARD is empowered to act for and on behalf of the CITY in all matters relating to this CONTRACT. It is further agreed by all parties hereto that necessary amendments hereto will be promptly made at the appropriate times when Federal and State regulations make such amendments necessary.

9. Points of connection - The BOARD, as part of its construction contract shall construct the necessary gravity sewers, pump stations and force mains, to extend its interceptor system to any point at which the DISTRICT is to connect to the CITY'S system. The DISTRICT'S sewer shall be connected to the CITY'S sewer system at mutually agreed to points along the Monongahela and Tygart Valley Rivers, all at the DISTRICT'S expense and in accordance with the plans and specifications as approved by the BOARD.

10. Whitehall Area sewage - The BOARD shall construct necessary extensions along the Tygart Valley River to receive sewage from the Benton's Ferry area of the DISTRICT and from Whitehall Public Service District as well as from the BOARD'S service area along the river and U. S. Route 250, and shall discharge sewage therefrom into the DISTRICT'S system at Kingmont through connections and metering facilities :

approved by the DISTRICT'S Engineer. The parties hereto agree that their Engineers shall work to coordinate this work. The parties hereto also agree that the BOARD shall charge the DISTRICT for all sewage delivered from the Benton's Ferry area and from the Kingmont metering stations at the BOARD'S rate for such service and that the DISTRICT shall charge the BOARD for all sewage delivered through its metered connection to the DISTRICT'S system in the Kingmont area at the BOARD'S rate for such service and further that the respective rates to be charged for service at all points of connection between the two systems shall be only for the actual cost of rendering such service, including the local share of the captial cost of all system betterments provided to accomodate the benefiting party, and all applicable operating and maintenance costs, and that each party will provide the other with an itemized statement detailing the basis for its charges based on accounting principles acceptable to the Public Service Commission of West Virginia.

11. Completion date - It is understood by the parties hereto that the BOARD will not accept sewage from the DISTRICT, and the DISTRICT understands and agrees that it will not be entitled to service from the BOARD, until the BOARD'S secondary sewage treatment plant, which is to be constructed at the confluence of the Monongahela River and Buffalo Creek, under the BOARD'S Contract "D", has been constructed and placed in service. The estimated time of completion of the Fairmont Secondary Sewage Treatment Plant is 730 calendar days after the Contractor is given, with EPA's permission, notice to proceed, and the DISTRICT agrees, to the extent possible given the need for agency approval and for State and Federal financial aid, to coordinate the construction schedule for its facilities so that they will come on the line at that time or as soon thereafter as is practical. Due to the involvement of agencies over which neither has control, neither party hereto shall be entitled to damages of any nature by reason of failure to meet completion schedules so long as each shall have proceed to effect completion of its work in a diligent manner.

12. DISTRICT service area - The DISTRICT'S service area is shown on the map attached hereto, which map is made a part of this CONTRACT, and it is agreed that the DISTRICT may extend its facilities within its area of service as the need arises without further consultation with, or consent from the BOARD, provided however, that in the event flows from the DISTRICT exceed those allocated by this CONTRACT by more than ten percent (10%) for a period of one (1) year, the DISTRICT shall, if the BOARD deems it necessary to do so, then negotiate with the BOARD for a revised treatment quota and costs if the DISTRICT is unable to reduce its flow to within the allowed excess.

13. The DISTRICT shall not accept sewage from, nor shall it extend or allow its facilities to be extended to, any area outside of its service area unless it first obtains the BOARD'S written authorization to do so, which authorization will be forthcoming only after the DISTRICT has first provided the BOARD with full written disclosure of the extent of all such proposed extension of service and the maximum flow which will be generated thereby. Conversely, the BOARD and the CITY agree not

to accept sewage from areas outside the area of study for the CITY'S facility, which area is shown on a map attached hereto and made a part hereof, without the mutual consent of the parties hereto; provided however, that if the DISTRICT has not connected to the CITY'S system within five (5) years from the date hereof and at that time has no active plan for doing so, the BOARD may, if it so desires, then or at any time thereafter, use the excess capacity reserved to the DISTRICT to provide service to other areas and this CONTRACT shall at that time become null and void and the DISTRICT shall have no further rights thereunder, provided however, that the capacity for treatment reserved for the DISTRICT shall be reserved to the DISTRICT'S sole use so long as the DISTRICT has a grant pending from or an active project with the U. S. Environmental Protection Agency.

14. The DISTRICT and the BOARD each agree to compensate the other for their prorata share of the local share of the cost, including interest charges, of all betterments in the other's system required to permit the other to accept, transport and treat the other's sewage, which sums shall be recovered as a part of the respective monthly charges to be made for sewage metered into each system.

15. DISTRICT may cancel - The DISTRICT, upon one (1) years advance written notice to the BOARD, may, if it deems it to be to the DISTRICT'S benefit to do so, terminate and withdraw from this CONTRACT after it has fully compensated the CITY for the then undepreciated cost, as determined by Public Service Commission accounting methods, of all betterments constructed by the CITY for the DISTRICT'S benefit, but the DISTRICT shall not be entitled to recover any property, or to receive any credit for unused capacities in the BOARD'S system or for betterments which the DISTRICT made for the BOARD'S benefit, by reason of such action by the DISTRICT, nor shall it retain any rights to such betterments nor to a renewal of this CONTRACT.

16. Term of contract - Unless terminated as hereinbefore provided, this CONTRACT shall run for twenty (20) years and may be renewed thereafter in ten (10) year increments for an additional twenty (20) years at the DISTRICT'S option, which renewals shall be deemed automatic unless the DISTRICT notifies the BOARD of its desire not to renew, such notice to be given in writing at a regular meeting of the BOARD during the six (6) months preceeding the effective date of each ten (10) year renewal. In the event of notice not to renew, the DISTRICT shall compensate the BOARD for undepreciated betterments as specified in Item 15 next above.

Thereafter, the CONTRACT may be extended by mutual agreement or renegotiated as may be dictated by the then existing needs of the parties hereto.

17. Plant effluent quality - It shall be the duty of the BOARD in the operation of its plant to treat all wastes in such a manner as to produce a plant effluent which is in conformance with the effluent discharge requirement of its NPDES permit, and it is agreed between the parties hereto that the DISTRICT will be held harmless by the CITY and the BOARD in any second party action related to effluent quality, it being understood and agreed between the parties hereto that the DISTRICT shall have no authority or control over the operation of the plant or the quality of the plant's effluent being discharged into the river.

18. DISTRICT ICR and user charge - The DISTRICT agrees that it will comply with all EPA policies pertaining to user charges and industrial cost recovery (ICR) charge, and that it will hold the CITY and the BOARD harmless for any damages which may be proved to have been caused by reason of the DISTRICT'S noncompliance with such policies.

19. Resolution of Controversy - All matters of controversy which may arise concerning compliance of the parties hereto with the provisions of this CONTRACT shall be resolved as follows:

(i) In the event of controversy arising by reason of an illegal discharge, or other illegal act by the DISTRICT, which may place the BOARD'S facilities or treatment process in jeopardy to the extent that substantial damages will result to the BOARD'S facilities, or that the BOARD will not be able to render treatment to the degree required by its discharge permit, the BOARD shall first notify the DISTRICT orally followed immediately by notice in writing hand delivered to the DISTRICT of the nature of the problem and of its potential impact on the BOARD'S operation, and requesting an immediate response as to what remedial action will be taken. Thereafter the BOARD may:

(a) If time permits, obtain a court order requiring the DISTRICT to immediately discontinue such illegal discharge or other act, or

(b) If the BOARD deems that time is of the essence in preventing extensive damage to its facilities or the disruption of its treatment process, the BOARD may then, after first notifying the DISTRICT by person and in writing, of its intentions and the reason therefor, stop the flow of sewage from the DISTRICT into the BOARD'S system, it being further agreed that

(c) The DISTRICT shall pay all of the cost of correction of any damage which the BOARD can show to have been the result of such illegal flow or other illegal act by the DISTRICT.

(ii) In the event of a controversy pertaining to rates and charges, such matters shall be resolved in accordance with the rules of the U. S. Environmental Protection Agency and of the West Virginia Public Service Commission as they may pertain thereto.

20. The CITY agrees, that at the DISTRICT'S request, it will attend to the operation, maintenance, meter readings, billing and collections for the DISTRICT, under a management contract, lease or other arrangement, with the cost of said services to be paid by the DISTRICT to the CITY, any such management contract, lease or other arrangements being deemed an amendment hereto.

IN WITNESS WHEREOF, the City of Fairmont has caused this CONTRACT to be signed on its behalf by Edwin C. Daley, City Manager, and its corporate seal to be affixed thereto by Lena C. West, its City Clerk, by authority of a resolution of the City Council of the City of Fairmont duly adopted on the 30th day of June, 1981, and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont

has caused this CONTRACT to be signed on its behalf by Edwin C. Daley, its Chairman and its seal to be affixed thereto by Clayton Goodman, III, its Secretary, by authority of a resolution of the Sanitary Sewer Board adopted on the 25th day of June, 1981, and

IN WITNESS WHEREOF, the Kingmill Valley Public Service District has caused this CONTRACT to be signed by Delbert L. Phillips, its Chairman, and its corporate seal to be affixed thereto by John G. Conaway, its Secretary, by authority of a resolution of the District Board duly adopted on the 1st day of June, 1981.

This CONTRACT is executed in three (3) copies with one (1) copy to each party hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT,
a Municipal Corporation

SEAL

By: Edwin C. Daley
Edwin C. Daley, City Manager

ATTEST:
Lena C. West
Lena C. West, City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

SEAL

By: Edwin C. Daley
Edwin C. Daley, Chairman

ATTEST:
Clayton Goodman III
Clayton Goodman, III, Secretary

KINGMILL VALLEY PUBLIC SERVICE DISTRICT

SEAL

By: Delbert L. Phillips
Delbert L. Phillips, Chairman

ATTEST:
John G. Conaway
John G. Conaway, Secretary

Approved as to correctness of form and content for the City of Fairmont this the 14th day of July, 1981.

George R. Higinbotham, City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 26 day of June, 1981.

George W. May, Its Attorney

Approved as to correctness of form and content for the Kingmill Valley Public Service District this the 1st. day of JUNE, 1981.

Harry R. Cronin, Jr., Its Attorney

STATE OF WEST VIRGINIA

COUNTY OF MARION, TO-WIT:

I, George A. Mason, a Notary Public in and for the State and County aforesaid, certify that Edwin C. Daley, Lena C. West, Clayton Goodman, III, Delbert L. Phillips, John G. Conaway, George R. Higinbotham, George W. May and Harry R. Cronin, Jr., whose names are signed to the CONTRACT FOR TREATMENT BY THE CITY OF FAIRMONT OF SEWAGE FROM KINGMILL VALLEY PUBLIC SERVICE DISTRICT, Marion County, West Virginia, entered into by the City of Fairmont, the Sanitary Sewer Board of the City of Fairmont and Kingmill Valley Public Service District, and dated the 1st day of June, 1981, have acknowledged the same before me in my said County this the 26th day of June, 1981.

Notary Public

My Commission Expires:

April 14, 1986

CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
THE TOWN OF MONONGAH

THIS CONTRACT made as of the 25TH day of DECEMBER, 1997 by and between the CITY OF FAIRMONT, a municipal corporation, hereinafter designated as CITY, the SANITARY SEWER BOARD OF THE CITY OF FAIRMONT, hereinafter designated as BOARD, and the TOWN OF MONONGAH, a political subdivision of Marion County, State of West Virginia, hereinafter designated as TOWN.

WITNESSETH THAT:

WHEREAS, the State of West Virginia has ordered and directed the CITY to install secondary treatment facilities and necessary interceptors and pumping facilities in connection therewith; and

WHEREAS, the CITY, acting through the BOARD, has upgraded its facilities so as to provide secondary treatment to meet State and Federal requirements of eligibility for construction grant aid as set forth in PL 92-500, Title 40, Chapter 1, Subchapter B, Part 35, State and Local Assistance, and amendments thereto; and

WHEREAS, the TOWN is presently in the process of planning a sewer system to abate the discharge of sewage into streams in the TOWN and its area of service and,

WHEREAS, the TOWN desires to connect to the sewer system of the CITY at mutually agreed upon locations along the West Fork River, and to have its sewage treated by the CITY in accordance with applicable water quality standards; and

WHEREAS, it is the intent of the parties hereto, that the CITY shall accept sewage from the TOWN and transport it to the CITY'S treatment plant for treatment in accordance with the standards established in the CITY'S NPDES permit and in such a manner that the TOWN will be held harmless in any second party action relating to effluent quality, and

WHEREAS, it is the intent and purpose of the parties hereto to comply with all regulations to abate pollution in their respective areas and to cooperate with each other, and with the State and Federal Authorities to reduce and prevent pollution of the streams and waterways, thereby protecting the health of the Inhabitants and serving the public health and welfare of all;

NOW THEREFORE, in consideration of these recitals, the parties hereto agree to proceed in cooperation with each other, and to use their best efforts to plan, finance, construct and operate sewage facilities which will accomplish the aforesaid objectives according to the following terms, conditions and considerations:

1. All acts required of the CITY by reason of this CONTRACT shall be for and on behalf of the CITY by the BOARD which shall have sole authority over the construction and operation of the CITY'S sewage facilities. The BOARD shall perform all acts and make all such rules and regulations as may be necessary from time to time for the proper and efficient operation of the sewage facilities for the benefit of the CITY, the TOWN and other users.

2. The TOWN intends to plan and cause to be constructed at its sole cost, a transmisssion line to transport the TOWN'S sewage flow to the CITY, and to undertake a rehabilitation project within its existing system, all in accordance with current and future guidelines as promulgated by Federal and State Authorities. It is the present intention of the parties that the TOWN will be responsible for the maintenance and operation of its sewer system and that the TOWN will establish user charges sufficient at all times to pay when due, proper charges for service rendered by the CITY to the TOWN.

3. The Town of Monongah shall purchase a flow meter to be located near the point of connection with the City of Fairmont Sanitary Sewer Board System at or near the Westchester lift station. The City of Fairmont Sanitary Sewer Board System shall be owner of the flow meter and be responsible for the continued operation and maintenance of said flow meter along with future replacements as required.

4. The charges made to the TOWN by the BOARD for providing the services contemplated hereunder shall be, in the first instance established by the BOARD in accordance with fair cost accounting and allocation principles, with the objective that the BOARD will recover from the TOWN its costs, both capital (including required bond service coverages) and operating, incurred in making service available and providing service to the TOWN, without requiring other users of the CITY sewer system to subsidize capital or operating costs incurred by the BOARD for the purpose of serving the TOWN. Initially, rates charged by the BOARD to the TOWN will be established and subsequently amended from time to time as necessary pursuant to the provisions of Chapter 16, Article 13 and Chapter 24, Article 2 of the West Virginia Code, as amended. All such rates, when established in accordance with procedures promulgated by the Legislature of the State of West Virginia, and of any regulating or other agency or authority having jurisdiction in such matters, shall automatically, upon proper adoption and notice to the TOWN, become an amendment to the CONTRACT without further action by the parties hereto.

In determining said charges, the following provisions shall apply:

a. The TOWN will pay a proportionate share of the capital costs (Including bond service coverages) for the treatment plant. The TOWN shall pay capital costs based on design flows as a percentage of plant capacity

b. The reserved capacity and percentage for capital cost sharing between all parties using the plant shall be done as follows:

Parties	Reserved	Actual Percentage	Cost Share Percentage
Fairmont	7.15	79.44%	79.96%
Barrackville	0.32	3.56%	3.47%
Kingmill Valley PSD	0.57	6.33%	6.18%
Monongah	0.20	2.22%	2.17%
Paw Paw PSD	0.50	5.56%	5.42%
Whitehall PSD	0.26	2.89%	2.82%
Total	9.00	100.00%	100.00%

c. The proportionate share paid by the TOWN for operation and maintenance costs will be based on actual sewage flows. The TOWN'S flow will be metered and compared to the total flow treated at the BOARD'S treatment plant. Said operating costs are defined as the cost of all labor, power, chemicals, vehicle expenses, maintenance, repair, replacement, improvement and administrative expenses.

d. The BOARD will bill the TOWN on a monthly basis for these services. The amount of this bill will initially be based on projected flows until actual flow data is available.

e. The total annual cost paid by the TOWN to the BOARD will be adjusted at the end of the first year to account for actual vs. projected flows and actual vs. projected costs.

f. The BOARD will provide the TOWN with financial reports verifying the costs of operation and maintenance items and the flows treated at the plant.

g. The account numbers used in calculating Monongah's share of treatment expense shall be:

228 - Taxes Accrued
741 - Operation, Supervision & Engineering
742 - Operation Labor
743-1 - Supplies & Expenses
743-2 - Chemical Treatment Expenses
744 - Maintenance Supervision & Engineering
745 - Maintenance of Structures & Improvement
746 - Maintenance of Treatment & Disposal System Equipment
795 - Special Services
797 - Regulatory Commission Expenses
798 - Insurance
799 - Injuries & Damages
800-1 - Employee's Welfare Expenses
800-2 - Pensions

h. Any adjusted amount due or receivable upon completion of the annual review of expenses shall be prorated over three months.

i. The CITY and the BOARD will, after service to the TOWN is in effect, provide the TOWN, at least annually, with:

(I) A copy of the BOARD'S annual report filed with the Public Service Commission of West Virginia.

(II) A copy of audited financial statements as the CITY provides for holder of revenue bonds issued by the CITY, payable from revenues of its sewer system

(III) A copy of all reports of audit of the BOARD'S records prepared by the BOARD'S auditors or by State or Federal Auditors.

The cost of preparing these documents will be allocated to the TOWN and to other users of the CITY"S sewer system in accordance with sound public utility accounting principles. Upon the request of the TOWN, the BOARD will cause to be made such other and additional financial information as the TOWN may reasonable request, but at the sole cost of the TOWN.

5. Each of the parties intend to proceed to cause plans and specifications to be developed for its respective facilities, in cooperation with each other; to seek appropriate regulatory approvals; to seek such federal or other grants and aid as may be available; to plan for the financing of capital costs which are not met by grants in aid; and, at the appropriate time, to seek a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia and such approval of rates as may be necessary to finance these projects and to provide monies for the operating and maintenance costs which will be associated therewith so as to provide service as follows:

(I) By the TOWN to its customers.
(II) By the BOARD to its customers, including the TOWN.

6. It is recognized by the parties hereto that the BOARD will be operating the BOARD'S major pumping and treatment facilities for its own benefit and for the benefit of the TOWN and other users of the BOARD'S facilities, and, therefore, the parties hereto further agree that the following rights and duties shall be imposed upon the BOARD and the TOWN to insure the harmonious coordination of the two projects and to provide the BOARD with the necessary means by which it can verify the proper construction of all facilities contributing sewage to its treatment plant, regulate the quality of sewage being delivered to the BOARD for treatment, prohibit the introduction of unacceptable wastes into its system, and to require the TOWN to immediately take such corrective action as may be necessary to bring it to compliance with the BOARD'S rules, regulation and quality standards.

(I) Rules - The BOARD shall from time to time promulgate rules and regulation regarding the quality of sewage it will treat; and the TOWN shall at all times comply with these regulations (including the Fairmont Sanitary Board's Pretreatment Program and the City of Fairmont Ordinance 602); provided, however, that the BOARD shall adopt no quality standard that discriminates against the TOWN or which is more restrictive than is necessary for the proper operation of its plan within its limits of design. Said rules presently include the following:

a. The Town shall supply to the Board a current listing of the names and addresses of all industrial and/or commercial users on its system on or before December 31 of each year.

b. The Town shall notify the Board thirty (30) days prior to the approval and/or installation of any industrial and/or commercial sewer tap.

c. The Town shall adopt Article 923 (Sewer Discharge Control) of the code of the City of Fairmont, a copy of which is attached hereto, within sixty (60) days from this date. Any amendments and modifications to said Article shall likewise be adopted by the Town within sixty (60) days from the date of such amendment or modification by the City/Board.

d. In the event that the Town seeks to amend and modify this contract, the Town must notify the City/Board sixty (60) days prior the adoption of such amendment and modification to allow the City/Board to review and approve same.

e. In event that the Town accepts sewage and wastewater from areas outside its service area, such outlying area shall enter into and be bound by the terms of the interjurisdictional agreement between the City/Board and Town.

f. The Town shall designate and authorize the Board to act as its agent in the implementation and enforcement of all provisions of any said ordinance relating to sewer discharge control.

(II) Inflow and Infiltration - The TOWN shall conduct a Sewer System Evaluation Survey (SSES) of its existing sewers, and, to the extent that such survey shows it to be cost effective to do so, all inflow from roof drains, surface drains, storm sewers, catch basins and other structures which may be a source of inflow into the TOWN'S system shall be excluded therefrom.

(III) Review of Plans and Specifications - The TOWN shall coordinate its design with the BOARD'S engineer. At the time it submits its plans to the reviewing agencies for review, the TOWN shall provide the BOARD with one set of its plans and specifications pertaining to the points of connection to the BOARD'S system including metering facilities for the BOARD'S

review and comment, and shall confirm to the BOARD'S design requirements pertaining to the construction and operation thereof.

(IV) Inspection - the BOARD shall, from time to time as it deems necessary, and at the BOARD'S own proper expense, have the right to inspect the TOWN'S facilities for the purpose of determining that the TOWN'S facilities are being constructed and operated in such a way as to minimize infiltration, to eliminate illegal sources of inflow into the system, to insure that excessive infiltration does not become a future problem and that sources of inflow are not illegally connected at some future time. Upon being advised by the BOARD of the presence of excessive inflow or infiltration originating in the TOWN'S system, or of the presence of sewage in the TOWN'S system which is detrimental to the operation of the BOARD'S facilities, the TOWN shall immediately proceed to correct such deficiencies in the most expeditious manner available.

(V) If additional sewage flow from any additional utilities is added to the BOARD's treatment facility, the Parties hereto agree to negotiate change in the percentages shown in Table 4 (b) of this agreement if said changes are necessary.

(VI) Review of Operating Rules and Regulations - The TOWN shall submit its rules and regulations and operating procedures to the BOARD for review, and shall adopt no such rules, regulation or operating procedure, which, in the BOARD'S opinion, would affect the operation of the BOARD'S facilities to the detriment of the CITY, the TOWN, and the other users of the CITY'S facilities. The TOWN shall provide the BOARD with advance copies of any proposed change in its rules and regulations, and the BOARD shall provide the TOWN with copies of its rules, regulations and operating procedures for the TOWN'S guidance.

7. Approval of Contract and Tariff - The parties hereto agree that at the appropriate time the Public Service Commission will be asked to approve this CONTRACT and appropriate tariff provisions establishing reasonable rules and regulations for the rendering of the services herein contemplated by the BOARD to the TOWN, and of rates and fees to be charged by the BOARD for such services and to be charged by the TOWN to provide monies to pay for such services, it being agreed between the parties hereto that each shall take all legislative action relating thereto, and that all such action (including future rate orders) shall be deemed an amendment to this CONTRACT without further action by the parties hereto.

8. BOARD to Act Under Contract - The CITY, the TOWN and the BOARD agree that the BOARD is empowered to act for and on behalf of the CITY in all matters relating to this CONTRACT. It is further agreed by all parties hereto that necessary amendments hereto will be promptly made at the appropriate times when Federal and State regulations make such amendments necessary.

9. Points of Connection - The BOARD, as part of its construction contract shall construct the necessary gravity sewers, pump stations and force mains, to extend its interceptor system to any point at which the TOWN is to connect to the CITY'S system. The TOWN'S sewer shall be connected to the CITY'S sewer system at mutually agreed to points along the West Fork River, all at the TOWN'S expense and in accordance with the plans and specifications as approved by the BOARD.

10. The TOWN shall not accept sewage from, nor shall it extend or allow its facilities to be extended to, any area outside of its service area unless it first obtains the BOARD"S written authorization to do so, which authorization will be forthcoming only after the TOWN has first provided the BOARD with full written disclosure of the extent of all such proposed extensions of service and the maximum flow which will be generated thereby.

11. The TOWN and the BOARD each agree to compensate the other for their prorated share of the local share of the cost, including interest charges, of all betterments in the other's system required to permit the other to accept, transport and treat the other's sewage which sums shall be recovered as a part of the respective monthly charges to be made for sewage metered into each system.

12. TOWN My Cancel - The TOWN, upon one (1) year's advance written notice to the BOARD, may, if it deems it to be to the TOWN'S benefit to do so, terminate and withdraw from this CONTRACT after it has fully compensated the CITY for the then undepreciated cost, as determined by Public Service Commission accounting methods, of all betterments constructed by the CITY for the TOWN'S benefit, but the TOWN shall not be entitled to recover any property, or to receive any credit for unused capacities in the BOARD'S system or for betterments which the TOWN made for the BOARD'S benefit, by reason of such action by the TOWN, nor shall it retain any rights to such betterments nor to a renewal of this CONTRACT.

13. Term of Contract - Unless terminated hereinbefore provided, this CONTRACT shall run for twenty (20) years and may be renewed thereafter in ten (10) year increments for an additional twenty (20) years at the TOWN'S option, which renewals shall be deemed automatic unless the TOWN notifies the BOARD of its desire not to renew, such notice to be given in writing at a regular meeting of the BOARD during the six (6) months proceeding the effective date of each ten (10) year renewal. In the event of notice not to renew, the TOWN shall compensate the BOARD for undepreciated betterments as specified in item 12 next above.

Thereafter, the CONTRACT may be extended by mutual agreement or renegotiated as may be dictated by the then existing needs of the parties hereto.

14. Plant Effluent Quality - It shall be the duty of the BOARD in the operation of its plant to treat all wastes in such a manner as to produce a plant effluent which is in conformance with the effluent discharge requirement of this NPDES permit, and it is agreed between the parties hereto that the TOWN will be held harmless by the CITY and the BOARD in any second party

action related to effluent quality, it being understood and agreed between the parties hereto that the TOWN shall have no authority or control over the operation of the plant or the quality of the plant's effluent being discharged into the river.

15. TOWN ICR and User Charge - The TOWN agrees that it will comply with all EPA policies pertaining to user charges and industrial cost recovery (ICR) charges, and that it will hold the CITY and the BOARD harmless for any damages which may be proved to have been caused by reason of the TOWN'S non-compliance with such policies.

16. Resolution of Controversy - All matters of controversy which may arise concerning compliance of the parties hereto with the provisions of this CONTRACT shall be resolved as follows:

(I) In the event of controversy arising by reason of an illegal discharge, or other illegal act by the TOWN, which may place the BOARD'S facilities or treatment process in jeopardy to the extent that substantial damages will result to the BOARD'S facilities, or that the BOARD will not be able to render treatment to the degree required by its discharge permit, the BOARD shall first notify the TOWN orally followed immediately by notice in writing, hand delivered, to the TOWN of the nature of the problem and of its potential impact on the BOARD'S operation, and requesting an immediate response as to what remedial action will be taken. Thereafter the BOARD may:

(a) If time permits, obtain a court order requiring the TOWN to immediately discontinue such illegal discharge or other act, or

(b) If the BOARD deems that time is of the essence in preventing extensive damage to its facilities or the disruption of its treatment process, the BOARD may then, after first notifying the TOWN by person and in writing, of its intentions and the reason therefor, stop the flow of sewage from the TOWN into the BOARD'S system, it being further agreed that

(c) The TOWN shall pay all of the cost of correction of any damages which the BOARD can show to have been the result of such illegal flow or other illegal act by the TOWN.

(II) In the event of a controversy pertaining to rates and charges, such matters shall be resolved in accordance with the rules of the U. S. Environmental Protection Agency and of the West Virginia Public Service Commission as they may pertain thereto.

IN WITNESS WHEREOF, THE CITY OF FAIRMONT has caused this CONTRACT to be signed on it behalf by Bruce McDaniel, City Manager, and its corporate seal to be affixed thereto by Janet Keller, its City Clerk, by authority of a resolution of the City Council of the City of Fairmont duly adopted on the 25th day of November, 1997 and

IN WITNESS WHEREOF, THE SANITARY SEWER BOARD OF THE CITY OF FAIRMONT has caused this CONTRACT to be signed on its behalf by Bruce McDaniel, its

Chairman and its seal to be affixed thereto by Sally Gower, its Secretary, by authority of a resolution of the Sanitary Sewer Board adopted on the 30th day of October, 1997 and

IN WITNESS WHEREOF, THE TOWN OF MONONGAH has caused this CONTRACT to be signed by James Vandetta, its Mayor, and its corporate seal to be affixed thereto by Rebecca Thompson, its City Recorder, by authority of a resolution of the DISTRICT BOARD duly adopted on the _____ day of _____, 1997.

IN WITNESS WHEREOF, THE SANITARY SEWER BOARD OF THE TOWN OF MONONGAH has caused this CONTRACT to be signed on its behalf by James Vandetta, its Chairman and its seal to be affixed thereto by _____, its Secretary, by authority of a resolution of the Sanitary Sewer Board adopted on the _____ day of _____, 1997 and

This CONTRACT is executed in three (3) copies with one (1) copy of each part hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT
a Municipal Corporation

SEAL

By: _____
Bruce McDaniel, City Manager

ATTEST:

_____
Janet Keller, City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

SEAL

By: _____
Bruce McDaniel, Chairperson

ATTEST:

_____
Sally Gower, Secretary-Treasurer

THE TOWN OF MONONGAH

SEAL

By: James Vandetta
James Vandetta

ATTEST:
Rebecca A Thompson
Rebecca Thompson, City Recorder

SANITARY SEWER BOARD OF THE
TOWN OF MONONGAH

SEAL

By: James Vandetta
James Vandetta, Chairperson

ATTEST:
Rebecca A Thompson

Approved as to correctness of form and content for the City of Fairmont this the 23rd day of December, 1997.

Kevin Sansalone
Kevin Sansalone, City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 29th day of December, 1997.

James O. Watkins Jr.
James O. Watkins, Jr.

Approved as to correctness of form and content for the Town of Monongah and the Sanitary Sewer Board of the Town of Monongah this the 29th day of December 1997.

James A. Liotta

STATE OF WEST VIRGINIA
COUNTY OF MARION, TO-WIT

I, a Notary Public in and for the State and County aforesaid, certify that Bruce McDaniel, Janet Keller, Sally Gower, James Vandetta, Rebecca Thompson, Kevin Sansalone, James O. Watkins, Jr., and James A. Liotta, whose names are signed to the CONTRACT FOR TREATMENT BY THE CITY OF FAIRMONT OF SEWAGE FROM THE TOWN OF MONONGAH, Marion County, West Virginia, entered into by the City of Fairmont, the Sanitary Sewer Board of the City of Fairmont and the Town of Monongah and the Sanitary Sewer Board of the Town of Monongah and dated the 29th day of December, 1997, have acknowledged the same before me in my said County this the 29th day of December, 1997.

William H Payton Sr
Notary Public

My Commission Expires:

Nov. 4, 2002

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
WILLIAM H. PAYTON, SR.
Route 2, Box 225-B
Fairmont, West Virginia 26554
My Commission Expires Nov. 4, 2002

AMENDMENT TO THE CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
Whitehall Public Service District

This is an amendment to the contract for treatment by the City of Fairmont of sewage from Whitehall P.S.D., dated May 12, 1980, between the City of Fairmont, hereinafter referred to as City, Sanitary Sewer Board of the City of Fairmont, hereinafter referred to as Board, and the Whitehall P.S.D., hereinafter referred to as District.

WITNESSETH THAT:

WHEREAS, the parties hereto have heretofore entered into a contract for the treatment by the City of Fairmont of sewage and wastewater from the District and its service area, dated May 12, 1980, and subsequent amendments thereto, if any, providing for the Board to accept, transport and treat sewage and wastewater from the District and for the District to compensate the Board for such service; and

WHEREAS, the City and Board are under mandate to implement and enforce a POTW Pretreatment Program under 40 CFR 403 and 46 CSR 2.14.4 upon all industrial and/or commercial users of its systems, and the City and Board are further solely responsible for the implementation of said program upon said users; and

WHEREAS, the parties hereto are in agreement that the rules and regulations imposed upon the City and Board with reference to the operation and maintenance of its sanitary sewer treatment and collection system should be extended to

the satellite systems and users of and contributors to said systems.

NOW THEREFORE in consideration of these recitals, the parties hereto mutually agree as follows:

That said contract dated May 12, 1980, and any subsequent amendments thereto are amended, modified and changed to include the following:

1. The District shall supply to the Board a current listing of the names and addresses of all industrial and/or commercial users on its system on or before December 31 of each calendar year.

2. The District shall notify the Board thirty (30) days prior to the approval and/or installation of any industrial and/or commercial sewer tap.

3. The District shall adopt Article 923 (Sewer Discharge Control) of the code of the City of Fairmont, a copy of which is attached hereto, within sixty (60) days from this date. Any amendments and modifications to said Article shall likewise be adopted by the District within sixty (60) days from the date of such amendment or modification by the City/Board.

4. In the event that the District seeks to amend and modify this contract, the District must notify the City/Board sixty (60) days prior the adoption of such amendment and modification to allow the City/Board to review and approve same.

5. In the event that the District accepts

sewage and wastewater from areas outside its service area, such outlying area shall enter into and be bound by the terms of the interjurisdictional agreement between the City/Board and District.

6. The District shall designate and authorize the Board to act as its agent in the implementation and enforcement of all provisions of any said ordinance relating to sewer discharge control.

IN WITNESS WHEREOF, the City of Fairmont, by resolution properly adopted, has caused this AMENDMENT to be signed on its behalf by Edwin J. Thorne, City Manager, and its corporate seal to be affixed thereto by Janet Keller, its City Clerk; and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont, by resolution properly adopted, has caused this AMENDMENT to be signed on its behalf by Edwin J. Thorne, its Chairman and its seal to be affixed thereto by Janet Shackelford, its Secretary; and

IN WITNESS WHEREOF, the District by resolution properly adopted, has caused this AMENDMENT to be signed by John E. Barnes, its Chairman and its corporate seal to be affixed thereto by Robert DeLorenzo, its Secretary.

This AMENDMENT is executed in three (3) copies with one (1) copy to each party hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT,
a Municipal Corporation

By: _____
City Manager

ATTEST:

Janet L. Kellen
City Clerk

SANITARY SEWER BOARD OF THE CITY OF FAIRMONT

By: _____
Chairman

ATTEST:

Janet Shackelford
Secretary

John E. Barnes
By: Chairman
Whitehall P.S.D.

ATTEST:

Robert D. Lorenzo
Secretary, Whitehall P.S.D.

Approved as to correctness of form and content for the City of Fairmont this the 7th day of April, 1993.

Frank V. Sansalone
City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 26th day of March, 1993.

James O. Watkins
Its Attorney

Approved as to correctness of form and content for the District this the 22nd day of April, 1993.

Its Attorney

CONTRACT
FOR TREATMENT BY THE CITY OF FAIRMONT
OF SEWAGE FROM
WHITEHALL PUBLIC SERVICE DISTRICT
MARION COUNTY, WEST VIRGINIA

THIS CONTRACT made as of the 12th day of May, 1980, by and between the CITY OF FAIRMONT, a municipal corporation, hereinafter designated as CITY, the SANITARY SEWER BOARD OF THE CITY OF FAIRMONT, hereinafter designated as BOARD, and the WHITEHALL PUBLIC SERVICE DISTRICT, a political subdivision of the State of West Virginia created by the Marion County Commission, hereinafter designated as DISTRICT,

WITNESSETH THAT:

WHEREAS, the State of West Virginia has ordered and directed the CITY to upgrade its sanitary sewers and to install secondary treatment facilities; and

WHEREAS, the CITY, acting through the BOARD, is in the process of upgrading its facilities so as to provide secondary treatment to meet State and Federal requirements of eligibility for construction grant aid as set forth in PL 92-500, Title 40, Chapter 1, Subchapter B, Part 35, State and Local Assistance, and amendments thereto; and

WHEREAS, the DISTRICT has also been ordered and directed to cease the discharge of sewage from the DISTRICT, and

WHEREAS, the DISTRICT in compliance with such orders, desires to connect to the sewer system of the CITY at a location to be designated by the BOARD at the southern terminus of the CITY'S newly constructed intercepting sewer along U. S. Route 250, and to have its sewage treated by the CITY in accordance with applicable water quality standards; and

WHEREAS, the CITY, acting through the BOARD, intends to construct new secondary sewage treatment facilities with a capacity reserved for treatment of the DISTRICT'S sewage, and

WHEREAS, it is the intent of the parties hereto, that the CITY shall accept sewerage from the DISTRICT and transport it to the CITY'S treatment plant for treatment in accordance with the standards established in the CITY'S NPDES permit and in such a manner that the DISTRICT will be held harmless in any second party action relating to effluent quality; and

WHEREAS, it is the intent and purpose of the parties hereto to comply with all such orders to abate pollution in their respective areas and to cooperate with each other, and with the State and Federal Authorities to reduce and prevent pollution of the streams and waterways, thereby protecting the health of the inhabitants and serving the public health and welfare of all;

NOW THEREFORE, in consideration of these recitals, the parties hereto agree to proceed in cooperation with each other, and to use their best efforts to plan, finance, construct and operate sewage facilities which will accomplish the aforesaid objectives according to the following terms, conditions, and considerations:

1. All acts required of the CITY by reason of this CONTRACT shall be performed for and on behalf of the CITY by the BOARD which shall have sole authority over the construction and operation of the CITY'S sewage facilities. The BOARD shall perform all acts and make all such rules and regulations as may be necessary from time to time for the proper and efficient operation of the sewage facilities for the benefit of the CITY, the DISTRICT, and other users.

2. The DISTRICT intends to plan and cause to be constructed at its sole cost, an interceptor and collector sewer system meeting generally accepted sanitary engineering standards, which will collect from its area and transmit sanitary sewage (without excessive infiltration and inflow of surface drainage) to the City's sanitary sewer system, all in accordance with current and future guidelines as promulgated by Federal and State Authorities. It is the present intention of the parties that the DISTRICT will be responsible for the maintenance and operation of its sewer system and that the DISTRICT will establish user charges sufficient at all times to pay, when due, proper charges for services rendered by the CITY to the DISTRICT. The CITY agrees, that at the DISTRICT'S request, it will attend to the operation, maintenance, meter readings, billings, and collections for the DISTRICT, under a management contract, lease, or other arrangement, with the cost of said services to be paid by the DISTRICT to the CITY, any such management contract, lease, or other arrangements being deemed an amendment hereto.

3. The BOARD intends to cause its secondary treatment facility to be designed with additional capacity of not less than 260,000 gallons daily (0.260 MGD) reserved for treatment of the DISTRICT'S sewage, and to receive, treat and dispose of the sanitary sewage delivered to it by the DISTRICT at a point to be designated by the CITY along the westerly side of U. S. Route 250 and north of Interstate Highway 79 near the DISTRICT'S boundary, which sewage is to be metered at the sole cost of the DISTRICT in a manner and with equipment satisfactory to the BOARD.

4. The charges made to the DISTRICT by the BOARD for providing the services contemplated hereunder shall be, in the first instance, established by the BOARD in accordance with fair cost accounting and allocation principles, with the objective that the BOARD will recover from the DISTRICT all of its costs, both capital (including required bond service coverage) and operating, inccured in making service available and providing service to the DISTRICT, without requiring other users of the CITY sewer system to subsidize capital or operating costs incurred by the BOARD for the purpose of serving the DISTRICT. Initially, rates charged by the BOARD to the DISTRICT will be established and subse-

quently amended from time to time as necessary pursuant to the provisions of Chapter 16, Article 13 and Chapter 24, Article 2 of the West Virginia Code, as amended. All such rates, when established in accordance with procedures promulgated by the Legislature of the State of West Virginia, and of any regulating or other agency or authority having jurisdiction in such matters, shall automatically, upon proper adoption and notice to the DISTRICT, become an amendment to this CONTRACT without further action by the parties hereto.

The CITY and the BOARD will, after service to the DISTRICT is in effect, provide the DISTRICT at least annually, with:

(i) A copy of the BOARD'S annual report filed with the Public Service Commission of West Virginia.

(ii) A copy of such audited financial statements as the CITY provides for holders of revenue bonds issued by the CITY, payable from revenues of its sewer system.

(iii) A copy of all reports of audit of the BOARD'S records prepared by the BOARD'S auditors or by State or Federal auditors.

The cost of preparing these documents will be allocated to the DISTRICT and to other users of the CITY's sewer system in accordance with sound public utility accounting principles as a part of the rates charged. Upon the request of the DISTRICT, the BOARD will cause to be made such other and additional financial information as the DISTRICT may reasonably request, but at the sole cost of the DISTRICT.

5. Each of the parties intend to proceed to cause plans and specifications to be developed for its respective facilities, in cooperation with each other; to seek appropriate regulatory approvals; to seek such federal or other grants and aid as may be available; to plan for the financing of capital costs which are not met by grants in aid; and, at the appropriate time, to seek a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia and approval of rates as are necessary to finance these projects and to provide the operating and maintenance costs which will be associated therewith as follows:

(i) By the DISTRICT to its customers,

(ii) By the BOARD to its customers, including the DISTRICT.

6. It is recognized by the parties hereto that the BOARD will be operating major pumping and treatment facilities for its own benefit and for the benefit of the DISTRICT and other users of the BOARD'S facilities, and, therefore, the parties hereto further agree that the following rights and duties shall be imposed upon the BOARD and the DISTRICT to insure the harmonious coordination of the two projects and to provide the BOARD with the necessary means by which it can verify the proper

construction of all facilities contributing sewerage to its treatment plant, regulate the quality of sewage being delivered to the BOARD for treatment, prohibit the introduction of unacceptable wastes into its system, and to require the DISTRICT to immediately take such corrective action as may be necesary to bring it to compliance with the BOARD'S rules, regulations and quality standards:

(i) Rules - In the event the BOARD shall be required from time to time promulgate rules and regulations regarding the quality of sewage it will treat, the DISTRICT shall at all times comply with these regulations.

(ii) Inflow and infiltration - the DISTRICT shall conduct an investigation of its existing sewers, and, all inflow from roof drains, surface drains, storm sewers, catch basins and other structures which may be a source of inflow into the DISTRICT'S system shall be excluded therefrom prior to connecting to the CITY'S system. Infiltration into the DISTRICT'S system from existing sewers shall not exceed the maximum allowable for the CITY'S existing system as determined by the BOARD'S engineer. The DISTRICT shall maintain its system so that infiltration during operation does not exceed fifteen (15) gallons per capita per day or the initial amount of infiltration allowable at the time the DISTRICT'S system is completed, whichever is greater. Inflow and infiltration into new facilities constructed by the DISTRICT shall conform to levels for such flows established by the BOARD for its facilities.

(iii) Connection to the BOARD'S sewer system - The DISTRICT shall provide for the BOARD'S approval the design and specifications for connecting the DISTRICT'S system to the CITY'S system and for metering the flow of sewage into the CITY'S system. The DISTRICT shall include the construction of such facilities in its project at the DISTRICT'S expense, and upon completion thereof shall turn the completed metering facilities over to the BOARD for operation.

(iv) Inspection - The BOARD shall, from time to time as it deems necessary, and at the BOARD'S own proper expense, have the right to inspect the DISTRICT'S facilities during construction and as often thereafter as the BOARD may deem necessary for the purpose of determining that the DISTRICT'S facilities are being constructed and operated in such a way as to minimize infiltration, to eliminate illegal sources of inflow into the system, to insure that excessive infiltration does not become a future problem and that sources of inflow are not illegally connected at some future time, and to determine to the BOARD'S satisfaction that discharges from the DISTRICT do not contain industrial or other wastes which will detrimentally affect the CITY'S treatment process and facilities. Upon being advised by the BOARD of the presence of excessive inflow or infiltration originating in the DISTRICT'S system, or of the presence of sewage in the DISTRICT'S system which is detrimental to the operation of the BOARD'S facilities, the DISTRICT shall immediately proceed to correct such deficiencies in the most expeditious manner available.

(v) Review of operating rules and regulations - The DISTRICT shall submit to the BOARD for review, its rules and regulations and operating procedures, and shall adopt no such rule, regulation or operating procedure which is contrary to the rules, regulations and operating procedures of the BOARD relating to illegal substances or connections, inflow, infiltration, storm water or other hazards to the plant's capacity or operation, and which, in the BOARD'S opinion, would affect the operation of the BOARD'S facilities to the detriment of the CITY, the DISTRICT and the other users of the CITY's facilities. The DISTRICT upon being advised by the BOARD of a conflict will promptly revise its rules, regulations and operating procedures to conform to the BOARD'S standards. The DISTRICT shall provide the BOARD with advance copies of any proposed change in its rules and regulations, and the BOARD shall provide the DISTRICT with copies of its rules, regulations and operating procedures for the DISTRICT'S guidance.

7. The parties hereto agree that at the appropriate time each will file and seek Public Service Commission approval of this CONTRACT and of appropriate tariff provisions establishing reasonable rules and regulations for the rendering of the services herein contemplated by the BOARD to the DISTRICT, and of rates and fees to be charged by the BOARD for such services and to be charged by the DISTRICT to provide monies to pay for such services, it being agreed between the parties hereto that each shall take all necessary legislative and administrative action necessary to comply with the Commission's orders relating thereto, and that all such action (including future rate orders) shall be deemed an amendment to this CONTRACT without futher action by the parties hereto.

8. The CITY, the DISTRICT and the BOARD agree that the BOARD is empowered to act for and on behalf of the CITY in all matters relating to this CONTRACT. It is further agreed by all parties hereto that necessary amendments hereto will be promptly made at the appropriate times when Federal and State regulations make such amendments necessary or when they are required to permit the BOARD to operate its system as was intended by its design, and to discharge its obligations hereunder.

9. The BOARD shall provide the necessary gravity sewers, pump stations and force mains, to extend its Tygart Valley River interceptor in a westerly direction to the point at which the DISTRICT is to connect to the CITY'S system. The DISTRICT'S sewer shall be connected to the CITY'S sewer at the point along U. S. Route 250 designated by the BOARD, all at the DISTRICT'S expense and in accordance with the plans and specifications to be prepared by the BOARD'S engineer for the connection.

It is understood by the parties hereto that the BOARD will not accept sewage from the DISTRICT, and the DISTRICT understands and agrees that it will not be entitled to service from the BOARD, until the BOARD'S secondary sewage treatment plant, which is to be constructed at the confluence of the Monongahela River and Buffalo Creek, under the BOARD'S Contract "D", has been constructed and placed in service. The estimated

time of completion of the Fairmont Secondary Sewage Treatment Plant is June 30, 1983, and the DISTRICT agrees, to the extent possible given the need for agency approval and for State and Federal financial aid, to coordinate the construction schedule for its facilities so that they will come on the line at that time or as soon thereafter as is practical. The BOARD will, from time to time, provide the DISTRICT with updates of the schedule for placing its sewage treatment plant in service and it will be the responsibility of the DISTRICT to modify its construction schedule to conform to any earlier or later completion dates should it become necessary, for any reason, for the BOARD to revise its plans for the date it will be placing its sewage treatment plant in service.

10. Each party will proceed diligently with its respective planning, financing and construction with the objective that both projects, to the extent that it is possible to do so, will be completed according to the schedule outlined in nine (9) above, and each shall keep the other fully informed.

11. The DISTRICT'S service area is shown on the map attached hereto, which map is made a part of this CONTRACT, and it is agreed that the DISTRICT may extend its facilities within its area of service as the need arises without futher consultation with, or consent from the BOARD, provided however, that in the event flows from the DISTRICT exceed those allocated by this CONTRACT by more than ten percent (10%) for a period of one (1) year, the DISTRICT shall, if the BOARD deems it necessary to do so, then negotiate with the BOARD for additional treatment quotas and costs if the DISTRICT is unable to reduce its flow to within the allowed excess.

12. The DISTRICT shall not accept sewage from, nor shall it extend or allow its facilities to be extended to, any area outside of its service area unless it first obtains the BOARD'S written authorization to do so, which authorization will be forthcoming only after the DISTRICT has first provided the BOARD with full written disclosure of the extent of all such extension of service and the maximum flow which will be generated thereby. Conversely, the BOARD and the CITY agree not to accept sewage from areas outside the area of study for the CITY'S facility, which area is shown on a map attached hereto and made a part hereof, without the mutual consent of the parties hereto; provided however, that if the DISTRICT has not connected to the CITY'S system within five (5) years from the date hereof and at that time has no active plan for doing so, the BOARD may, if it so desires, then, or at any time thereafter, use the excess capacity reserved to the DISTRICT for providing service to other areas and this CONTRACT shall at that time become null and void and the DISTRICT shall have no further rights thereunder, provided however, that the capacity for treatment reserved for the DISTRICT shall be reserved to the DISTRICT'S sole use so long as the DISTRICT has a grant pending from or an active project with the U.S. Environmental Protection Agency.

13. The DISTRICT agrees to compensate the CITY for the DISTRICT'S prorata share of the CITY'S local share of the cost of all betterments in the CITY'S system required to permit the CITY to accept and treat the DISTRICT'S sewage.

Such reimbursement may be in lump sum by the DISTRICT at the time it constructs its facility or, in the alternate, through a monthly payment with interest at the rate or rates incurred by the CITY to obtain funds for its local share of the construction.

The DISTRICT, upon one (1) years advance written notice to the BOARD, may, if it deems it to be to the DISTRICT'S benefit to do so, terminate and withdraw from this CONTRACT after it has fully compensated the CITY for the cost of all betterments constructed by the CITY for the DISTRICT'S benefit, but the DISTRICT shall not be entitled to recover any property or to receive any credit for unused facilities by reason of such action by the DISTRICT, nor shall it retain any rights to such betterments nor to a renewal of this CONTRACT.

14. Unless terminated as hereinbefore provided, this CONTRACT shall run for twenty (20) years and may be renewed thereafter in ten (10) year increments for an additional twenty (20) years at the DISTRICT'S option, which renewals shall be deemed automatic unless the DISTRICT notifies the BOARD of its desire not to renew, such notice to be given in writing at a regular meeting of the BOARD during the six (6) months preceeding the effective date of each ten (10) year renewal.

Thereafter, the CONTRACT may be extended by mutual agreement or renegotiated as may be dictated by the then existing needs of the parties hereto.

15. It shall be the duty of the BOARD in the operation of its plant to treat all wastes in such a manner as to produce a plant effluent which is in conformance with the effluent discharge requirement of the NPDES permit, and it is agreed between the parties hereto that the DISTRICT will be held harmless by the CITY and the BOARD in any legal action or claims relating to effluent quality, it being understood and agreed between the parties hereto that the DISTRICT shall otherwise have no authority or control over the operation of the plant or the quality of the plant's effluent being discharged into the river.

16. The DISTRICT agrees that it will comply with all EPA policies pertaining to user charge and industrial cost recovery, and that it will hold the CITY and the BOARD harmless for any damages which may be proved to have been caused by reason of the DISTRICT'S noncompliance with such policies.

17. All matters of controversy which may arise concerning compliance of the parties hereto with the provisions of this CONTRACT shall be resolved as follows:

(i) In the event of controversy arising by reason of an illegal discharge, or other illegal act by the DISTRICT, which may place the BOARD'S facilities or treatment process in jeopardy to the extent that substantial damages will result to the BOARD'S facilities, or that the BOARD will not be able to render treatment to the degree required by its discharge permit, the BOARD shall first notify the DISTRICT in writing hand delivered to the DISTRICT of the nature of the problem and of its potential impact on the BOARD'S operation, and request an immediate response as to what remedial action will be taken.

(a) In the event the problem created by reason of an alledged illegal discharge or other alledged illegal act of the DISTRICT, the BOARD is free to seek such legal remedies as are available under existing law.

(b) The DISTRICT shall pay all of the cost of correction of any damage which the BOARD can show to have been the result of such illegal flow or other illegal act by the DISTRICT.

(ii) In the event of a controversy pertaining to rates and charges, such matters shall be resolved in accordance with the rules of the U. S. Environmental Protection Agency and of the West Virginia Public Service Commission as they may pertain thereto.

IN WITNESS WHEREOF, the City of Fairmont has caused this CONTRACT to be signed on its behalf by Edwin C. Daley, City Manager, and its corporate seal to be affixed thereto by Lena C. West, its City Clerk, by authority of a resolution of the City Council of the City of Fairmont duly adopted on the 14th day of May, 1980, and

IN WITNESS WHEREOF, the Sanitary Sewer Board of the City of Fairmont has caused this CONTRACT to be signed on its behalf by Edwin C. Daley, its Chairman and its seal to be affixed thereto by Clayton Goodman III, its Secretary, by authority of a resolution of the Sanitary Sewer Board adopted on the 14th day of May, 1980, and

IN WITNESS WHEREOF, the Whitehall Public Service District has caused this CONTRACT to be signed by John E. Barnes, its Chairman, and its corporate seal to be affixed thereto by Robert DeLorenzo, its Secretary, by authority of a resolution of its Board of Directors duly adopted on the 14th day of May, 1980.

This CONTRACT is executed in three (3) copies with one (1) copy to each party hereto, each copy of which shall be deemed an original for all purposes.

THE CITY OF FAIRMONT,
a municipal corporation.

S E A L

By: Edwin C. Daley
Edwin C. Daley
City Manager

ATTEST:

Lena C. West
Lena C. West, City Clerk

SANITARY SEWER BOARD OF THE
CITY OF FAIRMONT

S E A L

By: Edwin C. Daley
Edwin C. Daley
Chairman

ATTEST:

Clayton Goodman III
Clayton Goodman III, Secretary

WHITEHALL PUBLIC SERVICE DISTRICT

S E A L

By: John E. Barnes
John E. Barnes, Chairman

ATTEST:

Robert DeLorenzo
Robert DeLorenzo, Secretary

Approved as to correctness of form and content for the City of Fairmont this the 14th day of May, 1980.

George R. Higinbotham
George R. Higinbotham, City Attorney

Approved as to correctness of form and content for the Sanitary Sewer Board of the City of Fairmont this the 14th day of May, 1980.

George W. May
George W. May, Its Attorney

Approved as to correctness of form and content for the Whitehall Public Service District this the 14th day of May, 1980.

Alfred J. Lemley
Alfred J. Lemley, Its Attorney

STATE OF WEST VIRGINIA

COUNTY OF MARION, TO WIT:

I, George A. Mason, a Notary Public in and for the State and County aforesaid, certify that Edwin C. Daley, Lena C. West, Clayton Goodman III, John E. Barnes, Robert DeLorenzo, George R. Higinbotham, George W. May and Alfred J. Lemley, whose names are signed to the CONTRACT FOR TREATMENT BY THE CITY OF FAIRMONT OF SEWAGE FROM WHITEHALL PUBLIC SERVICE DISTRICT entered into by the City of Fairmont, The Sanitary Sewer Board of the City of Fairmont, and Whitehall Public Service District, and dated the 14th day of May, 1980, have acknowledged the same before me in my said County this the 14th day of May, 1980.

George A. Mason

Notary Public

My Commission Expires:

April 14, 1986

THIS AGREEMENT, made this 9th day of January, 2004, by and between the City of Fairmont Sanitary Sewer Board, a public board of the City of Fairmont, West Virginia, a municipal corporation, (hereafter Board) and the Town of Barrackville, a West Virginia municipal corporation, (hereafter Town).

WHEREAS, Town owns and operates a sanitary sewer collection and transmission system;

WHEREAS, the Board owns and operates a public sanitary sewer utility which provides for the collection, transmission and treatment of sewerage to individual, commercial, industrial and bulk rate customers within the corporate limits of said City and its environs located in Marion County, West Virginia;

WHEREAS, since 1991, the Town has contracted with the Board for certain services relating to the operation, maintenance and administration of the Town's sanitary sewer collection and transmission system pursuant to the terms of that certain Agreement dated April 25, 1991;

WHEREAS, the Town desires to continue its relationship with the Board and to provide for the operation, maintenance and administration of the Town's system by the Board;

WHEREAS, the Board desires to continue its relationship with the Town;

WHEREAS, by Ordinance duly adopted on the 18th day of November, 2003, the Council for the Town of Barrackville did approve the form of this Agreement; and

WHEREAS, by Ordinance duly adopted on the 9th day of December, 2003, upon the recommendation of the Sanitary Sewer Board's Board of Directors, the Council for the City of Fairmont did approve the form of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH: That for and in consideration of the aforementioned recitals, the terms and conditions hereinafter set forth, and with intent to be legally bound hereby, the City of Fairmont Sanitary Sewer Board (hereinafter Board) and the Town of Barrackville (hereinafter Town) covenant and agree as follows:

A. The Board Agrees:

1. To provide the limited services described herein to and for the Town in the operation and conduct of the collection and transmission of sewerage within the Town's system (hereafter the system or sewer system), including any betterments, improvements, additions, or deletions, which as of the date of this agreement has been defined as consisting of approximately:

(a) 49,500 lineal feet of sewer lines;

(b) 200 manholes; and

(c) 6 lift stations.

2. To provide routine, day to day, operation and maintenance of the system as the same shall be deemed necessary in the sole discretion of the Board, including, but not limited to, collection pipelines and rights of way, pump stations, and any/all other facilities owned by the Town during the term of this Agreement. These services shall include routine operation, routine preventative maintenance, and to the extent reasonably possible maintenance of system mapping. Any obligation on the part of the Board to provide routine operation and maintenance services shall be dependent upon the availability of sufficient Town funds and revenues for same.

3. To provide repair services as the same shall be deemed necessary by the Board. Repair services shall be considered as any unplanned work on the system that may be necessary to ensure continued, safe and compliant sewerage collection and transmission for the customers of the

Town and routine installation of new sewer services which do not require a certificate of convenience and necessity from the Public Service Commission of West Virginia. Any obligation on the part of the Board to provide repair services shall be dependent upon the availability of sufficient Town funds and revenues for same.

4. To provide routine administrative services necessary to conduct the daily business of providing routine sewer service to the Town. These services are: billing customers; receiving customer payments; payment of all expenses associated with the operation, maintenance, and repair of the system, including payment of any periodic payments required by any long term capital bond indentures, provided however that the Board shall only be obligated to make such payments from the Town's revenues; delinquent account collection; budget forecasting; job/project cost analysis; routine legal services; and support of audit preparation relating to the sewer system.

5. To provide to the Town periodic reports of revenues and expenditures relating to its system as the Board deems necessary or as the same may be requested by the Town.

6. In consultation with the Town and at Town's request, to provide advice, recommendations and assistance with regard to extraordinary work on or to the system. Extraordinary work shall include, but not be limited to, replacement of any capital asset and/or tasks that require resources and/or staff that must be obtained from a third party or any activity for which the Public Service Commission of West Virginia requires the issuance of a certificate of convenience and necessity. Any obligation on the part of the Board to conduct extraordinary work activities shall be dependent upon the availability of sufficient Town funds and revenues for same.

7. In consultation with the Town and at Town's request, to provide advice, recommendations and assistance with regard to system expansion activities. System expansion

activities shall include, but not be limited to, installation of main line extensions and special system mapping or any activity for which the Public Service Commission of West Virginia requires the issuance of a certificate of convenience and necessity. Any obligation on the part of the Board to conduct system expanding activities shall be dependent upon the availability of sufficient Town funds and revenues for same.

8. In consultation with Town and at Town's request, to provide advice, assistance and recommendations to the Town regarding the Town's obligation to obtain and maintain any and all permits which may be necessary for the operation of the sewer system, including any national pollution discharge elimination system (NPDES) permit

9. To perform all its obligations set out in this Agreement in accordance with and in compliance with all relevant federal, state, and local statutes, regulations and ordinances.

B. The Town Agrees:

1. To compensate the Board for services rendered hereunder and for materials, equipment and labor, in accordance with the rates, fees and charges established by the Board from time to time.

2. To indemnify and hold harmless the Board from any and all liability arising from the maintenance and/or operation of the sewerage system by the Board, and to protect, defend and indemnify and hold the City of Fairmont and the Board and the members thereof, their officers, agents, representatives and employees, completely harmless from and against any claims, action or judgments arising by reason of the injury or death of any person or damage to or loss of property, of any nature whatsoever arising out of operation, maintenance and administration of the system, unless the injury, death or loss or damage is caused by the negligence of the City of Fairmont, its Sanitary

Sewer Board or its officers, agents, employees or representatives. The Town's obligation to indemnify and hold the Board and the City harmless shall extend to indemnification for all reasonable costs for investigation and defense of any claim (including but not limited to, attorney fees, court costs, and expert fees). The Town shall give the Board reasonable notice of any such claim or action. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3. To procure and maintain in force during the term of this agreement a public liability policy of insurance with a solvent insurer with coverage adequate to protect against liability for damage claims arising out of incidents occurring or arising out of the operation, maintenance or administration of the system in the amount of not less than $1,000,000.00, and the Town shall name the City of Fairmont and the Board as additional insureds. The Town shall supply the Board with evidence of such insurance. If the Town fails to provide evidence of such insurance or fails to procure and maintain in force the necessary insurance or requests that the Board procure same, the Board shall procure such insurance and pay the premium therefor from the revenues collected from the sewer system.

4. To direct that all monies collected by the Board from the operation of Town's system shall be applied to and used in the operation, maintenance, repair and administration of the system.

5. To establish from time to time such customer rates, fees and charges for sanitary sewer services which are recommended by the Board and its agents and employees and which may be necessary and adequate to meet the required debt service coverage mandated by any bond indenture and to provide for and meet all operating, maintenance and administrative expenses.

6. To provide to the Board any and all operation and maintenance manuals, as built drawings, system maps, plats and records regarding the system.

7. For purposes of fulfilling the Board's obligations hereunder, to allow the Board access and control of the operation and maintenance of the system; however, acknowledging the fact that the Board's primary objective is to operate the sanitary sewer treatment plant and collection system that serves the City of Fairmont and that the City of Fairmont's system shall have priority with regard to operation, maintenance and repair.

8. To obtain and maintain any and all permits which may be necessary for the operation of the sewer system and in doing so, the Town covenants and agrees that it shall be solely and exclusively responsible for obtaining and maintaining any and all permits which may be required by and federal, state or local statute, rule, regulation or ordinance, including any national pollution discharge elimination system (NPDES) permit. Town further covenants and agrees that it shall be solely liable and answerable for any and all fines, damages and liabilities which may be imposed or assessed by any federal, state or local administrative agency or court having jurisdiction to do so for the Town's failure to obtain and maintain any and all permits which may be required by any federal, state or local statute, rule, regulation or ordinance, including any national pollution discharge elimination system (NPDES) permit. The Town further covenants and agrees that it shall protect, defend, indemnify and hold the City of Fairmont and the Board and the members thereof, their officers, agents, representatives and employees harmless of and from any and all liability arising from the Town's failure to obtain and maintain all such permits and from and against any and all fines, damages or liabilities resulting from such failure. The Town shall give the Board reasonable notice of any violation, claim or action regarding any permit or lack thereof. The provisions of this

paragraph shall survive the expiration or earlier termination of this Agreement

C. The Board and the Town Agree That:

1. If at any time during the initial term of this agreement or during any renewal period, the Board determines in its sole discretion that it desires to dissolve the relationship, or the Town determines in its sole discretion that it desires to dissolve the relationship, then, in such event, either party hereto shall have the right to terminate this contract, without liability except for work performed, debts incurred or matters which arose prior to the date of termination. In the event that either party shall desire to terminate said contract, the terminating party shall provide sixty (60) days written notice of its intention to do so to the non-terminating party . If such notice is served, this Agreement shall be terminated on the 61st day next preceding the date of service of such notice.

2. The Town's customers shall not be deemed or considered the Board's customers for any purpose and no relationship shall be deemed to be created between the Board and the Town other than described herein.

3. The operation of the Town's sewer system is not a joint venture between the Board and the Town and the Board and the Town shall not be deemed to be co-partners or co-venturers for any purpose. It is covenanted and agreed that for all purposes, the Town is and shall be the sole owner and operator of its sewer system and the Board shall not have any duties, responsibilities or obligations, express or implied, other than the limited duties, responsibilities and obligations as hereinbefore set forth.

4. The West Virginia Public Service Commission's Rules and Regulations for the Government of Sewer Utilities now, or as hereafter promulgated shall be binding on the partes and shall govern their relationship to the extent that said Rules may apply.

5. At any time during the term of this Agreement, the Board, upon thirty (30) days notice, may require the Town to deposit with it a minimum cash deposit to secure the payment of the services provided herein in an amount not to exceed three (3) times the estimated cost of the monthly operation, maintenance and administration expenses relating to the system as determined by a two (2) year average of such costs. As part of the consideration for this Agreement, the Board shall not be required to pay to the Town any interest upon the amount of the deposit so made and the Town expressly covenants and agrees to waive the payment of any such interest.

6. Neither this Agreement, nor any interest or claim arising hereunder shall be assignable or transferable by either party without the prior written consent of the other, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon the Board and the Town and their respective successors in interest.

7. The Term of this Agreement shall be for a period of one (1) year from the date first above written. At the expiration of the initial one (1) year term, this Agreement shall automatically renew for like periods of one (1) year each, until either party shall elect to terminate this Agreement in accordance with the provisions of Paragraph (C) (1) above.

8. The failure of any party or parties to enforce at any time any right or privilege under this Agreement shall in no way constitute or be construed as a waiver of that or any other right or privilege under this Agreement, nor shall it affect in any way the validity and full enforceability of this Agreement and each and every provisions thereby. No waiver of any right or privilege under this Agreement shall operate as a waiver of any other breach of that or any other provision of this Agreement, and no waiver of any remedy for any such breach shall operate as a waiver of any other remedy for such breach.

9. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, and not be necessary in making proof of this Agreement to produce or account for more than one of such counterparts.

10. This Agreement is the entire agreement between the parties hereto, and supersedes any prior agreements between the parties hereto, either oral or written.

11. Should any provisions of this Agreement be declared void and unenforceable by any regulatory agency or a court of law, it is the intention of the parties to give full force and effect to the remaining provisions.

12. All notices given pursuant to this Agreement shall be deemed effective upon placing same in the hands of the United States Postal Service, certified or registered mail, return receipt requested, as follows:

The City of Fairmont Sanitary Sewer Board
City County Complex
200 Jackson Street
P.O. Box 1428
Fairmont, WV 26554

Town of Barrackville
C/o Mayor
P.O. Box 9
Barrackville, WV 26559

Or, such other address as may be provided in writing to the other party.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf by its proper officer duly authorized as of the day and year first above written.

THE CITY OF FAIRMONT SANITARY SEWER BOARD

By: _____
Its Chairman

Attest: _____
Secretary

THE TOWN OF BARRACKVILLE

By: _____
Its Mayor

Attest: _____
Town Recorder

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

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information
(304) 353-8196 - Telephone
(304) 353-8181 - Fax
John.Stump@steptoe-johnson.com

October 16, 2007

City of Fairmont
Sewer Revenue Bonds, Series 2007 A
(West Virginia SRF Program)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service
Internal Revenue Service Center
Ogden, Utah 84201

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed envelope.

Thank you for your attention to this letter. If you have any questions regarding any of the issues set forth herein, or if I can be of any service, please do not hesitate to call.

My best regards.

Very truly yours,

John C. Stump

JCS/bsl
Enclosure

RECEIVED
250 OCT 22 2007
OC

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TERRALEX
The Worldwide Network of Independent Law Firms

Form **8038-G** (Rev. November 2000) Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

Part I Reporting Authority

If Amended Return, check here ▶ ☐

1	Issuer's name City of Fairmont	2	Issuer's employer identification number 55 6000171
3	Number and street (or P.O. box if mail is not delivered to street address) Post Office Box 1428	Room/suite	4 Report number 3 2007-1
5	City, town, or post office, state, and ZIP code Fairmont, West Virginia 26555	6	Date of issue October 11, 2007
7	Name of issue Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program)	8	CUSIP number N/A
9	Name and title of officer or legal representative whom the IRS may call for more information Bruce McDaniel, City Manager	10	Telephone number of officer or legal representative (304) 367.0490

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11	☐ Education	11	
12	☐ Health and hospital	12	
13	☐ Transportation	13	
14	☐ Public safety	14	
15	☑ Environment (including sewage bonds)	15	5,577,760
16	☐ Housing	16	
17	☐ Utilities	17	
18	☐ Other. Describe ▶	18	
19	If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐		
20	If obligations are in the form of a lease or installment sale, check box ▶ ☐		

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	March 1, 2029	$ 5,577,760	$ 5,577,760	12.177 years	2.003 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest			22	-0-
23	Issue price of entire issue (enter amount from line 21, column (b))			23	5,577,760
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	30,500		
25	Proceeds used for credit enhancement	25			
26	Proceeds allocated to reasonably required reserve or replacement fund	26	0		
27	Proceeds used to currently refund prior issues	27			
28	Proceeds used to advance refund prior issues	28			
29	Total (add lines 24 through 28)			29	30,500
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	5,547,260

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31	Enter the remaining weighted average maturity of the bonds to be currently refunded ▶	n/a	years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded ▶	n/a	years
33	Enter the last date on which the refunded bonds will be called ▶	n/a	
34	Enter the date(s) the refunded bonds were issued ▶	n/a	

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	-0-
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	-0-
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	-0-

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☐

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

40 If the issuer has identified a hedge, check box ▶ ☐

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Scott Sears — Signature of issuer's authorized representative — Date

▶ Scott Sears, Mayor — Type or print name and title

For Paperwork Reduction Act Notice, see page 2 of the Instructions.

Cat. No. 63773S Form **8038-G** (Rev. 11-2000)