CITY OF FAIRMONT

WATER REVENUE BONDS, SERIES 2008 A
(WEST VIRGINIA DWTRF PROGRAM)

DATE OF CLOSING: 06/26/2008

BONDS TRANSCRIPT

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BOND TRANSCRIPT

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CITY OF FAIRMONT

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(WEST VIRGINIA DWTRF PROGRAM)

BOND ORDINANCE

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CITY OF FAIRMONT

BOND ORDINANCE

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF 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 8, Article 19 and Chapter 16, Article 13C 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 water system (the "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 extensions, additions, betterments and improvements to the System of the Issuer, consisting of providing the City of Mannington with a potable water supply through the construction of waterline along Route 250 from the City of Fairmont's existing Cleveland Avenue main to the City of Mannington's water storage tank, including a booster pump station, a master meter system and a SCADA system, together with all appurtenant facilities (collectively, the "Project"), 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"),which administers the West Virginia Drinking Water Treatment Revolving Fund (the "West Virginia DWTRF Program") pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), in the total aggregate principal amount of not more than $3,500,000 (the "Series 2008 A Bonds"), to be initially represented by a single bond, to permanently finance a portion of the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2008 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 2008 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, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2008 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 2008 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 40 years.

F. It is in the best interests of the Issuer that its Series 2008 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health (the "BPH"), in form satisfactory to the Issuer, the Authority and the BPH (the "Loan Agreement"), as shall be approved by a resolution supplemental hereto.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000 (the "Series 1997 Bonds"); (2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of $9,600,000 (the "Series 1998 Bonds"); and (3) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of $19,945,000 (the "Series 1999 Bonds"). The Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds are hereinafter collectively called the "Prior Bonds."

The Series 2008 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2008 A Bonds, the Issuer will obtain a certificate of an

Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds have been met. 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.

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 the principal of and interest on the Bonds (as hereinafter defined) and payments into all funds and accounts and other payments provided for herein and in the Prior Ordinances (as hereinafter defined) and all costs of operation and maintenance of the System.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2008 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, 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 convenience and necessity from the Public Service Commission of West Virginia by final order.

J. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council pursuant to 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 2008 A Bonds by 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 Bondholders of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds 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 8, Article 19 and Chapter 16, Article 13C the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement for the Series 2008 A Bonds.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2008 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

"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.

"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 2008 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.

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

"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 2008 A Bonds for all or a portion of the proceeds of the Series 2008 A Bonds from the Authority.

"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.

"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.

"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 established by Prior Ordinances and continued hereby.

"DWTRF Regulations" means the DWTRF regulations set forth in the West Virginia Code of State Regulations, as amended from time to time.

"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 grants committed for 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 Revenue" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualifies 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.

"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, or to be entered, into by and between the Issuer and the Authority on behalf of the BPH, providing for the purchase of the Series 2008 A Bonds, 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 2008 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2008 A Bonds Reserve Account.

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

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance 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 Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent or Paying Agents,

payments to the pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principals; provided, that "Operating Expenses" does not include payments on account of principal of or redemption, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of the capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar, at or prior to said date; (ii) any Bond 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 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; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bond 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 such other entity or authority as may be designated as a Paying Agent for the Series 2008 A Bonds by the Issuer in the Supplemental Resolution with the written consent of the Authority and the BPH.

"Prior Bonds" means, collectively, the Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds.

"Prior Ordinances" means, collectively, the ordinance of the Issuer authorizing the Prior Bonds.

"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, 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, or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above, or fully insured by FDIC with member banks of the Federal Reserve System or 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 including, without limitation, authorized pools of investments operated by such State Board of Investments; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, 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 2008 A Bonds and the Prior Bonds.

"Reserve Requirement" means collectively, the respective amounts required to be on deposit in any Reserve Account.

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

"Series 1997 Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000.

"Series 1998 Bonds" means the Issuer's Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of $9,600,000.

"Series 1999 Bonds" means the Issuer's Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of $19,945,000.

"Series 2008 A Bonds" means the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer, authorized by this Ordinance.

"Series 2008 A Bonds Construction Trust Fund" means the Series 2008 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2008 A Bonds Reserve Account" means the Series 2008 A Bonds Reserve Account established in the Series 2008 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 2008 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 2008 A Bonds in the then current or any succeeding year.

"Series 2008 A Bonds Sinking Fund" means the Series 2008 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Series 2008 A Bonds and the Prior Bonds.

"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 2008 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2008 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 or the Prior Ordinances to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation the Sinking Funds, the Reserve Accounts and the Depreciation Fund.

"System" means the existing water system of the Issuer, as expanded and improved by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system after the completion of the Project.

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

"West Virginia DWTRF Program" means the West Virginia DWTRF Program established by the State, administered by BPH and funded by capitalization grants awarded to the State pursuant to the federal Safe Drinking Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the acquisition, construction and improvement of drinking water projects.

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 the 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 $4,970,000 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2008 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 compatible with the financing plan submitted to the BPH and the Authority.

The cost of the Project is estimated not to exceed $4,970,000 of which not more than $3,500,000 will be obtained from the proceeds of the 2008 A Bonds; $1,025,000 will be obtained from a Small Cities Block Grant; and approximately $1,195,000 will be obtained from a grant from the West Virginia Infrastructure Fund.

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 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 2008 A Bonds of the Issuer. The Series 2008 A Bonds shall be issued as a single bond, designated "Water Revenue Bond, Series 2008 A (West Virginia DWTRF Program)", in the principal amount of not more than $3,500,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2008 A Bonds remaining after funding of the Series 2008 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2008 A Bonds, if any, shall be deposited in or credited to the Series 2008 A Bonds Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2008 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 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 2008 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 2008 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 2008 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of the Series 2008 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2008 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 have such terms as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2008 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 2008 A Bonds shall cease to be such officer of the Issuer before the Series 2008 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 2008 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 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 2008 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 2008 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 2008 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 2008 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 2008 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2008 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 2008 A Bonds or transferring the registered Series 2008 A Bonds are exercised, all Series 2008 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2008 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 2008 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 2008 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2008 A Bonds or, in the case of any proposed redemption of Series 2008 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 2008 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 2008 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 Gross Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2008 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2008 A Bonds and the Prior Bonds and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2008 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2008 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 2008 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 2008 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 2008 A Bonds.

Section 3.10. Form of Series 2008 A Bonds. The text of the Series 2008 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 2008 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
WATER REVENUE BONDS, SERIES 2008 A
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That on this ___ day of _____, 2008, 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.

This bond shall not bear interest. The Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing _____ 1, 20___, 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").

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority on behalf of the BPH, dated _____, 2008.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, 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 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 2008, and a Supplemental Resolution duly adopted by the Issuer on _____, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond

Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,600,000 (THE "SERIES 1998 BONDS"); AND (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $19,945,000 (THE "SERIES 1999 BONDS"). THE SERIES 1997 BONDS, THE SERIES 1998 BONDS AND THE SERIES 1999 BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2008 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay 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 Gross Revenues, the monies in the Series 2008 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 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 subordinate to, the Bonds, including the Prior Bonds and to provide for the reasonable expenses of operation, repair and maintenance of the System, and; provided however, that so long as there exists in the Series 2008 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 subordinate 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 (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such 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 in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross 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.

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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 first written above.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2008 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: _____, 2008.

THE HUNTINGTON NATIONAL BANK,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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: _____, 20___.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2008 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 and all schedules and exhibits attached thereto are hereby approved and ratified and incorporated into this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the BPH and the Authority a schedule for the Series 2008 A Bonds, the form of which will be provided by the Authority and the BPH, 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) Depreciation Fund (established by the Prior Ordinances);

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

(4) Series 2008 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 (or continued if previously established by the Prior Ordinances) 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 1997 Sinking Fund (established by Prior Ordinance);

(2) Series 1997 Bonds Reserve Account (established by Prior Ordinance);

(3) Series 1997 Bonds Redemption Account (established by Prior Ordinance);

(4) Series 1998 Bonds Sinking Fund (established by Prior Ordinance);

(5) Series 1998 Bonds Reserve Account (established by Prior Ordinance);

(6) Series 1998 Bonds Redemption Account (established by Prior Ordinance);

(7) Series 1999 Bonds Sinking Fund (established by Prior Ordinance);

(8) Series 1999 Reserve Account (established by Prior Ordinance);

(9) Series 1999 Bonds Redemption Account (established by Prior Ordinance);

(10) Series 2008 A Bonds Sinking Fund; and

(11) Series 2008 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and in the Prior Ordinances 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 disposed of only in the following order and priority:

(1) The Issuer shall on the first day of each month, transfer from the Revenue Fund and remit to the Commission the interest payments on the respective Prior Bonds, as required by the Prior Ordinances.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the principal payments, as required by the Prior Ordinances on the respective Prior Bonds; and (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2008 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 2008 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.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the respective reserve accounts for the Prior Bonds, the amounts required by the Prior Ordinances to be deposited therein; and (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, if not fully funded upon issuance of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2008 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2008 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 2008 A Bonds Reserve Requirement.

(4) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(5) The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, transfer to the Depreciation Fund, a sum 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 account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

Monies in the Series 2008 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2008 A Bonds as the same shall become due. Monies in the Series 2008 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2008 A Bonds as the same shall come due, when other monies in the Series 2008 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 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 2008 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 2008 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2008 A Bonds Reserve Account which result in a reduction in the balance of the Series 2008 A Bonds Reserve Account to below the Series 2008 A Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2008 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds 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 accounts in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2008 A Bonds Sinking Fund, or the Series 2008 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2008 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and Series 2008 A Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account created

hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2008 A Bonds Sinking Fund and the Series 2008 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 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

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

C. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2008 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 also 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 Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

D. 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, fees and expenses then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at 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.

E. 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 Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; 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 Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2008 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2008 A Bonds, there shall first be deposited with the Commission in the Series 2008 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2008 A Bonds for the period commencing on the date of issuance of the Series 2008 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2008 A Bonds, there shall be deposited with the Commission in the Series 2008 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2008 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2008 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2008 A Bonds Construction Trust Fund and applied solely to payment of the Costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2008 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 2008 A Bonds shall be expended as directed by the BPH.

Section 6.02. Disbursements of Bond Proceeds. On or before the Closing Date, the Issuer shall have delivered to the Authority and the BPH a report listing the specific purposes for which the proceeds of the Series 2008 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for the costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2008 A Bonds from the Series 2008 A Bonds Construction Trust Fund shall be made only after submission to, and approval from, the BPH of a certificate, signed by an Authorized Officer, stating that:

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

(2) 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;

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

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

Pending such application, monies in the Series 2008 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 2008 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 2008 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 2008 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2008 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 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2008 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2008 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The 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 of the facilities of the System shall be as set forth in the water rate ordinance duly enacted on August 24, 2007, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2008 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, fees and charges initially established for the System in connection with the Series 2008 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, fees 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.

So long as the Series 2008 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the BPH, 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 2008 A Bonds, immediately be remitted to the Commission for deposit in the Series 2008 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 immediately apply such proceeds to the payment of principal of and interest on the Series 2008 A Bonds. Any balance remaining after the payment of all the Series 2008 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, 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, in writing, 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 Revenue 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 the Governing Body 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 derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of $10,000 and not in excess of $50,000, shall be deposited in the Depreciation Fund.

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, or their duly authorized representatives, 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. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2008 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2008 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 2008 A Bonds; provided, that no

such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein 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 2008 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2008 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the BPH 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 System, 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. In addition, no additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2008 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the BPH and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

After the Prior Bonds are no longer outstanding, no such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of additions extensions, improvements or betterments to the System or refunding any outstanding Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustment 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 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 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 on the following:

(1) The Bonds then Outstanding;

(2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinances and this Bond Legislation 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 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 date of 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 herein above 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 has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 2008 A Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said 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 account created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2008 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 the lien on and source of and security for payment from such revenues, with the Series 2008 A Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance and the Prior Ordinances with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance and the Prior Ordinances, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance and the Prior Ordinances.

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 BPH 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 BPH 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 BPH or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

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

The Issuer shall file with the BPH and the Authority, or any other original purchaser of the Series 2008 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2008 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.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and, to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2008 A Bonds and shall submit said report to the Authority and the BPH, or any other original purchaser of the Series 2008 A Bonds. Such audit report submitted to the Authority and the BPH 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 revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service 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 permit the Authority and the BPH, 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 also provide the Authority and the BPH, 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 BPH with respect to the System pursuant to the Act.

The Issuer shall provide the BPH 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 for the Series 2008 A Bonds or as promulgated from time to time.

Section 7.09. Rates. So long as the Prior Bonds are outstanding, the Issuer will maintain rates as required in the Prior Ordinances. Prior to the issuance of the Series 2008 A Bonds, rates or charges for the use of the services and facilities of the System will be 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 City Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules 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 and accounts created hereunder. Such schedule or schedules 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 Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all 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 on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2008 A Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Series 2008 A Bonds Reserve Account and any reserve accounts for obligations on a parity with, or subordinate to, including the Prior Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2008 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.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or 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.

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 Authority and the BPH 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 to the Authority, the BPH or to any Holder of any Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and 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 2 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 Authority and the BPH 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 BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the BPH 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 BPH 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 BPH, the Authority 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 DWTRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the BPH 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 BPH 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 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 the 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.

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 either 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 2008 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 $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION 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 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 BPH. 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. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards. The Issuer shall take all steps to properly operate and maintain the System and make the necessary replacements due to normal wear and tear so long as the Series 2008 A Bonds are outstanding.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission 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 all approvals for the issuance of the Series 2008 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 will provide the BPH with copies of all documents submitted to the Authority. The Issuer agrees to comply with all applicable laws, rules and regulations issued by the Authority, the BPH 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. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2008 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2008 A Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

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; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2008 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 BPH for written approval. The Issuer shall obtain the written approval of the BPH before expending any proceeds of the Series 2008 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 BPH before expending any proceeds of the Series 2008 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the BPH 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 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 if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate 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 2008 A Bonds as a condition to issuance of the Series 2008 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 2008 A Bonds as may be necessary in order to maintain the status of the Series 2008 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 2008 A Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the BPH, as the case may be, from which the proceeds of the Series 2008 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 or the BPH, 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 2008 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 2008 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2008 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its respective part relating to the Series 2008 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2008 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 the Series 2008 A Bonds 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 Series 2008 A 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 Series 2008 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2008 A Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2008 A Bonds shall be on a parity with the Holders of 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 do.

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 the 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 2008 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 Gross 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 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2008 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2008 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 2008 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2008 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2008 A 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 Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2008 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 excludability of interest, if any, on the Series 2008 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 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 2008 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. Notices. All notices to be sent to the Issuer, the Authority or the BPH shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

City of Fairmont
Post Office Box 1428
Fairmont, West Virginia 26555
Attention: Mayor

AUTHORITY:

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311-1571
Attention: Director

BPH:

West Virginia Bureau for Public Health
815 Quarrier Street, Suite 418
Charleston, West Virginia 25301
Attention: Infrastructure and Capacity Development

All notices to be sent to the BPH hereunder, shall also be sent to the Authority.

Section 11.06. Conflicting Provisions Repealed. 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 11.07. 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 11.08. 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 2008 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.

Section 11.09. Effective Date. This Ordinance shall take effect at the expiration of 30 days after public hearing and final reading hereof.

Passed on First Reading: March 11, 2008

Passed on Second Reading: March 25, 2008

Passed on Final Reading Following Public Hearing: April 22, 2008

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 22nd day of April, 2008.

Dated: June 26, 2008.

[SEAL]

Janet L. Keller
City Clerk

02.12.08
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF 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 WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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 enacted a bond ordinance on April 22, 2008 (the "Bond Ordinance" or the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer (the "Series 2008 A Bonds" or the "Bonds"), in the aggregate principal amount not to exceed $3,500,000 and has authorized the execution and delivery of the loan agreement relating to the Series 2008 A Bonds, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH") (the "Loan Agreement"), all in accordance with Chapter 8, Article 19 and Chapter 16, Article 13C 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, the sale price and other terms 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 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $2,750,000. The Series 2008 A Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2039 and shall bear no interest. The principal of the Series 2008 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009 to and including September 1, 2039 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 2008 A Bonds. The Series 2008 A Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the 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 2008 A Bonds. The

Issuer does hereby approve and shall pay the Administrative Fee equal to 1% of the principal amount of the Series 2008 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.

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 BPH 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 2008 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2008 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2008 A Bonds proceeds in the amount of $91,668 shall be deposited in the Series 2008 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2008 A Bonds shall be deposited in or credited to the Series 2008 A Bonds Construction Trust Fund 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 City Clerk are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds to be issued hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about June 26, 2008, 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 hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Monies in the Series 2008 A Bonds Sinking Fund, including the Series 2008 A Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Board of Treasury Investments.

Section 13. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations promulgated or to be promulgated thereunder.

Section 14. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 24th day of June, 2008.

CITY OF FAIRMONT

Mayor

City Manager

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the City of Fairmont on the 24th day of June, 2008.

Dated: June 26, 2008.

[SEAL]

Janet L. Keller
City Clerk

06.10.08
268460.00009

DWTRF
(12/01/07)

LOAN AGREEMENT

THIS DRINKING WATER TREATMENT REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting under the direction of the WEST VIRGINIA BUREAU FOR PUBLIC HEALTH, a division of the West Virginia Department of Health and Human Resources (the "BPH"), and the local entity designated below (the "Local Entity").

CITY OF FAIRMONT

W I T N E S S E T H:

WHEREAS, the United States Congress under Section 1452 of the Safe Drinking Water Act, as amended (the "Safe Drinking Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining drinking water treatment revolving funds for the construction, acquisition and improvement of drinking water systems;

WHEREAS, pursuant to the provisions of Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a drinking water treatment revolving fund program (the "Program") to direct the distribution of loans to eligible Local Entities pursuant to the Safe Drinking Water Act;

WHEREAS, under the Act the BPH 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 BPH has been awarded capitalization grants to partially fund the Program;

WHEREAS, the Act establishes a permanent perpetual fund known as the "West Virginia Drinking Water Treatment Revolving Fund" (hereinafter the "Fund"),

which fund is to be administered and managed by the Authority under the direction of the BPH;

WHEREAS, pursuant to the Act, the Authority and BPH are empowered to make loans from the Fund to Local Entities for the acquisition or construction of drinking water projects by such Local Entities, all subject to such provisions and limitations as are contained in the Safe Drinking Water Act and the Act;

WHEREAS, the Local Entity constitutes a local entity as defined by the Act;

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

WHEREAS, the Local Entity is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a drinking water 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 Entity;

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

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

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and BPH are willing to lend the Local Entity the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Entity with moneys held in the Fund, subject to the Local Entity'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 Entity, BPH 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 entity," and "project" have the definitions and meanings ascribed to them in the Act or in the DWTRF 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 BPH to the Local Entity 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 Entity required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Entity 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 drinking water facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Safe Drinking Water Act and administered by BPH.

1.9 "Project" means the drinking water project hereinabove referred to, to be constructed or being constructed by the Local Entity in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Entity 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 "DWTRF Regulations" means the regulations set forth in the West Virginia Code of State Regulations.

1.11 "System" means the drinking water system owned by the Local Entity, 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 Entity by the Consulting Engineers, the BPH 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 Entity 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 Entity 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 Entity, 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 BPH and the Authority.

2.4 The Local Entity agrees that the Authority and BPH 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 Entity further agrees that the Authority and BPH 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 BPH with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Entity 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 Entity shall permit the Authority and BPH, 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 Entity shall submit to the Authority and BPH 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 Entity agrees that it will permit the Authority and BPH and their respective agents to have access to the records of the Local Entity 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 Entity 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 Entity 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 BPH and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Entity, the Local Entity or (at the option of the Local Entity) 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 Entity, 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 Entity 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 Entity 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 Entity shall provide and maintain competent and adequate engineering services satisfactory to the Authority and BPH 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, BPH and the Local Entity 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 Entity shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Local Entity shall notify BPH in writing of such receipt.

2.10 The Local Entity shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to BPH when the Project is 90% completed. The Local Entity shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Entity 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 Entity shall notify BPH in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Entity hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, BPH 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 Entity, 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 A and incorporated herein by reference, and forward a copy by the 10th of each month to BPH and the Authority.

2.13 The Local Entity, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward such forms to BPH in compliance with the Local Entity's construction schedule.

ARTICLE III

Conditions to Loan;
Issuance of Local Bonds

3.1 The agreement of the Authority and BPH to make the Loan is subject to the Local Entity's fulfillment, to the satisfaction of the Authority and BPH, 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 Entity shall have delivered to BPH and the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Entity 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 Entity 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 Entity 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 Entity 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 BPH shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit C;

(e) The Local Entity 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 BPH shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Entity 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 BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity,

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

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

(h) The Local Entity 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 BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity, bond counsel or special PSC counsel but must be satisfactory to the Authority and BPH, 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 BPH shall have received a certificate of the accountant for the Local Entity, or such other person or firm experienced in the finances of local entities and satisfactory to the Authority and BPH, 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 BPH shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of drinking water projects and satisfactory to the Authority and BPH, to such effect, such certificate to be in form and substance satisfactory to the Authority and BPH, and evidence satisfactory to the Authority and BPH of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the BPH, including the DWTRF 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 Entity and the Local Entity shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Entity 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 Entity 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, BPH and the Local Entity. 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.

3.5 The Local Entity understands and acknowledges that it is one of several local entities which have applied to the Authority and BPH for loans from the Fund to finance drinking water projects and that the obligation of the Authority to make any such loan is subject to the Local Entity'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 Entity 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 execution of this Loan Agreement, the Authority may purchase the bonds of other local entities set out in the State Project Priority List, as defined in the DWTRF Regulations. The Local Entity further specifically recognizes that all loans will be originated in conjunction with the DWTRF Regulations and with the prior approval of BPH or such later date as is agreed to in writing by the BPH.

3.6 The Local Entity shall provide BPH with the appropriate documentation to comply with the special conditions regarding the public release requirements established by federal and State regulations as set forth in Exhibit D 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 Entity shall, as one of the conditions of the Authority and BPH to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Entity 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 Entity 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 gross or net revenues, as applicable, 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 Entity will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the DWTRF Regulations, 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 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 the 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 Entity 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 BPH;

(vi) That the Local Entity 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 Entity 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 Entity 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 Entity will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Entity shall annually, within six months of the end of the fiscal year, 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 BPH. If the Local Entity receives $300,000 or more (in federal funds) in a fiscal year, the audit shall be obtained in accordance with the Single Audit Act (as amended from time to time) and the applicable OMB Circular (or any successor thereto). Financial statement audits are required once all funds have been received by the Local Entity. The audit 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 Entity's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Entity 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 BPH 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 Entity 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 funding of such Local Entity, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and BPH, 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 Entity may authorize redemption of the Local Bonds with 30 days written notice to BPH and 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 Entity 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 Entity shall complete the Monthly Payment Form, attached hereto as Exhibit E 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, if required by the Authority and BPH and, 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 Entity 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 Entity 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 BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and BPH 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 Entity shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate its services to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore such services until all delinquent charges for the services of the System have been fully paid; and

(xxi) That the Local Entity shall submit all proposed change orders to the BPH for written approval. The Local Entity shall obtain the written approval of the BPH 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 Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Entity 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 F.

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Entity 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 Entity, the BPH 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 DWTRF 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 Entity. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the DWTRF Regulations, the Local Entity agrees to pay from time to time, if required by the Authority and BPH, the Local Entity's allocable share of the reasonable administrative expenses of the BPH and the Authority relating to the Program. Such administrative expenses shall be determined by the BPH and the Authority and shall include, without limitation, Program expenses, legal fees paid by the BPH and the Authority and fees paid for any bonds or notes to be issued by the Authority for contribution to 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 Entity; Imposition and Collection of User Charges; Payments To Be Made by Local Entity to the Authority

5.1 The Local Entity 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 Entity 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 Entity 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 Entity 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 Entity hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Entity, 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 Entity

6.1 The Local Entity hereby acknowledges to the Authority and BPH its understanding of the provisions of the Act, vesting in the Authority and BPH certain powers, rights and privileges with respect to drinking water projects in the event of default by local entities in the terms and covenants of this Loan Agreement, and the Local Entity hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Entity 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 Entity hereby warrants and represents that all information provided to the Authority and BPH 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 BPH 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 BPH by the Local Entity in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Entity 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 DWTRF Regulations or this Loan Agreement.

6.3 The Local Entity 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 Entity hereby covenants that, if required by the Authority and BPH, 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 Entity fails to make any such rebates as required, then the Local Entity 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 BPH may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the

Local Entity to be monitored or cause the rebate calculations for the Local Entity to be prepared, in either case at the expense of the Local Entity.

6.6 The Local Entity hereby agrees to give the Authority and BPH 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 Entity hereby agrees to file with the Authority and BPH upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule B 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 Entity 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 Entity 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 Entity from either the Authority or BPH;

(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 the BPH if the Local Entity has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and BPH 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 Entity to the Authority or BPH.

In the event funds are not available to make all of the Loan, the responsibility of the Authority and BPH to make all the Loan is terminated; provided further that the obligation of the Local Entity to repay the outstanding amount of the Loan made by the Authority and BPH is not terminated due to such non-funding on any balance of the Loan. The BPH agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. 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: _____
Its: Mayor
Date: June 26, 2008

Attest:

Janet L Kellen
Its: Recorder

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: June 26, 2008

Attest:

Barbara B Meadows
Its: Secretary-Treasurer

000832/00520
11/01/04

EXHIBIT A

MONTHLY FINANCIAL REPORT

Name of Local Entity _____
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

EXHIBIT C

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 used herein and 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 between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), 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 BPH and any change orders approved by the Issuer, BPH 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 B 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 BPH 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 BPH; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - 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 D

SPECIAL CONDITIONS

The Local Entity 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.

EXHIBIT E

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 _____ on _____.
[Local Entity] [Date]

Sinking Fund:

Interest $_____

Principal $_____

Total: $_____

Reserve Account: $_____

Witness my signature this ___ day of _____.

_____
[Name of Local Entity]

By: _____
Authorized Officer

Enclosure: wire transfer form

EXHIBIT F

OPINION OF BOND COUNSEL FOR LOCAL ENTITY

[To Be Dated as of Date of Loan Closing]

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

West Virginia Bureau for Public Health
One Davis Square, Suite 200
Charleston, WV 25301-1798

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of a (i) loan agreement dated _____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Entity and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), and (ii) the issue of a series of revenue bonds of the Local Entity, 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 Entity on _____, as supplemented by the supplemental resolution duly adopted by the Local Entity 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 Entity and is a valid and binding special obligation of the Local Entity, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the BPH and cannot be amended so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Local Entity without the consent of the Authority and the BPH.

3. The Local Entity 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 Entity and constitute valid and binding obligations of the Local Entity, enforceable against the Local Entity 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 Entity to the Authority and are valid, legally enforceable and binding special obligations of the Local Entity, payable from the gross or net revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the gross or net 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 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	$2,750,000
Purchase Price of Local Bonds	$2,750,000

The Local Bonds shall bear no interest. Commencing December 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 Entity 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 Entity 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 Entity 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 gross or net revenues of the Local Entity's system as provided in the Local Act.

The Local Entity may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and BPH. The Local Entity shall request approval from the Authority and BPH in writing of any proposed debt which will be issued by the Local Entity 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 Entity:

(1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original principal amount of $10,260,000;

(2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original principal amount of $9,600,000; and

(3) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original principal amount of $19,945,000.

$2,750,000
City of Fairmont
30 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: June 26, 2008

Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	-	-	-
12/01/2009	22,917.00	-	22,917.00
03/01/2010	22,917.00	-	22,917.00
06/01/2010	22,917.00	-	22,917.00
09/01/2010	22,917.00	-	22,917.00
12/01/2010	22,917.00	-	22,917.00
03/01/2011	22,917.00	-	22,917.00
06/01/2011	22,917.00	-	22,917.00
09/01/2011	22,917.00	-	22,917.00
12/01/2011	22,917.00	-	22,917.00
03/01/2012	22,917.00	-	22,917.00
06/01/2012	22,917.00	-	22,917.00
09/01/2012	22,917.00	-	22,917.00
12/01/2012	22,917.00	-	22,917.00
03/01/2013	22,917.00	-	22,917.00
06/01/2013	22,917.00	-	22,917.00
09/01/2013	22,917.00	-	22,917.00
12/01/2013	22,917.00	-	22,917.00
03/01/2014	22,917.00	-	22,917.00
06/01/2014	22,917.00	-	22,917.00
09/01/2014	22,917.00	-	22,917.00
12/01/2014	22,917.00	-	22,917.00
03/01/2015	22,917.00	-	22,917.00
06/01/2015	22,917.00	-	22,917.00
09/01/2015	22,917.00	-	22,917.00
12/01/2015	22,917.00	-	22,917.00
03/01/2016	22,917.00	-	22,917.00
06/01/2016	22,917.00	-	22,917.00
09/01/2016	22,917.00	-	22,917.00
12/01/2016	22,917.00	-	22,917.00
03/01/2017	22,917.00	-	22,917.00
06/01/2017	22,917.00	-	22,917.00
09/01/2017	22,917.00	-	22,917.00
12/01/2017	22,917.00	-	22,917.00
03/01/2018	22,917.00	-	22,917.00
06/01/2018	22,917.00	-	22,917.00
09/01/2018	22,917.00	-	22,917.00
12/01/2018	22,917.00	-	22,917.00
03/01/2019	22,917.00	-	22,917.00
06/01/2019	22,917.00	-	22,917.00

$2,750,000
City of Fairmont
30 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: June 26, 2008

Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2019	22,917.00	-	22,917.00
12/01/2019	22,917.00	-	22,917.00
03/01/2020	22,917.00	-	22,917.00
06/01/2020	22,917.00	-	22,917.00
09/01/2020	22,917.00	-	22,917.00
12/01/2020	22,917.00	-	22,917.00
03/01/2021	22,917.00	-	22,917.00
06/01/2021	22,917.00	-	22,917.00
09/01/2021	22,917.00	-	22,917.00
12/01/2021	22,917.00	-	22,917.00
03/01/2022	22,917.00	-	22,917.00
06/01/2022	22,917.00	-	22,917.00
09/01/2022	22,917.00	-	22,917.00
12/01/2022	22,917.00	-	22,917.00
03/01/2023	22,917.00	-	22,917.00
06/01/2023	22,917.00	-	22,917.00
09/01/2023	22,917.00	-	22,917.00
12/01/2023	22,917.00	-	22,917.00
03/01/2024	22,917.00	-	22,917.00
06/01/2024	22,917.00	-	22,917.00
09/01/2024	22,917.00	-	22,917.00
12/01/2024	22,917.00	-	22,917.00
03/01/2025	22,917.00	-	22,917.00
06/01/2025	22,917.00	-	22,917.00
09/01/2025	22,917.00	-	22,917.00
12/01/2025	22,917.00	-	22,917.00
03/01/2026	22,917.00	-	22,917.00
06/01/2026	22,917.00	-	22,917.00
09/01/2026	22,917.00	-	22,917.00
12/01/2026	22,917.00	-	22,917.00
03/01/2027	22,917.00	-	22,917.00
06/01/2027	22,917.00	-	22,917.00
09/01/2027	22,917.00	-	22,917.00
12/01/2027	22,917.00	-	22,917.00
03/01/2028	22,917.00	-	22,917.00
06/01/2028	22,917.00	-	22,917.00
09/01/2028	22,917.00	-	22,917.00
12/01/2028	22,917.00	-	22,917.00
03/01/2029	22,917.00	-	22,917.00
06/01/2029	22,917.00	-	22,917.00
09/01/2029	22,917.00	-	22,917.00
12/01/2029	22,916.00	-	22,916.00
03/01/2030	22,916.00	-	22,916.00
06/01/2030	22,916.00	-	22,916.00

$2,750,000
City of Fairmont
30 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: June 26, 2008

Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2030	22,916.00	-	22,916.00
12/01/2030	22,916.00	-	22,916.00
03/01/2031	22,916.00	-	22,916.00
06/01/2031	22,916.00	-	22,916.00
09/01/2031	22,916.00	-	22,916.00
12/01/2031	22,916.00	-	22,916.00
03/01/2032	22,916.00	-	22,916.00
06/01/2032	22,916.00	-	22,916.00
09/01/2032	22,916.00	-	22,916.00
12/01/2032	22,916.00	-	22,916.00
03/01/2033	22,916.00	-	22,916.00
06/01/2033	22,916.00	-	22,916.00
09/01/2033	22,916.00	-	22,916.00
12/01/2033	22,916.00	-	22,916.00
03/01/2034	22,916.00	-	22,916.00
06/01/2034	22,916.00	-	22,916.00
09/01/2034	22,916.00	-	22,916.00
12/01/2034	22,916.00	-	22,916.00
03/01/2035	22,916.00	-	22,916.00
06/01/2035	22,916.00	-	22,916.00
09/01/2035	22,916.00	-	22,916.00
12/01/2035	22,916.00	-	22,916.00
03/01/2036	22,916.00	-	22,916.00
06/01/2036	22,916.00	-	22,916.00
09/01/2036	22,916.00	-	22,916.00
12/01/2036	22,916.00	-	22,916.00
03/01/2037	22,916.00	-	22,916.00
06/01/2037	22,916.00	-	22,916.00
09/01/2037	22,916.00	-	22,916.00
12/01/2037	22,916.00	-	22,916.00
03/01/2038	22,916.00	-	22,916.00
06/01/2038	22,916.00	-	22,916.00
09/01/2038	22,916.00	-	22,916.00
12/01/2038	22,916.00	-	22,916.00
03/01/2039	22,916.00	-	22,916.00
06/01/2039	22,916.00	-	22,916.00
09/01/2039	22,916.00	-	22,916.00
Total	**$2,750,000.00**	-	**$2,750,000.00** *

***Plus $3,466.12 one-percent Administrative Fee paid quarterly. Total fee paid over life of loan is $415,934.40.**

061576ALJ022707.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

3/19/2007

Issued: February 27, 2007

CASE NO. 06-1576-W-CN

CITY OF FAIRMONT
a municipal corporation,

Application for a certificate of convenience and necessity for the construction, operation and maintenance of a distribution system extension for purposes of supplying the City of Mannington with potable water for resale.

RECOMMENDED DECISION

On October 17, 2006, The City of Fairmont (City, Applicant or Fairmont), a municipal water utility, filed with the West Virginia Public Service Commission a duly verified application for a certificate of convenience and necessity to construct certain additions and improvements to its existing water distribution system in Marion County, West Virginia. The application stated that the project would include the construction of 70,748 linear feet of 12-inch and 16-inch water line along U.S. Route 250, from the City's existing Cleveland Avenue main water line to the City of Mannington's 632,000-gallon water storage tank, including a 1,000-gallon-per-minute deluxe water booster pump station with booster chlorination, a master meter system, and a SCADA system for automated operation, together with related appurtenances and appliances. The purpose of the project is to supply potable water to the City of Mannington for resale. The application stated that the certificate of convenience and necessity should be granted because the City of Mannington, which also operates a municipal water utility in Marion County, West Virginia, is in need of a new source of potable water for its customers. The City of Mannington's water filtration plant has become antiquated and is in need of extensive upgrades and rehabilitation. Also, in the past, the City of Mannington has experienced interruptions to its water supply during droughts and dry spells resulting in periods of restricted water use. The application stated that, "The West Virginia Infrastructure and Jobs Development Council has determined that it is more feasible for the City of Mannington to purchase water for resale than to reconstruct or rehabilitate its existing filtration plant." To facilitate the arrangement, the City of Fairmont and the City of Mannington have entered into an exclusive

Water Purchase Agreement (Agreement), dated September 6, 2005, as amended on January 17, 2006, whereby the City of Fairmont will supply water to the City of Mannington for sale to its existing direct customers and its resale customers. Also, the proposed project is the subject of an Intergovernmental Agreement, dated September 6, 2005.

The total estimated project cost is $4,970,000, and the City of Fairmont proposed that construction be funded by a $1,025,000 Small Cities Block Grant, a West Virginia Infrastructure and Jobs Development Council grant in the amount of $1,195,000 and a Drinking Water Treatment Revolving Fund loan in the amount of $2,750,000. The loan would bear an interest rate of 0% and an annual administrative fee of 1% and would be repayable over a term of thirty (30) years. The application stated that no rate increase was anticipated to support the project.

On October 17, 2006, as corrected on October 19, 2006, the Commission issued a Notice of Filing, which required that the City of Fairmont give notice of the filing of the certificate application by publishing the Notice of Filing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Marion County. The Commission also ordered the City of Fairmont to make due return of proper certification of publication immediately after publication. The Notice of Filing stated that, if no protests were received within the 30-day public protest period, the Commission may waive formal hearing and grant the application based on its review of the evidence submitted with the application.

On November 13, 2006, the City of Fairmont filed with the Commission copies of domestic return receipts evidencing notification of the City's nine resale customers of the filing of the certificate application by the City of Fairmont. The City of Fairmont notified Paw Paw Public Service District, Ice's Run Public Service District, Little Creek Public Service District, Valley Falls Public Service District, Monumental Public Service District, Montana Water Works, Town of Rivesville, Grant Town Public Service District and Tri-County Water Association.

On November 13, 2006, Staff Attorney Carrie Freeman of the Commission's Legal Division filed an Initial Joint Staff Memorandum, along with an Initial Internal Memorandum, prepared by Utility Analyst Michael Quinlan of the Commission's Water and Wastewater Division and Technical Analyst James Spurlock of the Commission's Engineering Division. Staff summarized the relevant facts, noted that preliminary funding documentation was filed with the application and that additional funding documents would be filed as soon as they became available. Staff noted that the Applicant had filed a Rule 42 exhibit, which indicated that the current rates were sufficient to support the proposed project. Staff stated that a final recommendation would be filed within the appropriate internal case processing time frames.

By Commission Referral Order issued on November 29, 2006, the Commission referred this case to the Division of Administrative Law Judges for a decision to be rendered on or before February 28, 2007, if no public protests were filed. The Commission Referral Order stated that, if public protests were filed within 30 days after the required notice had been provided, the Division of Administrative Law Judges would be required to render its decision on or before May 15, 2007.

On December 6, 2006, the Applicant filed an affidavit of publication which reflected that the Notice of Filing was published as a Class I legal advertisement in the *Times West Virginian* on October 28, 2006.

No protests were filed.

On January 16, 2007, Staff Attorney Carrie Freeman filed the Final Internal Memorandum, prepared by Utility Analyst Quinlan and Technical Analyst Spurlock. Therein, Staff summarized the facts set forth in the certificate application. Staff added that the City's water treatment plant was constructed in 2003 and is well able to supply the additional water demand resulting from this project. Staff noted that the City of Fairmont's current water source is the Tygart River, which, in Staff's opinion, provides an uninterrupted and abundant supply of water. Staff stated that, since there are several small water utilities located between Fairmont and Mannington, construction of the proposed extension to serve Mannington will create an alternative source of water for those small water utilities and will insure that the long term needs of the area can be met.

Engineering Staff concluded that, given the fact that Mannington currently serves approximately 1,000 customers and given the fact that the total estimated project cost is $4,970,000, the cost per customer of $4,970 is reasonable for the scope of the project. Engineering Staff also concluded that the estimated increase of $59,042 in operation and maintenance expenses associated with the proposed project is reasonable.

Financial Staff noted in the Final Internal Memorandum that the Applicant has filed funding commitment letters. Financial documentation provided by the Applicant in support of the project indicated that annual revenues from the sale of water to Mannington are projected to be $208,054; annual operation and maintenance expenses are expected to increase by $59,042; and total debt service and reserve requirements are projected to increase $121,956 per year as a result of this project. Staff indicated that the remaining cash surplus is projected to increase by $27,056, resulting in a total cash flow surplus of $279,597. Debt coverage of 115% is anticipated. Financial Staff added that current rates, effective for all service rendered on or after July 22, 2006, are sufficient to support the project, based upon information provided by the Applicant.

In its Final Internal Memorandum, Staff noted that a Water Purchase Agreement, signed by the City of Fairmont and the City of Mannington, was included by the Applicant when the certificate application was filed. Staff expressed concern that the Agreement had been executed by the parties before it was filed with the Commission. Staff reminded the parties that West Virginia Code §24-2-12 requires that such contracts be submitted for the consent and approval of the Public Service Commission before being entered into by the parties. Three additional concerns with regard to the Water Purchase Agreement were noted by Staff. Staff recommended that Section No. 12 of the Agreement be revised to include language stating that Public Service Commission approval must be obtained before any termination of service takes place. Also, Staff recommended that Section No. 13 be revised to delete the second paragraph, which seems to be an attempt by the City of Fairmont to hold the City of Mannington financially responsible for some portion of the total construction cost

associated with the proposed project, should the City of Mannington ever default on the Water Purchase Agreement. Finally, Staff recommended that the Legal Division address the reasonableness of cash deposits for defaults in payment, included in Section No. 16 of the Agreement.

The final recommendations of Commission Staff were as follows:

(1) The City of Fairmont be granted a certificate of convenience and necessity to construct certain additions and improvements to its existing water distribution system, at an estimated cost of $4,970,000, as described in the engineering plans and contract documents submitted with this filing.

(2) The Commission approve the project funding consisting of a Small Cities Block Grant in the amount of $1,025,000, a West Virginia Infrastructure and Jobs Development Council grant in the amount of $1,195,000 and a Drinking Water Treatment Revolving Fund loan in the amount of $2,750,000, at an interest rate of 0% for thirty (30) years and an annual administrative fee of 1.0%.

(3) If there is any change in the plans and/or scope of the project or in the event that a change in financing affects rates, the City of Fairmont be required to request that the certificate case be reopened by the Commission for potential adjustments and approval.

(4) Should there be a change in project costs that does not affect rates, the City need not seek reopening and approval. However, in such an event, the City of Fairmont should be required to file with the Public Service Commission an affidavit signed by its Certified Public Accountant, verifying that rates are not affected.

(5) The City be required to provide a copy of the engineer's certified tabulation of bids, within ten days of the bid opening date, for each construction contract or vendor bid contract to be awarded for this project.

(6) The City of Fairmont be required to notify the Public Service Commission when its Engineer has performed the substantial completion inspection.

(7) The City of Fairmont be required to adopt the Staff-recommended tariff language in its next rate ordinance adoption proceeding, which will bring its tariff language into compliance with the Public Service Commission's updated Tariff Rules.

(8) The proposed Water Purchase Agreement be approved, contingent upon revision of the agreement in conformance with Staff's specific concerns set forth above and on Pages No. 3 and 4 of the Final Internal Memorandum.

In her Final Joint Staff Memorandum, Staff Attorney Freeman advised that she supported the recommendations submitted by Technical Staff. She recommended approval of the certificate of

convenience and necessity. She also recommended that the proposed Water Purchase Agreement be approved, contingent upon revision and resubmission of Section No. 12 and 13, as recommended by Technical Staff. As to the issue regarding Section 16 of the proposed Water Purchase Agreement, Staff Attorney Freeman recommended that Section No. 16 be removed or stricken, since such a deposit would be unduly burdensome on the ratepayers of the City of Mannington. She added that it is not common practice for a utility to charge a resale customer such a deposit.

On January 18, 2007, Staff Attorney Freeman filed a Further Final Joint Staff Memorandum, along with certain attachments, which were inadvertently omitted from the Final Joint Staff Memorandum, filed on January 16, 2007.

On January 26, 2007, the City of Fairmont filed the Response of City of Fairmont to Final Joint Staff Memorandum Dated January 16, 2007. Therein, the City of Fairmont advised that it did not agree with the recommendation of Commission Staff that Section No. 16 of the Water Purchase Agreement be deleted or removed. The City of Fairmont noted that the same language contained within Section No. 16 of the Agreement had been approved by the Public Service Commission on three prior occasions involving water purchase agreements and the City of Fairmont's resale customers. The City specifically identified three cases in which the same water purchase agreement language had been approved. The City of Fairmont also stated that it did not agree with Staff's recommendation that the second paragraph of Section No. 13 of the Water Purchase Agreement be deleted or removed. The City of Fairmont noted that, while it does not dispute Technical Staff's assertion that the City of Fairmont's resale rate of $1.93 per thousand gallons was established in light of the costs associated with this project, Fairmont contends that, when the resale rate was determined, income generated from the project was also anticipated. Fairmont added that, "If Mannington were to default under the terms of the agreement and purchase water from another source, the City of Fairmont would lose the income that would have been generated from the sale of water to Mannington. The loss of income resulting from the breach would not relieve the City of Fairmont of its obligation to service the approximate $2,750,000 debt it will incur as a result of undertaking the project. The portion of Item No. 13 which PSC Staff finds objectionable was designed to provide some method of repaying the City of Fairmont and alleviating the need for a rate increase in the event of Mannington's default." The City of Fairmont proposed an alternative modification to Section No. 13 of the Agreement which would "provide for repayment so long as the debt to be incurred by the City of Fairmont remains outstanding." Finally, the City of Fairmont advised that it disagreed with Staff's recommendation that Section No. 12 of the Agreement be modified. The City of Fairmont stated that "termination and default are not synonymous terms and the Commission is without the jurisdiction to award the City of Fairmont monetary damages in the event of Mannington's default."

On February 13, 2007, Staff Attorney Freeman filed a Second Further Final Joint Staff Memorandum. She advised that the City's counsel and Staff have agreed to an addendum to the Water Purchase Agreement. The addendum will state that Fairmont will contact the Commission for permission to implement any redress sought in Paragraphs 12, 13 or 16 before it attempts to implement any redress contained in the above stated paragraphs. The Staff Attorney recommended that Fairmont file a copy of this addendum with the Commission.

DISCUSSION

Commission Staff has recommended that the City of Fairmont's application for a certificate of convenience and necessity to construct the proposed extension of its existing water distribution system, along U.S. Route 250 from its Cleveland Avenue water tank to the City of Mannington, be granted. The record does not contain any objection to that Staff recommendation from the City of Fairmont. However, the record does contain objections from the City of Fairmont to Staff's recommendation of specific revisions or modifications to the Water Purchase Agreement filed as a part of the certificate application case by the City of Fairmont. While Commission Staff recommended approval of the certificate application "without specifically approving the terms of the Water Purchase Agreement", Staff recommended specific modifications of the proposed Agreement. After the City of Fairmont objected to Staff's recommended modifications to the Water Purchase Agreement, it appears that Commission Staff and the City of Fairmont resolved their differences. Staff advised in its Second Further Final Joint Staff Memorandum that the City of Fairmont and the City of Mannington have agreed to the terms of an addendum to the Water Purchase Agreement, which addresses Staff's concerns. Staff recommended that the City of Fairmont file a copy of the addendum with Commission Staff. Since Staff's recommendation was that the certificate application be granted, without specifically approving the terms of the Water Purchase Agreement, the certificate application and the proposed financing for the project will be approved, contingent upon the filing of the addendum by the City of Fairmont.

The record in this case reflects that the Notice of Filing was properly published by the City of Fairmont, as directed in the Commission's October 17, 2006 order. The Notice of Filing provided that public protests or requests for intervention regarding the City of Fairmont's certificate application be filed with the Public Service Commission within thirty (30) days of the date of publication of the Notice of Filing. The City of Fairmont later filed an affidavit of publication from the *Times West Virginian,* which established that publication of the Notice of Filing took place on October 28, 2006. The record reflects that no public protests or requests to intervene were filed in this matter during the 30-day public protest period. Furthermore, the City of Fairmont has substantially complied with Rule 10.3.d. of the Public Service Commission's Rules of Practice and Procedure, which requires that the utility separately mail Form No. 14 to each of its resale customers, via certified mail, return receipt requested. Therefore, it is reasonable to conclude that there has been no objection from the public to the issuance of a certificate of convenience and necessity for construction of the project described herein. Finally, since Staff, the City of Fairmont and the City of Mannington have resolved their differences regarding the Water Purchase Agreement, the Agreement should be approved by the Commission, without specifically approving the terms thereof.

FINDINGS OF FACT

1. On October 17, 2006, the City of Fairmont filed an application for a certificate of convenience and necessity to construct an extension of its existing water distribution system along

U.S. Route 250, from the City of Fairmont's existing Cleveland Avenue main water line to the City of Mannington's 632,000-gallon water storage tank. The proposed project included construction of approximately 70,748 linear feet of 12-inch and 16-inch diameter water line, installation of a 1,000-gpm deluxe water booster pump station with booster chlorination, installation of a master meter system and installation of a SCADA system for automated operation, together with related appurtenances and appliances. (See, October 17, 2006 filing).

2. The City of Fairmont mailed a copy of the Notice of Filing for the proposed project to each of its nine resale customers, via United States Certified Mail, Return Receipt Requested, in compliance with Rule 10.3.d. of the Public Service Commission's *Rules of Practice and Procedure.* (See, November 13, 2006 filing).

3. The City of Fairmont published the Notice of Filing regarding this certificate application in the *Times West Virginian*, a daily newspaper published at Fairmont, Marion County, West Virginia, on October 28, 2006. (See, December 6, 2006 filing).

4. A copy of each of the United States Certified Mail Domestic Return Receipt cards, addressed to each of the City of Fairmont's nine resale customers was filed by the City of Fairmont with the Public Service Commission. (See, November 13, 2006 filing).

5. The thirty-day public protest period set forth in the Notice of Filing ended on or about November 27, 2006. No protests to the City of Fairmont's certificate application were received by the Public Service Commission during the thirty (30) day public protest period, or as of the date of this Order. (See, case file generally).

6. The purpose of the project is to connect Fairmont's water system to the City of Mannington. The City of Mannington's water treatment plant, which serves 1,000 customers, has become antiquated and is in need of extensive upgrades and rehabilitation. Mannington also experiences water supply shortages during dry weather. The West Virginia Infrastructure and Jobs Development Council has determined that it is more feasible for Mannington to purchase water from Fairmont than to reconstruct or rehabilitate its existing plant. (See, Application filed October 17, 2006, and attached exhibits; Final Joint Staff Memorandum and attachments filed January 16, 2007).

7. The total estimated project cost is $4,970,000, and will be funded by a Small Cities Block Grant in the amount of $1,025,000, a grant from the West Virginia Infrastructure and Jobs Development Council in the amount of $1,195,000 , and a Drinking Water Treatment Revolving Fund loan in the amount of $2,750,000, at an annual interest rate of 0%, for 30 years, and a 1% annual administrative fee. Letters of commitment for the grants and the loan were filed with the Public Service Commission. (See, Final Joint Staff Memorandum filed January 16, 2007).

8. The City of Fairmont water treatment facility has adequate capacity to provide the water required by the City of Mannington. (See, Final Joint Staff Memorandum filed January 16, 2007).

9. Resale revenue from the sale of water to the City of Mannington is projected to be $208,054 annually. (See, Final Joint Staff Memorandum filed January 16, 2007).

10. Operation and maintenance expenses are expected to increase by $59,042 as a result of this project. (See, Final Joint Staff Memorandum filed January 16, 2007).

11. Total debt service and reserve requirements are projected to increase $121,956 per year as a result of this project. (See, Final Joint Staff Memorandum filed January 16, 2007).

12. Based upon information supplied to the Public Service Commission by the City of Fairmont, the current resale rate for the City of Fairmont of $1.93 per thousand gallons, which became effective for all service rendered on and after July 22, 2006, is sufficient to support the project. (See, Final Joint Staff Memorandum filed January 16, 2007).

13. Fairmont's existing rates will provide a cash flow surplus of $279,597 and a debt service coverage of 115%. (See, Final Joint Staff Memorandum filed January 16, 2007).

CONCLUSIONS OF LAW

1. It is reasonable to grant the City of Fairmont's request for a waiver of the requirement that it comply with certificate application pre-filing requirements, since the proposed project was reviewed and approved by the West Virginia Infrastructure and Jobs Development Council on January 17, 2006, and again on March 1, 2006.

2. The public convenience and necessity require the specific extension, as well as the associated upgrades, improvements and appurtenances proposed by the City of Fairmont to its existing water distribution system, in order to provide adequate supplies of potable water to the City of Mannington.

3. It is reasonable to approve the proposed financing for the project, consisting of a Small Cities Block Grant in the amount of $1,025,000, a West Virginia Infrastructure and Jobs Development Council grant in the amount of $1,195,000 and a Drinking Water Treatment Revolving Fund loan of $2,750,000, with an annual interest rate of 0%, for 30 years and an annual administrative fee of 1.0%.

4. It is reasonable to grant Commission consent and approval for the City of Fairmont to enter into the Water Purchase Agreement filed herein, contingent upon the City of Fairmont filing an addendum thereto, reflecting that the City of Fairmont will contact the Public Service Commission for permission to implement any redress sought in Section Nos. 12, 13 or 16, before attempting to implement any redress sought in Section Nos. 12, 13 or 16.

ORDER

IT IS, THEREFORE, ORDERED that the application filed by the City of Fairmont, on October 17, 2006, for a certificate of convenience and necessity to construct an extension of its existing water distribution system, along U.S. Route 250, from the City of Fairmont's existing Cleveland Avenue main water line to the City of Mannington's 632,000 water storage tank, together with necessary upgrades, improvements and appurtenances, be, and hereby is, granted.

IT IS FURTHER ORDERED that the financing for the project, consisting of a Small Cities Block Grant in the amount of $1,025,000, a West Virginia Infrastructure and Jobs Development Council grant in the amount of $1,195,000, and a Drinking Water Treatment Revolving Fund loan in the amount of $2,750,000, at an annual interest rate of 0% for a term of thirty (30) years and an annual administrative fee of 1.0%, be, and hereby is, approved.

IT IS FURTHER ORDERED that the City of Fairmont's request for a waiver of the certificate application pre-filing requirements for certificate application cases be, and hereby is, granted.

IT IS FURTHER ORDERED that the Water Purchase Agreement dated September 6, 2005, as amended on January 17, 2006, between the City of Fairmont and the City of Mannington, be, and it hereby is, approved, without specifically approving the terms and conditions thereof, conditioned, however, upon the filing of an Addendum to that Agreement, as described in the Second Further Final Joint Staff Memorandum filed herein on February 13, 2007. Said Addendum shall be filed within thirty (30) days of the date that this decision becomes final.

IT IS FURTHER ORDERED that the City of Fairmont submit a certificate of substantial completion for this water distribution system extension project from its professional 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 each construction contract or vendor bid contract awarded for this project, within ten (10) days of the bid opening date.

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

IT IS FURTHER ORDERED that, if there is a change in project cost that does not affect rates, the City of Fairmont is not required to obtain Commission approval of such change. However, the City of Fairmont shall, in such case, file an affidavit with the Commission, duly executed by its Certified Public Accountant, verifying that rates 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 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 Recommended Decision 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 Recommended Decision 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 Recommended Decision 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 Recommended Decision by filing an appropriate petition, in writing, with the Commission's Executive Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make an Administrative Law Judge's Recommended Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Public Service Commission.

Cecelia Gail Jarrell

Cecelia Gail Jarrell
Administrative Law Judge

CGJ:s
061576a.wpd

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince
Hurricane
Dwight Calhoun
Petersburg
Dave McComas
Pritchard
Tim 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 10/6/05

October 5, 2005

David Sago, Utility Manager
City of Fairmont
P.O. Box 1428
Fairmont, West Virginia 26525

Re: City of Fairmont
Water Project 2005W-873

Dear Mr. Sago:

Based on the findings of the Water 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 District should carefully review the enclosed comments of the Water Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

The West Virginia Infrastructure and Jobs Development Council, at its October 5, 2005 meeting, voted that the City of Fairmont (the "City") should utilize a $1,025,000 Small Cities Block Grant, a $400,000 Drinking Water Treatment Revolving Fund loan, a $1,025,000 Rural Utilities Service loan, a $1,725,000 Drinking Water Treatment Revolving Fund loan and be offered a binding commitment for an Infrastructure Fund grant of $795,000 to finance this $4,970,000 project. This project is to provide the Mannington Public Service District with potable water supply.

In order to receive the proposed binding commitment the City must adhere to a certain project schedule. Please contact Katy Mallory at 558-4607 by **November 30, 2005** to establish the necessary schedule and finalize the proposed binding commitment.

Sincerely,

Mark Prince

Enclosure
cc: Pat Taylor, BPH
Steve Collins, RUS
Debbie Legg, WVDO
Region VI Planning & Development Council
Greenhorne & O'Mara, Inc.
Mannington PSD
Marion County Commission
Randy Watson, Thrasher Engineering

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince
Hurricane
Dwight Calhoun
Petersburg
Tim Stranko
Morgantown
Dave McComas
Prichard

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

Jefferson E. Brady, PE
Executive Director

Jefferson.Brady@verizon.net

Received 3/6/06

March 1, 2006

David Sago, Utility Manager
City of Fairmont
P.O. Box 1428
Fairmont, West Virginia 26525

Re: City of Fairmont
City of Mannington Water Project 2005W-873

Dear Mr. Sago:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Fairmont's (the "City") revised preliminary application regarding its proposed project to provide the City of Mannington with potable water (the "Project").

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

Upon consideration of revised preliminary application, the Infrastructure Council recommends that the City utilize a $1,025,000 Small Cities Block Grant, a $1,195,000 Infrastructure Fund grant, a $1,725,000 Drinking Water Treatment Revolving Fund loan and a $1,025,000 Drinking Water Treatment Revolving Fund loan or Rural Utilities Service loan to fund this $4,970,000 project.

Please find attached a revised Schedule A reflecting the Infrastructure Council's revised recommendation with regard to the other funding sources. All terms and conditions previously submitted in the Binding Commitment letter dated June 17, 2006 remain the same.

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

Sincerely,

Mark Prince

Attachment
Enclosure
cc: Pat Taylor, BPH (w/o enclosure)
Tracey Rowan, SCBG (w/o enclosure)
Region VI Planning & Development Council
Greenhorne & O'Mara, Inc.

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

City of Fairmont
Water Project 2005W-873
January 17, 2006

SCHEDULE A

A. Approximate Amount: $1,195,000 Grant

B. Grant: $1,195,000

1. Grant Advancement Date(s): Monthly, upon receipt of proper requisition and after complete advancement of all Loan funding to the extent practical.

2. Special Conditions: None

NOTICE: The terms set forth above are subject to change following the receipt of construction bids.

C. Other Funding:

SCBG	$1,025,000
DWTRF loan / RUS loan	$1,025,000
DWTRF loan	$1,725,000

$1,025,000 + $1,025,000 = $2,050,000

D. Total Project Cost: $4,970,000

Received 1/26/06

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince
Hurricane
Dwight Calhoun
Petersburg
Tim Stranko
Morgantown
Dave McComas
Prichard

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

Jefferson E. Brady, PE
Executive Director

Jefferson.Brady@verizon.net

January 17, 2006

The Honorable Nick Fantasia
Mayor, City of Fairmont
P.O. Box 1428
Fairmont, West Virginia 26525

Re: Binding Commitment Letter
City of Fairmont Water Project
Project 2005W-873

Dear Mayor Fantasia:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") provides this binding offer of an Infrastructure Fund grant of approximately $1,195,000 (the "Grant") to the City of Fairmont (the "City") for above referenced water project to serve the City of Mannington. (Project). The Infrastructure Council has determined the Project to be technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The Grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final Grant amount will be established after the City has received acceptable bids for the Project. The Infrastructure Council will set aside a portion of the Infrastructure Fund to make the Grant upon the City's compliance with the program requirements. The Grant agreement will be between the City and the West Virginia Water Development Authority (Authority), acting on behalf of the Infrastructure Council.

This commitment is contingent upon the Project meeting the following schedule:

a. Submit Plans and Specifications to the Bureau for Public Health by June 1, 2006
b. File Certificate Case with the Public Service Commission no later than September 1, 2006
c. Advertise for bids no later than November 15, 2006
(The City must receive authority from the Infrastructure Council before bidding the project.)

The Infrastructure Council reserves the right to withdraw this Grant commitment if any of the above schedule dates are not met. The Infrastructure Council may, when justifiable circumstances occur, offer to modify the schedule. Any decision to modify the schedule is at the sole discretion of the Infrastructure Council.

If the City becomes aware that it will not meet one or more of the above schedule dates, the City should immediately notify the Infrastructure Council of this fact and the circumstances which have caused or will cause the City to be unable to meet the schedule. In addition, please immediately notify the Infrastructure Council if any of the other dates on the attached schedule have or will not be met.

The Authority will enter into Grant agreement with the City following receipt of the completed Schedule B, a final, nonappealable order from the Public Service Commission authorizing construction of the Project, evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; and any other documents requested by the Infrastructure Council.

No statements or representations made before or after the issuance of this contingent commitment by any person, member of the Infrastructure Council, or agent or employee of the Authority shall be construed as approval to alter or amend this commitment, as all such amendments or alterations shall only be made in writing after approval of the Infrastructure Council.

If the City has any questions regarding this commitment, please contact Jeff Brady at the above-referenced telephone number.

Sincerely,

Mark Prince

MP/km
Attachments
cc: Pat Taylor, BPH
Steve Collins, RUS
Tracey Rowan, WVDO
Greenhorne & O'Mara, Inc.
John Stump, Steptoe & Johnson
Gary Bennett, CPA
David Sago, City of Fairmont
Kevin V. Sansalone

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and immediately return to the Infrastructure Council.

City of Fairmont

By: _____

Its: City Manager

Date: 1/26/06

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

City of Fairmont
Water Project 2005W-873
January 17, 2006

SCHEDULE A

A. Approximate Amount: $1,195,000 Grant

B. Grant: $1,195,000

1. Grant Advancement Date(s): Monthly, upon receipt of proper requisition and after complete advancement of all Loan funding to the extent practical.

2. Special Conditions: None

NOTICE: The terms set forth above are subject to change following the receipt of construction bids.

C. Other Funding:

SCBG	$1,025,000
RUS loan	$1,025,000
DWTRF loan	$1,725,000

D. Total Project Cost: $4,970,000

Project Schedule

Project: City of Fairmont
County: Marion
Project #: 2005W-873

Funding:

IJDC grant	$1,195,000
RUS loan	1,025,000
DWTRF loan	1,725,000
SCBG	1,025,000
Total	$4,970,000

Action	Responsible Party	Start	Completion
Engineering Agreement (E/A)	City / G&O		Complete
Prepare & Submit Plans & Specs to BPH	G&O	mapping complete	June 1, 2006
Plans & Specs. Review & Approval	BPH	June 1, 2006	August 1, 2006
Prepare & Submit all Permit Applications - DOH	G&O	June 1, 2006	July 1, 2006
Prepare Rule 42 [no rate increase]	Dave Shriver & City		August 1, 2006
Mannington Rate Ordinance 45-60 day process	Gary Bennett / Attorney	June / July 2006	August / September 2006
File Certificate Case with PSC (6 months)	Kevin Sanslone	August 1, 2006	September 1, 2006
Review & Approve PSC Certificate	PSC	September 1, 2006	February 1, 2007
Rights-of-way, Easements & Land Acquisition	Kevin Sanslone	on or before June 1, 2006	October 1, 2006
Authority to Advertise	RUS / DWTRF / IJDC		November 1, 2006
Advertise for Bids (30 days)	City / G&O		November 15, 2006
Bid Opening (90 days)	City / G&O		December 15, 2006
Loan Closing	City / S&J		March 15, 2007
Start Construction ~ 2 contracts (9 months)	Contractors	April 1, 2007	Spring 2008

BPH - Bureau of Public Health
City - City of Fairmont
DWTRF - Drinking Water Treatment Revolving Fund
G & O - Greenhorne & O'Mara
IJDC - Infrastructure Council
PSC - Public Service Commission
RUS - Rural Utilities Service
S & J - Steptoe & Johnson

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH
OFFICE OF ENVIRONMENTAL HEALTH SERVICES

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 14, 2006

The Honorable Nick L. Fantasia
Mayor, City of Fairmont
200 Jackson Street/P.O. Box 1428
P.O. Box 691
Fairmont, WV 25507-0691

RE: Binding Commitment Letter
City of Fairmont
Project No. 2005W-873
DWTRF # Pending
Marion County

Dear Mayor Fantasia:

The Bureau for Public Health (Bureau) provides this binding offer of a loan of approximately $2,750,000 for the City of Fairmont's proposed project to construct a 12 and 16-inch water line and a 1000 GPM booster pump station with booster chlorination to provide water to the City of Mannington.

The loan will be subject to the terms set forth on Schedule "A" attached hereto and incorporated herein by reference. The final loan amount will be established after the City of Fairmont has received bids for the project. The loan agreement will be between the City of Fairmont and West Virginia Water Development Authority (Authority), who is the administrator of the DWTRF, acting on behalf of the Bureau.

This loan commitment is also contingent upon the City of Fairmont meeting the following:

a. A Capacity Development Assessment, performed by staff of the Bureau, on the City's water department with a recommendation to proceed.

b. Submit plans and specifications for the project to the Bureau by June 1, 2006.

c. Submit all documentation necessary for a formal Certificate of Convenience and Necessity to the Public Service Commission by September 1, 2006.

Capitol and Washington Streets
1 Davis Square, Suite 200
Charleston, West Virginia 25301-1798
Telephone: 304-558-2981

If the City of Fairmont becomes aware that it will not comply, they should immediately notify the Bureau of this fact and the circumstances which have caused this non-compliance. If you have any questions regarding this loan commitment, please contact me at 304-558-6749.

Very truly yours,

Patrick A. Taylor, P.E., Manager
Infrastructure & Capacity Development
Environmental Engineering Division

PAT:bms

Enclosures

pc: Gary Fazalare, P.E., Greenhorne & Omara, Inc.
David Sago, City of Fairmont
Daniel "Bernie" Yonkosky, WDA
Samme L. Gee, Esquire, Jackson & Kelly
John Stump, Steptoe & Johnson
Tracey Rowan, WVDO
Jefferson Brady, P.E., IJDC
Walter M. Ivey, P.E.
OEHS Philippi District Office

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and immediately return to the Bureau for Public Health, Capitol and Washington Streets, 1 Davis Square, Suite 200, Charleston, WV 25301-1798.

City of Fairmont

By: _____

Title: City Manager

Date: 3/24/06

WEST VIRGINIA BUREAU FOR PUBLIC HEALTH

Drinking Water Treatment Revolving Fund
Binding Commitment

SCHEDULE A

March 14, 2006

A. Project

City of Fairmont
City of Mannington Water Line Project
Marion County
IJDC No.: 2005W-873
DWTRF No.: Pending

B. Drinking Water Treatment Revolving Fund:

Loan (Approximate Amount):	$2,750,000
Terms:	0% + 1% administrative fee
Maturity Date:	30 years
Special Conditions (if any):	None

C. Other Funding Sources:

IJDC Grant	-	$1,195,000
SCBG	-	$1,025,000

D. Total Project Cost: - $ 4,970,000

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On the 26th day of June, 2008, 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 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer, in the principal amount of $2,750,000, numbered AR-1 (the "Bonds"), issued as a single, fully registered Bond, and dated June 26, 2008.

2. At the time of such receipt, all the 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 Bonds, of the sum of $91,668, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced by the Authority and the West Virginia Bureau for Public Health 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: Barbara B Meadows
Its: Authorized Representative

CITY OF FAIRMONT

By: J. Scott Lee
Its: Mayor

06.10.08
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith on this 26th day of June, 2008:

(1) Bond No. AR-1, constituting the entire original issue of the City of Fairmont Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), in the principal amount of $2,750,000, dated June 26, 2008 (the "Bonds"), executed by the Mayor, the City Manager and 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 22, 2008, and a Supplemental Resolution duly adopted by the Issuer on June 24, 2008 (collectively, the "Bond Legislation");

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

(3) Executed counterparts of a loan agreement for the Bonds, dated June 26, 2008, by and between the Issuer and the West Virginia Water Development Authority, on behalf of the West Virginia Bureau for Public Health (the "Loan Agreement"); and

(4) 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 $91,668, 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.

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Dated as of the day and year first written above.

CITY OF FAIRMONT

By: _____
Its: Mayor

06.10.08
268460.00009

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
WATER REVENUE BONDS, SERIES 2008 A
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1 $2,750,000

KNOW ALL MEN BY THESE PRESENTS: That on this 26th day of June, 2008, 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 TWO MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS ($2,750,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including September 1, 2039, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This bond shall not bear interest. The Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing December 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").

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority on behalf of the BPH, dated June 26, 2008.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Issuer (the "Project"); (ii) to fully fund the Series 2008 A Bonds Reserve Account; and (iii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, 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 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on April 22, 2008, and a Supplemental Resolution duly adopted by the Issuer on June 24, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $10,260,000 (THE "SERIES 1997 BONDS"); (2) WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,600,000 (THE "SERIES 1998 BONDS"); AND (3) WATER REVENUE BONDS, SERIES 1999, DATED JANUARY 1, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $19,945,000 (THE "SERIES 1999 BONDS"). THE SERIES 1997 BONDS, THE SERIES 1998 BONDS AND THE SERIES 1999 BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2008 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay 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 Gross Revenues, the monies in the Series 2008 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 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 subordinate to, the Bonds, including the Prior Bonds and to provide for the reasonable expenses of operation, repair and maintenance of the System, and; provided however, that so long as there exists in the Series 2008 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 subordinate 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 (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such 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 in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross 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.

[Remainder of Page Intentionally 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 first written above.

[SEAL]

Mayor

SPECIMEN

City Manager

ATTEST:

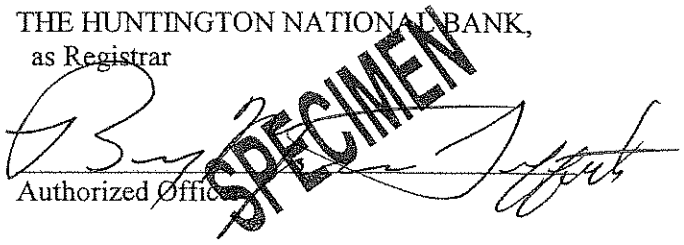
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2008 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: June 26, 2008.

THE HUNTINGTON NATIONAL BANK,
as Registrar



Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	Amount	Date		Amount	Date
(1)	$91,668	June 26, 2008	(11)		
(2)			(12)		
(3)			(13)		
(4)			(14)		
(5)			(15)		
(6)			(16)		
(7)			(17)		
(8)			(18)		
(9)			(19)		
(10)			(20)		

TOTAL: $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

$2,750,000
City of Fairmont
30 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: June 26, 2008

Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	-	-	-
12/01/2009	22,917.00	-	22,917.00
03/01/2010	22,917.00	-	22,917.00
06/01/2010	22,917.00	-	22,917.00
09/01/2010	22,917.00	-	22,917.00
12/01/2010	22,917.00	-	22,917.00
03/01/2011	22,917.00	-	22,917.00
06/01/2011	22,917.00	-	22,917.00
09/01/2011	22,917.00	-	22,917.00
12/01/2011	22,917.00	-	22,917.00
03/01/2012	22,917.00	-	22,917.00
06/01/2012	22,917.00	-	22,917.00
09/01/2012	22,917.00	-	22,917.00
12/01/2012	22,917.00	-	22,917.00
03/01/2013	22,917.00	-	22,917.00
06/01/2013	22,917.00	-	22,917.00
09/01/2013	22,917.00	-	22,917.00
12/01/2013	22,917.00	-	22,917.00
03/01/2014	22,917.00	-	22,917.00
06/01/2014	22,917.00	-	22,917.00
09/01/2014	22,917.00	-	22,917.00
12/01/2014	22,917.00	-	22,917.00
03/01/2015	22,917.00	-	22,917.00
06/01/2015	22,917.00	-	22,917.00
09/01/2015	22,917.00	-	22,917.00
12/01/2015	22,917.00	-	22,917.00
03/01/2016	22,917.00	-	22,917.00
06/01/2016	22,917.00	-	22,917.00
09/01/2016	22,917.00	-	22,917.00
12/01/2016	22,917.00	-	22,917.00
03/01/2017	22,917.00	-	22,917.00
06/01/2017	22,917.00	-	22,917.00
09/01/2017	22,917.00	-	22,917.00
12/01/2017	22,917.00	-	22,917.00
03/01/2018	22,917.00	-	22,917.00
06/01/2018	22,917.00	-	22,917.00
09/01/2018	22,917.00	-	22,917.00
12/01/2018	22,917.00	-	22,917.00
03/01/2019	22,917.00	-	22,917.00
06/01/2019	22,917.00	-	22,917.00

$2,750,000
City of Fairmont
30 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: June 26, 2008

Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2019	22,917.00	-	22,917.00
12/01/2019	22,917.00	-	22,917.00
03/01/2020	22,917.00	-	22,917.00
06/01/2020	22,917.00	-	22,917.00
09/01/2020	22,917.00	-	22,917.00
12/01/2020	22,917.00	-	22,917.00
03/01/2021	22,917.00	-	22,917.00
06/01/2021	22,917.00	-	22,917.00
09/01/2021	22,917.00	-	22,917.00
12/01/2021	22,917.00	-	22,917.00
03/01/2022	22,917.00	-	22,917.00
06/01/2022	22,917.00	-	22,917.00
09/01/2022	22,917.00	-	22,917.00
12/01/2022	22,917.00	-	22,917.00
03/01/2023	22,917.00	-	22,917.00
06/01/2023	22,917.00	-	22,917.00
09/01/2023	22,917.00	-	22,917.00
12/01/2023	22,917.00	-	22,917.00
03/01/2024	22,917.00	-	22,917.00
06/01/2024	22,917.00	-	22,917.00
09/01/2024	22,917.00	-	22,917.00
12/01/2024	22,917.00	-	22,917.00
03/01/2025	22,917.00	-	22,917.00
06/01/2025	22,917.00	-	22,917.00
09/01/2025	22,917.00	-	22,917.00
12/01/2025	22,917.00	-	22,917.00
03/01/2026	22,917.00	-	22,917.00
06/01/2026	22,917.00	-	22,917.00
09/01/2026	22,917.00	-	22,917.00
12/01/2026	22,917.00	-	22,917.00
03/01/2027	22,917.00	-	22,917.00
06/01/2027	22,917.00	-	22,917.00
09/01/2027	22,917.00	-	22,917.00
12/01/2027	22,917.00	-	22,917.00
03/01/2028	22,917.00	-	22,917.00
06/01/2028	22,917.00	-	22,917.00
09/01/2028	22,917.00	-	22,917.00
12/01/2028	22,917.00	-	22,917.00
03/01/2029	22,917.00	-	22,917.00
06/01/2029	22,917.00	-	22,917.00
09/01/2029	22,917.00	-	22,917.00
12/01/2029	22,916.00	-	22,916.00
03/01/2030	22,916.00	-	22,916.00
06/01/2030	22,916.00	-	22,916.00

$2,750,000
City of Fairmont
30 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: June 26, 2008

Debt Service Schedule

Date	Principal	Coupon	Total P+I
09/01/2030	22,916.00	-	22,916.00
12/01/2030	22,916.00	-	22,916.00
03/01/2031	22,916.00	-	22,916.00
06/01/2031	22,916.00	-	22,916.00
09/01/2031	22,916.00	-	22,916.00
12/01/2031	22,916.00	-	22,916.00
03/01/2032	22,916.00	-	22,916.00
06/01/2032	22,916.00	-	22,916.00
09/01/2032	22,916.00	-	22,916.00
12/01/2032	22,916.00	-	22,916.00
03/01/2033	22,916.00	-	22,916.00
06/01/2033	22,916.00	-	22,916.00
09/01/2033	22,916.00	-	22,916.00
12/01/2033	22,916.00	-	22,916.00
03/01/2034	22,916.00	-	22,916.00
06/01/2034	22,916.00	-	22,916.00
09/01/2034	22,916.00	-	22,916.00
12/01/2034	22,916.00	-	22,916.00
03/01/2035	22,916.00	-	22,916.00
06/01/2035	22,916.00	-	22,916.00
09/01/2035	22,916.00	-	22,916.00
12/01/2035	22,916.00	-	22,916.00
03/01/2036	22,916.00	-	22,916.00
06/01/2036	22,916.00	-	22,916.00
09/01/2036	22,916.00	-	22,916.00
12/01/2036	22,916.00	-	22,916.00
03/01/2037	22,916.00	-	22,916.00
06/01/2037	22,916.00	-	22,916.00
09/01/2037	22,916.00	-	22,916.00
12/01/2037	22,916.00	-	22,916.00
03/01/2038	22,916.00	-	22,916.00
06/01/2038	22,916.00	-	22,916.00
09/01/2038	22,916.00	-	22,916.00
12/01/2038	22,916.00	-	22,916.00
03/01/2039	22,916.00	-	22,916.00
06/01/2039	22,916.00	-	22,916.00
09/01/2039	22,916.00	-	22,916.00
Total	**$2,750,000.00**	-	**$2,750,000.00** *

*Plus $3,466.12 one-percent Administrative Fee paid quarterly. Total fee paid over life of loan is $415,934.40.

(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: _____, 20___.

_____

In the presence of:

_____

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

June 26, 2008

City of Fairmont
Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Bureau for Public Health
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 created and existing under the laws of the State of West Virginia, of its $2,750,000 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement dated June 26, 2008, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), 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, bearing no interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including September 1, 2039, 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 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 8, Article 19 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer; (ii) fully funding the Series 2008 A Bonds Reserve Account; and (iii) paying costs of issuance and related costs.

Clarksburg, WV • Charleston, WV • Morgantown, WV • Martinsburg, WV • Wheeling, WV
Huntington, WV • Columbus, OH

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We have also examined the applicable provisions of the Act and the Bond Ordinance duly enacted by the Issuer on April 22, 2008, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 24, 2008 (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 adopt 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 BPH and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Issuer without the written consent of the Authority and the BPH.

3. The Bond Legislation and all other necessary ordinances, orders 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 Gross Revenues of the System and secured by a first lien on and pledge of the Gross Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000; Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of $9,600,000; and Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of $19,945,000, all in accordance with the terms of the Bond and the Bond Legislation.

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

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

income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the 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 and the application of equitable remedies 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

06.10.08
268460.00009

CH4914220.1

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.fairmontwv.gov

June 26, 2008

City of Fairmont

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Bureau for Public Health
Charleston, West Virginia

Steptoe & Johnson PLLC
Charleston, 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 dated June 26, 2008, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), the Bond Ordinance duly enacted by the Issuer on April 22, 2008, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 24, 2008 (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, with full power and authority to acquire and construct the Project as set forth in the plans for the Project, excluding any relocation alternatives, as prepared by Greenhorne & O'Mara, Inc., the Project engineers, to operate and maintain its water works and to enact the Bond Legislation, all under applicable provisions of law, 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. 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 appears to be in full force and effect.

3. The Loan Agreement has been duly authorized and upon execution and delivery by the Issuer and, assuming due authorization, execution and delivery by the Authority, will constitute a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

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 water works are bound or any existing law, regulation, court order or consent decree to which the Issuer is subject.

5. The Issuer has received the recommended order of the Public Service Commission of West Virginia, dated February 27, 2007, which became final on March 19, 2007, in PSC WV Case Number 06-1576-W-CN, and which among other things, granted to the Issuer a certificate of convenience and necessity for the Project, and approved the financing for the Project. 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. The Issuer has or prior to commencing construction will have received all applicable 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 Bureau for Public Health, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia, and has taken the necessary action required for the imposition of rates and charges, including the enactment of an ordinance, being Ordinance No. 1390, on July 10, 2007. The time for appeal of said Ordinance has expired without any appeal and such rates are in effect.

7. 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 Revenues therefor.

8. 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 or prior to the commencement of construction will have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and all such bonds will have been verified for accuracy. In reliance upon the actions and representations of Greenhorn & O'Mara, Inc., consulting engineers for the project, I am of the opinion that such surety bonds and policies (1) will be in compliance with the contracts; (2) will be adequate in form, substance and amount to protect the various interests of the Issuer; (3) will be executed by duly authorized representatives of the proper parties; (4) will meet the requirements of the Bond Legislation and the Loan Agreement; and (5) all such documents will 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
200 Jackson Street
Fairmont, West Virginia 26555-1428
(304) 366-6211
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June 26, 2008

Robert W. DeCrease, PE
Manager
Infrastructure & Capacity Development
Environmental Engineering Division
1 Davis Square, Suite 200
Capitol & Washington Street
Charleston, WV 25301-1789

Jefferson E. Brady, PE
Executive Director
WV Infrastructure & Jobs Development Council
300 Summers Street, Suite 98
Charleston, WV 25301

Re: City of Fairmont Water Fund
Mannington Waterline Extension Project
IJDC Project 2005 W-873

Gentlemen:

Final Title Opinion

I am the attorney for the City of Fairmont Water Fund. The City of Fairmont Water Fund proposes to construct a distribution system extension consisting of approximately 70,748 linear feet of 12" and 16" diameter PVC pipe to be installed along U.S. Route 250 in Marion County, West Virginia from the City of Fairmont's existing 16" water main located along Cleveland Avenue to a connection point at or near the City of Mannington's existing 632,000 gallon water storage tank for purposes of supplying the City of Mannington with potable water for resale. In addition, as part of the water line extension, the City of Fairmont proposes to construct a 1000 GPM Water Booster Pump Station with chlorination booster system, and a SCADA system for automated operation. The extension will include all necessary meters, valves, controls, appliances and appurtenances.

I am providing this final title opinion for purposes of satisfying the applicable requirements of the State of West Virginia's Drinking Water Treatment Revolving Fund Program loan in an amount not to exceed $2,750,000.00 and for purposes of satisfying the applicable requirements of the West Virginia Infrastructure and Jobs Development Council grant in the amount of $1,195,000.00. 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 has the full power and authority to erect, establish, construct, acquire, improve, maintain and operate a waterworks system, pursuant to the provisions of West Virginia Code §8-12-5(32) and §8-19-1 and to undertake the water line extension as described in that certain final certificate of convenience and necessity issued by the Public Service Commission of West Virginia on February 27, 2007, in PSC WV Case No. 06-1576-W-CN, to which certificate reference is hereby made for all pertinent purposes.

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

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 construction of the extension as set forth in the plans for the project, excluding any and all relocation alternatives, which plans were prepared by Greenhorne & O'Mara, Inc., the consulting engineers.

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 extension is located and, except as set out in Paragraph 6 below, in my opinion, the City of Fairmont has acquired legal title or such other estate or interest in 100% of the necessary easements or rights of way sufficient to assure undisturbed use and possession and for the purpose of construction, operation and maintenance for the estimated life of the aforementioned extension to be constructed.

5. That I have further examined the records maintained in the Office of the Clerk of the County Commission of Marion County, West Virginia, the county in which the extension is located and, except as set out in Paragraph 6 below, in my opinion, the City of Fairmont has acquired legal title or such other estate or interest in 100% of the necessary parcels of real estate required to assure undisturbed use and possession and for the purpose of construction, operation and maintenance for the estimated life of the aforementioned extension to be constructed.

6. That the City of Fairmont is vested with and has exercised the right of eminent domain to acquire a right of entry order from the Circuit Court of Marion County, West Virginia, in and to the following described necessary sites and/or easements or rights of way which are required for the construction of the aforementioned extension and which were otherwise unavailable:

Name	Tax Map	Parcel	Civil Action #
Margherita Ruggiero	01-54	13	08-C-48
City National Bank of WV, et al.	01-30	14; 18	08-C-49
Mary Jane Riggi Pickstone, et al.	01-23	41.1	08-P-40
Any Interested Person	01-30	08	08-P-39

7. 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.

This final title opinion is expressly made subject to any errors as contained in the general indices of the records of the Office of the Clerk of the County Commission of Marion County, West Virginia; (ii) any matters which would be disclosed by an actual and accurate survey of the project sites; (iii) any defects or matters which would be disclosed by a physical inspection of said project sites; (iv) unfiled mechanics' liens against said sites; (v) rights of third parties in possession of said sites, if any, under unrecorded agreements; (vi) any questions of security interests or liens under the Uniform Commercial Code; (vii) any fraud or forgery in connection with any of the instruments in the chain of title; (viii) mental incompetence of any signatories; (ix) martial rights of spouses not revealed in the instrument; (x) any instrument executed by minors; (xi) lack of corporate capacity in the event that a corporation is in the chain of title (xii) whether there may be contamination by hazardous waste, toxic substances, or related material which is regulated by any local governmental authority, the State of West Virginia, or the United States of America or as listed in the U.S. Department of Transportation Hazardous

Materials Table (49 CFR 171.101), as amended from time to time; and (xiv) whether there exists or formerly existed any underground storage tank or tanks and related pipes, fittings and other equipment, upon, within, or beneath the surface of any of the sites, as regulated by the West Virginia Underground Storage Tank Act (W.Va. Code §22-17-1 et seq.), or any other governing statute, rule and regulations. Except as expressly provided above and notwithstanding anything provided above, these items are matters which would not generally be revealed by an examination of the records in the appropriate County Clerk's office.

No opinion is expressed as to the title of the coal, oil, gas or other minerals within and underlying said sites nor the effect of the same upon the surface thereof.

This final title opinion is provided solely to the entities and persons to whom it is addressed for purposes of the water line extension described herein. It shall not be relied upon or used by any other entity or person for any purpose whatsoever without my express written consent.

Very truly yours,

Kevin V. Sansalone
Attorney for the City of Fairmont

KVS/sf
CC: Jim Snider, City Manager
David Sago, Utility Director
Steve Cain, PE, Greenhorne & O'Mara
Richard Gaines, PE, Greenhoren & O'Mara
Sheena Hunt, Region Six

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF 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 ORDERS
16. SPECIMEN BOND
17. CONFLICT OF INTEREST
18. PROCUREMENT OF ENGINEERING SERVICES
19. SAFE DRINKING WATER ACT
20. GRANTS
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, on this 26th day of June, 2008, in connection with the Issuer's Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated the date hereof (the "Bonds" or the "Series 2008 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 22, 2008, and the Supplemental Resolution duly adopted June 24, 2008 (collectively, the "Bond Legislation").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Gross 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 Gross 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 rank on a parity with the Series 2008 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's (1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000 (the "Series 1997 Bonds"); (2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of $9,600,000 (the "Series 1998 Bonds"); and (3) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of $19,945,000 (the "Series 1999 Bonds"). The Series 1997 Bonds, the Series 1998 Bonds and the Series 1999 Bonds are hereinafter collectively called the "Prior Bonds."

The Series 2008 A Bonds shall be issued on a parity with the Series 1997 Bonds, Series 1998 and Series 1999 Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2008 A Bonds, the Issuer will obtain a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met. Other

than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

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 Order

Infrastructure and Jobs Development Council Approval

Charter and Rules of Procedure

Oaths of Office of Officers and Council Members

Water Rate Ordinance

Minutes on Adoption and Enactment of Rate Ordinance

Affidavit of Publication of Rate Ordinance and Notice of Public Hearing

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

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

Prior Bond Ordinances and Supplemental Resolution

Office of Environmental Health Services Permit

Evidence of Insurance

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "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	01/09/2007	01/13/2009
John J. Dahlia	Councilmember	01/01/2007	12/31/2010
Deborah D. Seifrit	Councilmember	01/01/2007	12/31/2010
William Burdick	Councilmember	11/06/2007	12/31/2008
Charles E. Warner, Jr.	Councilmember	01/01/2007	12/31/2010
Robin W. Smith	Councilmember	01/01/2007	12/31/2010
Matthew S. Delligatti	Councilmember	01/01/2007	12/31/2010
Burley Tennant	Councilmember	01/01/2007	12/31/2010
De'Andrea Bussey	Councilmember	01/01/2005	12/31/2008

The duly appointed and acting City Manager and City Clerk of the Issuer are James W. Snider and Janet Keller, respectively. The duly appointed and acting Counsel to the Issuer is Kevin Sansalone, Esquire.

7. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds. Counsel to the Issuer makes no representations regarding this paragaph.

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 Agreements is in full force and effect.

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

11. RATES: The Issuer has duly enacted a water rate ordinance on July 10, 2007 setting rates and charges for the services of the System. The time for appeal of such rate ordinance has expired without any appeal. 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 his or her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. BOND PROCEEDS: On the date hereof, the Issuer received $91,668 from the Authority and the BPH, 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. Counsel to the Issuer makes no representation regarding this paragraph.

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 22nd day of April, 2008, at 7:00 p.m., at the City Hall in 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 the Recommended Decision of the Public Service Commission of West Virginia entered on February 27, 2007, which became Final Order on March 19, 2007, in Case No. 06-1576-W-CN, among other things, granting to the Issuer a certificate of convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Final Order has expired prior to the date hereof without any appeal. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to such Order. The order remains in full force and effect.

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

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

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

19. SAFE DRINKING WATER ACT: The Project as described in the Bond Legislation complies with the Safe Drinking Water Act.

20. GRANTS: As of the date hereof the grant from the West Virginia Infrastructure and Jobs Development Council in the amount of $913,668, and the Small Cities Block Grant in the amount of $1,025,000 are committed and in full force and effect.

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 Left 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
	City Clerk
	Counsel to the Issuer

06.10.08
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF 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 26th day of June, 2008 as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing public waterworks facilities (the "System") of the City of Fairmont (the "Issuer"), to be constructed in Marion County, West Virginia, which acquisition and construction are being financed by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance enacted by the Issuer on April 22, 2008, as supplemented by the Supplemental Resolution adopted by the Issuer on June 24, 2008, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), dated June 26, 2008 (the "Loan Agreement").

2. The Bonds are being issued (i) to pay the costs of acquisition and construction of the Project; (ii) to fully fund the Series 2008 A Bonds Reserve Account; and (iii) to pay costs of issuance and related costs.

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 BPH and any change orders approved by the Issuer, the BPH and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least thirty-two (32) 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 Schedule B attached hereto as Exhibit A and the Issuer's counsel, 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 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 BPH 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 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 Bennett & Dobbins PLLC, the Issuer's certified public accountant, of even date herewith, as of the effective date thereof, the rates and charges for the System 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 BPH; 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 A. Cain, P.E.
West Virginia License No. 15264

06.10.08
268460.00009

EXHIBIT A

[Schedule B - Final Total Cost of Project,
Sources of Funds and Cost of Financing]

SCHEDULE B
CITY OF FAIRMONT

A. Cost or Project	TOTAL	SCBG	WVIJDC Grant	DWTRF (2nd Round)	DWTRF loan
1. Construction	$ 3,576,532.50	$ 29,032.50	$ 889,168.00	$ -	$ 2,658,332.00
Contract A	$ 979,707.00	$ -	$ 844,700.50	$ -	$ 135,006.50
Contract B	$ 2,523,325.50			$ -	$ 2,523,325.50
Contract C	$ 73,500.00	$ 29,032.50	$ 44,467.50	$ -	$ -
Construction Contingency (8%)	$ 286,285.50	$ 286,285.50			
2. Technical Services (G&O)					
Design	$ 345,500.00	$ 345,500.00			
Inspection	$ 175,000.00	$ 175,000.00			
3. Accounting (Gary Bennett)	$ 10,000.00	$ 10,000.00			
4. Legal (Sansalone & Sansalone)	$ 20,000.00	$ 20,000.00			
5. Administration (Region VI SCBG)	$ 50,000.00	$ 50,000.00			
6. Sites & Lands (R-O-W Acquisitions)	$ 38,000.00	$ 38,000.00			
7. Project Contingency	$ 71,182.00	$ 71,182.00	$ -		
8. TOTAL Lines 1 through 7	$ 4,572,500.00	$ 1,025,000.00	$ 889,168.00	$ -	$ 2,658,332.00
B. Cost of Financing					
9. Registrar Fee	$ 500.00	$ -	$ 500.00	$ -	$ -
10. Debt Service Reserve	$ 91,668.00			$ 91,668.00	$ -
11. Bond Counsel (Steptoe & Johnson)	$ 24,000.00	$ -	$ 24,000.00	$ -	$ -
12. Cost of Issuance (Line 9 through 11)	$ 116,168.00	$ -	$ 24,500.00	$ 91,668.00	$ -
13. TOTAL COST OF PROJECT (Line 8+Line 12)	$ 4,688,668.00	$ 1,025,000.00	$ 913,668.00	$ 91,668.00	$ 2,658,332.00
C. Sources of Funds					
14. Federal Grants	$ 1,025,000.00	$ 1,025,000.00	$ -		$ -
15. State Grants	$ 913,668.00		$ 913,668.00		
16. Other Grants					$ -
17. Other Funding					
18. TOTAL GRANTS (Total lines 14 through 17)	$ 1,938,668.00	$ 1,025,000.00	$ 913,668.00		$ -
19. SIZE OF BOND ISSUE (Line 13 minus Line 1	$ 2,750,000.00	$ -	$ -	$ 91,668.00	$ 2,658,332.00

City of Fairmont

6/24/08
Date

Steptoe & Johnson

6-23-08
Date

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

June 26, 2008

City of Fairmont
Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Bureau for Public Health
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the water rates and charges as set forth in the Water Rate Ordinance enacted by the City of Fairmont (the "Issuer") on July 10, 2007, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Greenhorne & O'Mara, Inc., consulting engineers, it is our opinion that such rates and charges will be sufficient to (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 120% of the maximum amount required in any year for payment of principal of and interest on the Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program) (the "Series 2008 A Bonds") and all other obligations secured by a lien on or payable from the revenues of the System, including the Issuer's: (1) Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000 (the "Series 1997 Bonds"); (2) Water Revenue Bonds, Series 1998, dated December 15, 1998, issued in the original aggregate principal amount of $9,600,000 (the "Series 1998 Bonds"); and (3) Water Revenue Bonds, Series 1999, dated January 1, 1999, issued in the original aggregate principal amount of $19,945,000 (the "Series 1999 Bonds") (collectively, the "Prior Bonds").

It is further our opinion that the Net revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of the Series 2008 A Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the date of issuance of the Series 2008 A Bonds, will not be less than 120% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the Series 2008 A Bonds and the Prior Bonds.

Very truly yours,

Bennett & Dobbins PLLC

Bennett & Dobbins PLLC

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Mayor and City Manager 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 $2,750,000 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), of the Issuer, dated June 26, 2008 (the "Bonds" or the "Series 2008 A Bonds"), hereby certify this 26th day of June, 2008 as follows:

1. I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance duly enacted by the Issuer on April 22, 2008, as supplemented by the Supplemental Resolution duly adopted by the Issuer on June 24, 2008 (collectively, the "Bond Ordinance"), authorizing the Bonds.

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

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on June 26, 2008, the date on which the Bonds are being physically delivered in exchange for an initial advance of the principal amount of the Series 2008 A Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

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

5. The Series 2008 A Bonds were sold on June 26, 2008, to the Authority, pursuant to a loan agreement dated June 26, 2008, by and between the Issuer and the Authority, on behalf of the BPH, for an aggregate purchase price of $2,750,000 (100% of par), at which time, the Issuer received $91,668 from the Authority and the BPH, being the first advance of the principal amount of the Series 2008 A Bonds. No accrued interest has been or will be paid on the Series 2008 A Bonds. The balance of the principal amount of the Series 2008 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2008 A Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment. The acquisition and construction of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Series 2008 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 August 1, 2009. The acquisition and construction of the Project is expected to be completed by February 1, 2009.

8. The total cost of the Project, a portion of which is financed from the proceeds of the Bonds (including all costs of issuance of the Bonds), is estimated at $4,688,668. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2008 A Bonds	$2,750,000
Infrastructure Grant	913,668
Small Cities Block Grant	1,025,000
Total Sources	$4,688,668

USES

Costs of Acquisition and Construction of the Project	$4,572,500
Funding the Series 2008 A Bonds Reserve ccount	91,668
Costs of Issuance	24,500
Total Uses	$4,688,668

9. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created or continued relative to the Series 2008 A Bonds:

(1) Revenue Fund (established by Prior Ordinance);

(2) Depreciation Fund (established by Prior Ordinance);

(3) Series 2008 A Bonds Construction Trust Fund;

(4) Series 2008 A Bonds Sinking Fund; and

(5) Series 2008 A Bonds Reserve Account.

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

(1) Series 2008 A Bonds proceeds in the amount of $-0- will be deposited in the Series 2008 A Bonds Sinking Fund as capitalized interest.

(2) Series 2008 A Bonds proceeds in the amount of $91,668 will be deposited in the Series 2008 A Bonds Reserve Account.

(3) The balance of the proceeds of the Series 2008 A Bonds will be deposited in the Series 2008 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 2008 A Bonds and related costs.

11. Monies held in the Series 2008 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2008 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on monies in the Series 2008 A Bonds Sinking Fund and Series 2008 A Bonds Reserve

Account will be withdrawn therefrom and deposited into the Series 2008 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within seven (7) months of the date hereof.

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

14. With the exception of the amount deposited in the Series 2008 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within thirteen (13) months from the date of issuance thereof.

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

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

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

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

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

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

21. The Bonds are not federally guaranteed.

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

23. The Issuer has either (a) funded the Series 2008 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 2008 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2008 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. Monies in the Series 2008 A Bonds Reserve Account and the Series 2008 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

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

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

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

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

[Remainder of Page Intentionally Left Blank]

WITNESS our signatures on the day and year first written above.

CITY OF FAIRMONT

By: _____
Its: Mayor

By: _____
Its: City Manager

06.10.08
268460.00009

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 purposes 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] 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.) ORD. 636

(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 appropration 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] and 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

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.

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. Keller
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, 20 07.

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, 2007.

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
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.

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.

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. Kellen
CITY CLERK

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):

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

Concurrently with the posting of such notice, the City Clerk shall mail or otherwise distribute, by any means reasonably calculated to provide notice, 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 Sr
MAYOR

ATTEST:

Janet L. Kellen
CITY CLERK

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

Legals

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

Entered by the Public Service Commission of West Virginia, in the City of Charleston on the 17th day of October, 2006.

CASE NO. 06-1576-W-CN

CITY OF FAIRMONT

a municipal corporation.

Application for a certificate of convenience and necessity to for the construction, operation and maintenance of a distribution system extension for purposes of supplying the City of Mannington with potable water for resale.

NOTICE OF FILING

WHEREAS, on October 17, 2006, the City of Fairmont a municipal water utility, filed an application duly verified, for a Certificate of Convenience and Necessity to construct certain additions and improvements to its water distribution system in Marion County, West Virginia. The application is on file with and available for public inspection at the Public Service Commission of West Virginia, 201 Brooks Street, Charleston, West Virginia.

WHEREAS, the City of Fairmont estimates that construction will cost approximately $4,970,000.00.

It is proposed that the Project will be financed as follows:

Small Cities Block Grant (Assigned) $1,025,000.00

Infrastructure/IJDC Grant $1,195,000.00

DWTRF LOAN

(0%) +1% Admin Fee 30 yrs) 2,750,000.00

Total $4,970,000.00

WHEREAS, The City of Fairmont resale rate is $1.93 per 1000 gallons as established by City of Fairmont Tariff P.S.C. W.Va. No. 16, filed with the Public Service Commission of West Virginia issued August 8, 2006, and effective for service rendered on or after July 22, 2006.

WHEREAS, no increase in the City of Fairmont's resale rate is involved,

WHEREAS, the resale customers of the City of Fairmont are:

Town of Rivesville
Grant Town Public Service District
Tri-County Water Association
Paw Paw Public Service District
Montana Water Association
Valley Falls Public Service District
Monumental Water Association
Ice's Run Pubic Service District
Little Creek Public Service

Legals

WHEREAS, It is anticipated that the City of Fairmont will construct, operate and maintain a water distribution system extension in Marion County, West Virginia consisting of 70,748 linear feet of 12" and 16" waterline along U.S. Route 250, from the City of Fairmont's existing Cleveland Avenue main to the City of Mannington's 632,000 water storage tank, including a 1,000 GPM deluxe water booster pump station with booster chlorination, master meter system, and SCADA system for automated operation, together with related appurtenances and appliances, for purposes of supplying the City of Mannington with potable water for resale.

Pursuant to S24-2-11, West Virginia Code, IT IS ORDERED that the City of Fairmont give notice of the filing of said application, by publishing a copy of this order once in a newspaper duly qualified by the Secretary State, published and of general circulation in Marion County, making due return to this Commission of proper certification of publication immediately after publication. Anyone desiring to make objection to said application must do so in writing, within thirty (30) days after the publication of this notice, to Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that if no protest are received within said 30-day period, the Commission may waive form hearing and grant the application based on the evidence submitted with said application and its review thereof.

A True Copy Teste:
Sandra Squire
Executive Secretary

AFFIDAVIT OF PUBLICATION 006660

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 Filing was duly published in said newspaper once day for 1 successive day (Class I), commencing with the issue of the 28 day of October, 2006, and ending with the issue of the 28 day of October, 2006, and was posted at the front door of the Marion County Courthouse on the 28 day of October, 2006; that said annexed notice was published on the following dates: October 28, 2006

and the cost of publishing said annexed notice as aforesaid was $ 128.23

Beverly A Miller

Taken, subscribed and sworn to before me in said county this 4 day of Dec, 2006,

My commission expires Jan 24, 2010.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Stacey L Gillespie
Times West Virginian
Fairmont, WV 26554
My Commission Expires Jan. 24, 2010

Notary Public of Marion County, West Virginia

ORDINANCE NO. 1390

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, RATES AND CHARGES, WHICH TARIFFS, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 16, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGININA ON AUGUST 8, 2006, TO PROVIDE FOR INCREASED RATES FOR ALL GENERAL DOMESTIC, COMMERCIAL AND INDUSTRIAL CUSTOMERS

WHEREAS, Chapter 24, Article 2, Section 4(b) of the Code of the State of West Virginia 1931 as amended authorizes the fixing of all rates and charges of municipally operated utilities by the adoption of appropriate ordinances;

WHEREAS, since 1891, the City of Fairmont has provided quality potable water to its general domestic, commercial and industrial customers within the City's corporate limits and within certain areas of Marion County, West Virginia;

WHEREAS, between 2001 -2003, the City of Fairmont undertook to replace its conventional water filtration plant with immersed ultra-filtration membrane technology. The plant was designed and constructed with four separate production trains with a purported capacity of producing 10 million of gallons of water per day (MGD). As designed, the plant was to have an immediate expansion capability to 12.0 MGD and an ultimate expansion capability to 15.0 MGD;

WHEREAS, although the water produced continued to exceed all drinking water standards, in January 2007, and again in late February – early March 2007, the City of Fairmont experienced reduced production of potable water. Production was unable to meet demand resulting in boil water advisories, usage curtailments, cancellation of school, and the involvement of the state and local offices of emergency services. In order to immediately enhance production capabilities and abate the shortage, the City was forced to make certain unanticipated capital expenditures and incurred increased operating and maintenance and other expenses, all totaling in excess of $1,000,000.00. Currently, the City is engaged in evaluating plant deficiencies and corrective measures with the plant manufacturer, design engineer, the City's consulting engineer, and the Public Service Commission. These measures include developing further enhanced production, addressing accountability issues, resolving pretreatment of the source water and solids handling, and providing for increased storage capacity;

WHEREAS, the City's current rates for water service were established by those certain orders of the Public Service Commission of West Virginia entered in Case No. 05-0424-W-MA on July 5, 2005, and July 12, 2005, and Ordinance No. 1351, duly adopted by the City on May 23, 2006, are set out in P.S.C. W.VA. Tariff No. 16, issued by the Public Service Commission of West Virginia Tariff Office on August 8, 2006, for service rendered by the City of Fairmont on or after July 22, 2006;

WHEREAS, the Revenue Requirements Class Cost of Service Study, dated June 23, 2005, prepared by Steven Kaz, Utilities Analyst II for the Public Service Commission of West Virginia in Case No. 05-0424-W-MA identified that the City's nine (9) resale customers generated annual revenues for the system in the amount of $942,331.00 at the going level resale rate of $1.93 per 1000 gallons. Said study further identified that said revenues exceeded the total cost of providing service to said resale customers by an amount of $228,751.00 per year. Accordingly, the rates which were formulated by the Public Service Commission and set out in the City's current tariff, being Tariff No. 16, provided no change to the City's resale rate.

WHEREAS, the City's current rates were designed to permit the water fund to operate as a self sufficient enterprise fund with adequate revenues to pay its operating and maintenance expenses, permit reasonable capital expenditures, and meet existing debt service obligations without subsidization from the City's other Funds; however, the current rates were not designed to accommodate the payment of the unanticipated capital expenditures or the unexpected increase in operating and maintenance and other expenses incurred as a result of the recent production shortages;

WHEREAS, it appears that increased rates and charges for all general domestic, commercial and industrial water service rendered after the effective date of this ordinance are reasonable and necessary and that such increase has been formulated to provide sufficient revenues to enable the water fund to maintain its self sufficiency.

WHEREAS, it further appears that the City's current resale rate of $1.93 per 1000 gallons remains generally consistent with the provisions of West Virginia Code §24-2-2b and that the rate is just, reasonable and based primarily upon the cost of providing resale services and that no increase in said rate is warranted.

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

The water rates or tariffs of the City of Fairmont established by those certain orders of the Public Service Commission of West Virginia entered in Case No. 05-0424-W-MA on July 5, 2005, and July 12, 2005, and Ordinance No.1351 are set out in P.S.C. W.VA. Tariff No. 16, issued by the Public Service Commission of West Virginia Tariff Office on August 8, 2006, be and are hereby amended and revised as follows: (New matter double underlined; matter to be deleted bracketed)

RULES AND REGULATIONS

Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modification thereof hereafter made by said Commission.

WATER SCHEDULE NO. 1

APPLICABILITY Applicable in entire territory or area served.

RATE

Water Consumption (Gallons used per month)		Rate (Per 1000 gallons)	
First	25,000	[$ 4.79]	$5.81
Next	25,000	[$ 2.80]	$3.40
Next	25,000	[$ 2.30]	$2.79
All Over	75,000	[$ 2.26]	$2.74

MINIMUM RATES No bill shall be rendered for less than the following amounts, according to size of meter installed:

Size of Meter (Inches)	Rate (Per month)	
5/8 or less	[$ 11.98]	$ 14.54
3/4	[$ 17.97]	$ 21.81
1	[$ 29.95]	$ 36.36
1-1/4	[$ 43.73]	$ 53.08
1-½	[$ 59.90]	$ 72.71
2	[$ 95.84]	$ 116.34
3	[$179.70]	$ 218.14
4	[$299.50]	$ 363.56
6	[$599.00]	$ 727.13
8	[$958.40]	$1,163.40

TAP FEE

Three Hundred Dollars ($300.00)

RECONNECTION SERVICE CHARGE

Twenty-Five Dollars ($25.00)

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

LEAK ADJUSTMENT

$0.455 per 1,000 gallons is to be used when the 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 the customer's historical average usage.

DISHONORED CHECK CHARGE

The maker of any check tendered in payment for water service which is returned for insufficient funds, closed account, or not honored for any other cause and for which a charge is imposed upon the City by any financial institution, shall be assessed a charge of Twenty-five Dollars ($25.00) per check. Provided, that nothing herein shall preclude the institution of criminal or civil proceedings for a dishonored check.

WATER SCHEDULE NO. 2.

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY

Available for resale.

RATE

The rate under this schedule is $1.93 per thousand gallons per month. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to Schedule No. 2

WATER SCHEDULE NO. 3

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY

Available for public fire protection.

RATE

The monthly rate for public fire protection will be Seventeen Dollars and Five Cents ($17.05) per hydrant or connection. The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule 1 are applicable to Schedule No. 3.

WATER SCHEDULE NO. 4

APPLICABILITY

Applicable in the entire territory where private fire service is provided.

AVAILABILITY

Available for private fire protection service.

MINIMUM RATES

No bill will be rendered for less than the following amounts, according to size of line installed:

Size of Line (inches)	Rate
2 or less	$ 39.65
3	$ 59.48
4	$ 79.30
6	$ 99.14
8	$ 148.71

HYDRANT FEE

In addition to the minimum rates established above, the monthly rate per hydrant connection will be Seventeen Dollars and Five Cents ($17.05).

The tap fee, connection and reconnection charges, dishonored check charge, and delayed payment penalty set forth in Schedule No. 1 are applicable to schedule No. 4.

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.

SAVINGS CLAUSE: Except as herein amended, all rates, fees and charges established by those certain orders of the Public Service Commission of West Virginia entered in Case No. 05-0424-W-MA on July 5, 2005, and July 12, 2005, and Ordinance No. 1351, set out in P.S.C. W.VA. Tariff

No. [15], 16 issued by the Public Service Commission of West Virginia Tariff Office on [July 14, 2005] August 8, 2006, for service rendered by the City of Fairmont on or after [July 12, 2005] July 22, 2006, be and are hereby saved and shall remain in full force and effect.

EFFECTIVE DATE: This ordinance shall become effective forty-five (45) days after passage.

Passed this the 10th day of July, 2007.

MAYOR

ATTEST:

CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No. 1390:**

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, RATES AND CHARGES, WHICH TARIFFS, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 16, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGININA ON AUGUST 8, 2006, TO PROVIDE FOR INCREASED RATES FOR ALL GENERAL DOMESTIC, COMMERCIAL AND INDUSTRIAL CUSTOMERS

was introduced and publicly read in its entirety at the Regular Meeting of Council held June 26, 2007 and was published in the Times-West Virginian on July 2, 2007, pursuant to Charter provisions Section 2.13(d); a public hearing was held on July 10, 2007. 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 10th day of July, 2007.

S. Scott Sr.
MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

A TRUE COPY:

Mayor, S. Scott Sr.
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

June 26, 2007

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 26th day of June, 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
Fifth District	Charles E. (Chuck) Warner
Seventh District	S. Scott Sears
Eighth District	Robin W. Smith
Ninth District	Matthew S. (Matt) Delligatti

Absent:

Fourth District	Phyllis J. Mills
Sixth District	De'Andrea Bussey

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Attorney	Kevin V. Sansalone
Utility Manager	David Sago
Finance Director	Eileen Layman
Police Chief	Steve Cain

IN RE: EXCUSE COUNCILMEMBER BUSSEY

The Mayor noted that Councilmember Bussey was out of town on a personal obligation and asked to be excused.

Motion:

Councilmember Delligatti moved to excuse Councilmember Bussey from tonight's meeting. The motion was seconded by Councilmember Warner.

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

IN RE: OPENING CEREMONIES

David Sago, Utility Manager, gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Smith.

APPROVAL OF MINUTES

Mayor Sears noted that each member of Council had received a copy of the minutes from the regular meeting held on June 12, 2007. He asked if there were any corrections, deletions, or amendments.

Councilmember Delligatti moved to approve the minutes as submitted. Councilmember Smith seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

ANNOUNCEMENTS

IN RE: MAIN STREET MORNING

The Mayor reported that Main Street is hosting a Main Street Morning at the Marion County Rescue Squad beginning at 8:00 a.m. in observance of their anniversary.

IN RE: PROCLAMATION PRESENTED TO ROBERTA STEELE

Mayor Sears presented a proclamation to Roberta Steele for her hard work and dedication as the Coordinator of Project Graduation for the last eleven years. Councilmember Seifrit then presented Roberta with a couple gifts that were donated from area businesses.

CITIZENS PETITIONS

IN RE: BEVERLY ESTATES SUBDIVISION

WAYNE TAYLOR, 100 Lucinda Lane, addressed Council regarding the new Beverly Estates Subdivision which is the new development off Mary Lou Retton Drive. He noted the residents have concerns regarding the development that they wanted to bring to Council's attention. He presented pictures of the development for Council to look at. Mr. Taylor went on to say that there are dangerous conditions that the residents feel exist, unmarked and unbarricaded large

holes along side the road, a non-functioning fire hydrant, no street signs to direct emergency vehicles and the developer has done nothing to move the development forward. He then asked if the City Attorney could find out what is going on because promises are no longer acceptable.

The Mayor asked the residents if they have approached the Planning Commission.

A gentleman from the audience (did not state his name) said he talked to someone from the City several times about getting street signs; however, they have not been installed.

The City Manager said it was not a city street until the subdivision is built to city specifications and it is legally conveyed over to the city. He then said that Council would set the name of the street based on some input from the residents. The City Manager went on to say that this is strictly a Planning Commission matter. He noted there may be some civil issues between the property owners and the developer and there may be some non-compliance issues with the developer and the Planning Commission.

Councilmember Dahlia asked if the residents could talk to the City Planner, Jay Rogers.

A gentleman from the audience said they have talked to Mr. Rogers several times.

The Mayor said that the City Manager will make the Planning Commission aware of the situation and then they will have to address the situation.

Councilmember Delligatti said he did not believe there was a time line set on when certain activities should be taking place and he thought that was also something that the Planning Commission should look at.

The City Manager suggested that the City facilitate a meeting with the Planning Department, the Building Department, the developer and the residents and try to hash out the issues.

Mr. Taylor closed by saying that the residents have been more than patient but something needs to be done.

IN RE: NEIGHBORHOOD COMPLAINT – O'DELL STREET

TANYA EVANS, 313 Montgomery Avenue, addressed Council regarding an on-going complaint on O'Dell Street regarding Shirley Merchant.

The Mayor explained that City Council is not going to get involved in personal matters. He said this is a matter between Ms. Evans and Mrs. Merchant and since it involves children under the age of 18, there is nothing this Council can make a decision on.

Ms. Evans then said that the City has a problem on Shady Side and it is going to involve the Police.

Councilmember Delligatti asked if she would be willing to meet with someone from the Police Department to have a conversation where we could be respectful on both sides and try to work out this issue.

Ms. Evans replied yes.

SHIRLEY MERCHANT, 417 O'Dell Street, addressed Council regarding police officers responding to complaints in her neighborhood. She reported that children ride an ATV by her kitchen window, the sound is unbearable, and the dust is more than enough to make a healthy person sick. She then asked Council to show her the law that says she must get along with her neighbors.

The Mayor asked if the police have shown up for each complaint.

Mrs. Merchant replied yes.

Mayor Sears then stated that on one situation it came down to if Mrs. Merchant was going to file a warrant against an individual. He asked if that was ever done.

Mrs. Merchant replied no.

The Mayor said that they were into a civil matter and that our Police Department has responded very diligently to handle the matter. He stated there was not much more City Council can do regarding these issues. He then said that on issues like this, the Council does report those issues to the City Manager which, in turn, will approach the department head and, in this case, it is the Police Chief.

IN RE: WATER RATE QUESTIONS

HAZEL BATTON, 208 Florida Avenue, stated that she had questions regarding the proposed water rate increase.

The Mayor said the public hearing on the proposed ordinance will be July 10; however, the City Manager will have a presentation shortly regarding the increased rates.

CITY MANAGER'S REPORT

IN RE: WATER PRESENTATION

The City Manager noted that after the water rate ordinance was introduced, he was going to ask Council for a few minutes for a water rate presentation.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1357, PERSONNEL RULES, TO AMEND THE PAY PLAN TO PROVIDE FOR AN INCREASE IN THE SPECIAL DUTY ASSIGNMENT PAY FOR THE POSITION OF FIRE PREVENTION/TRAINING OFFICER

Mayor Sears entertained a motion for the introduction of an ordinance amending the pay plan to increase the special duty assignment pay for a fire prevention/training officer from $2,700 annually to $8,000 annually.

Motion:

Councilmember Smith moved for the introduction of the proposed ordinance. The motion was seconded by Councilmember Dahlia.

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

The Mayor asked the Clerk to set a public hearing for July 10, 2007.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, RATES AND CHARGES, WHICH TARIFFS, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 16, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 8, 2006, TO PROVIDE FOR INCREASED RATES FOR ALL GENERAL DOMESTIC, COMMERCIAL AND INDUSTRIAL CUSTOMERS

Mayor Sears entertained a motion for the introduction of an ordinance providing for a water rate increase for all general domestic, commercial and industrial customers.

Motion:

Councilmember Smith moved for the introduction of the proposed ordinance. The motion was seconded by Councilmember Dahlia.

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

The Mayor asked the Clerk to set a public hearing for July 10, 2007.

IN RE: WATER RATE PRESENTATION

The City Manager took a few minutes to make a water rate presentation. He explained the history of the water rate increases and why this proposed increase is needed.

IN RE: ADOPTION, A 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

Mayor Sears entertained a motion for the introduction of a resolution amending Council's Rules of Order and Procedure to comply with provisions of the West Virginia Open Governmental Proceedings Act.

Motion:

Councilmember Delligatti moved for the adoption of the proposed resolution. The motion was seconded 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 those Councilmembers present.

Councilmember Dahlia stated that he thought this was a good change and he wanted to thank Councilmember Delligatti for this and he thought it was good that the City is making it easier for folks to get the agenda and hear about it as soon as possible.

IN RE: ADOPTION, A RESOLUTION BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA CONSENTING TO AND AUTHORIZING THE EXECUTION OF THE "WEST VIRGINIA HOMELESS SHELTERS PROGRAM, EMERGENCY SHELTER GRANTS PROGRAM CONTRACT BETWEEN THE WEST

VIRGINIA OFFICE OF ECONOMIC OPPORTUNITY AND THE CITY OF FAIRMONT DATED JULY 1, 2007"

Mayor Sears entertained a motion for the introduction of a resolution accepting a grant award for Scott Place Shelter and Hope, Inc. from the West Virginia Office of Economic Opportunity.

Motion:

Councilmember Dahlia moved for the adoption of the proposed resolution. The motion was seconded 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 those Councilmembers present.

IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, ENDORSING THE ANNUAL JOHNNIE JOHNSON BLUES AND JAZZ FESTIVAL TO BE HELD AT PALATINE PARK IN THE CITY OF FAIRMONT ON JULY 13, 14, & 15, 2007

Mayor Sears entertained a motion for the introduction of a resolution endorsing the Johnnie Johnson Festival to be held at Palatine Park July 13, 14, 15, 2007.

Motion:

Councilmember Warner moved for the adoption of the proposed resolution. The motion was seconded 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 those Councilmembers present.

IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, AUTHORIZING THE CITY OF FAIRMONT TO UNDERTAKE A CAPITAL CAMPAIGN, BY GIFT, DONATION, GRANT OR BEQUEST, TO PROVIDE

FUNDING FOR IMPROVEMENTS TO PALATINE PARK, TO BE KNOWN AS PROJECT PALATINE PARK

Mayor Sears entertained a motion for the introduction of a resolution to provide funding for improvements to Palatine Park, to be known as "Project Palatine Park".
Motion:

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

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

Councilmember Dahlia noted that this was the brain child of the Mayor and he wanted to compliment Mayor Sears on this. He thought this was a pro-active a way for Council to start looking at redeveloping Palatine Park.

Kevin Sansalone, City Attorney, then explained this project and the proposed resolution.

Roll call was taken by the Clerk.

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

IN RE: ONE APPOINTMENT, FAIRMONT RENAISSANCE CORPORATION, FIVE YEAR TERM TO END MAY 1, 2012

Mayor Sears entertained a motion for an appointment to the Fairmont Renaissance Corporation for a five year term to end May 1, 2012.

Motion:

Councilmember Dahlia moved to re-appoint Gina Fantasia to the Fairmont Renaissance Corporation for a five year term ending May 1, 2012. Councilmember Warner seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared Gina Fantasia re-appointed to the Fairmont Renaissance Corporation for a five year term ending May 1, 2012 by unanimous vote of those Councilmembers present.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. The motion was seconded by Councilmember Warner.

The Mayor declared the meeting adjourned by voice vote of Council at 8:35 p.m.

July 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 July, 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:

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

Absent:

First District	John J. Dahlia

Also present were:

City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
Utility Manager	David Sago
Finance Director	Eileen Layman
City Planner	Jay Rogers
Police Chief	Steve Cain

IN RE: EXCUSE COUNCILMEMBER DAHLIA

The Mayor noted that Councilmember Dahlia was out of town on a personal obligation and asked to be excused.

Motion:

Councilmember Delligatti moved to excuse Councilmember Dahlia from tonight's meeting. The motion was seconded by Councilmember Smith.

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

IN RE: OPENING CEREMONIES

Father Patsy Iaquinta of the Immaculate Conception Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Smith.

APPROVAL OF MINUTES

Mayor Sears noted that each member of Council had received a copy of the minutes from the regular meeting held on June 26, 2007. He asked if there were any corrections, deletions, or amendments.

Councilmember Delligatti moved to approve the minutes as submitted. Councilmember Smith seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

IN RE: INTRODUCTION OF NEW FIRE CHIEF

The City Manager introduced the new Fire Chief, Roger Wilson. He said that Chief Wilson took over the reigns at the Fire Department on July 7, 2007.

Council extended congratulations to Chief Wilson and wished him the best of luck.

PUBLIC HEARINGS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1357, PERSONNEL RULES, TO AMEND THE PAY PLAN TO PROVIDE FOR AN INCREASE IN THE SPECIAL DUTY ASSIGNMENT PAY FOR THE POSITION OF FIRE PREVENTION/TRAINING OFFICER

Pursuant to a notice duly published in the Times-West Virginian on July 2, 2007, a public hearing was convened to obtain citizen in put on an ordinance increasing the special duty assignment pay for the position of fire prevention/training officer from $2,700 annually to $8,000 annually.

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

ROGER WILSON, Fire Chief, asked Council to support this ordinance. He said what is offered as this position is just compensation for someone willing to take on the responsibilities and duties of fire prevention and training in their department.

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

IN RE: AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, RATES AND

CHARGES, WHICH TARIFFS, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 16, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 8, 2006, TO PROVIDE FOR INCREASED RATES FOR ALL GENERAL DOMESTIC, COMMERCIAL AND INDUSTRIAL CUSTOMERS

Pursuant to a notice duly published in the Times-West Virginian on July 2, 2007, a public hearing was convened to obtain citizen in put on an ordinance providing for an increase in water rates.

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

The City Manager reported at the last meeting a presentation was given on the need for the water fund rate ordinance. He noted they had initially anticipated putting a surcharge in place and that surcharge would have been across every customer in the amount of $5.57 per month. He explained that there was some concern on Council that penalized the users that used less water and now the rate ordinance that Council has this evening allows the Water Fund to re-coop expenses from the water emergencies this past winter plus enables us to go forward on a go forward basis and meet operational expenditures and fund some of the capital needs that were outlined in the last rate case. He then asked for Council's support on the ordinance.

DAVID SAGO, Utility Manager, spoke in favor of the proposed ordinance and asked for Council's support.

There being no others to speak, the public hearing was called to a close at 7:10 p.m.

IN RE: THE PROPOSED CREATION OF A TIF DISTRICT TO BE KNOWN AS THE "CITY OF FAIRMONT REDEVELOPMENT DISTRICT NO. 1" AND APPROVAL OF A PROJECT PLAN DESIGNATED AS "PROJECT NO. 1 – VOLCANO ISLAND", IN ACCORDANCE WITH THE TIF APPLICATION PREVIOUSLY SUBMITTED TO THE CITY OF FAIRMONT

Pursuant to a notice duly published in the Times-West Virginian on June 29, 2007 and July 6, 2007, a public hearing was convened to obtain citizen in put on the proposed creation of a TIF District.

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

Mr. McDaniel explained that this is a public hearing on a resolution which is necessary due to the requirements of the West Virginia Development Office and the TIF process. He went on to say that the TIF District has been formed to encompass the area known as the former Fairmont Coke Works Site or the Sharon Steel site and this particular resolution will create that District, authorize the submission of the TIF application to the Development Office which could fund up to $29 million worth of public improvements necessary to make the private development known as Volcano Island and the rest of the development to take place.

Councilmember Delligatti had several questions regarding the TIF application and project.

JAY ROGERS, City Planner and **VINCE COLLINS**, Bond Counsel for the Project, answered Councilmember Delligatti's questions.

There being no others to speak, the public hearing was called to a close at 7:20 p.m.

ANNOUNCEMENTS

IN RE: FARMER'S MARKET LOCATION

Councilmember Tennant reported that he received a phone call stating that the Farmer's Market can only use Mid-City Parking Lot until the end of July.

The City Manager said that was correct. He mentioned that it depends on how the Mid-City Parking Lot project goes with putting in the pay box and refurbishing that lot so it can be a paved lot. He noted that he has discussed this with Patty White who takes care of the Farmer's Market and they have agreed that they can use it for the month of July and during that period of time Patty will look for another location.

Alan Parks, County Commissioner, stated that the County has offered their lot at the Election Center and they will start using that lot.

IN RE: URBAN RENEWAL AUTHORITY MEETING

Councilmember Smith noted that he would like Council to discuss the meeting held last night with the URA.

The Mayor stated that it was probably something that the City Planner will have to acknowledge.

The City Manager asked Councilmember Smith if he would like a report or a work session.

Councilmember Smith stated that he read what is happening with the URA in the newspaper. He said that Councilmembers were on Council to make decisions; however, he gets all of the information about what is going on in this town by reading the newspaper. He said that he did not feel that Council was getting information beforehand and he thought Council should know about some things first before it gets in the newspaper. He noted that Council should be more informed on what is happening in the City.

The Mayor then suggested that the City Manager set up a work session to get everyone up to speed regarding the URA projects.

The City Manager explained that you cannot pre-announce the URA's intention as far as negotiations with a developer until those negotiations happen and that is what happened last night at the URA meeting. He then stated that this Council and this administration have reported for several months that the Red Shield Group signed a pre-development agreement and that we were negotiating the start of the development. He went on to say that it was an open meeting and the newspaper was there and they reported what happened. He then mentioned that the URA meetings are open to the public; he then encouraged Council to attend any of those meetings. The Manager also stated that when he gets the weekly reports from the Department Heads, perhaps the Planning and Building Department could give a list of building permits issued with a little more detail so Council will have an idea of what is going on. He then noted that the idea of a work session to discuss the URA process was something that needs to happen.

IN RE: WORK SESSION REQUESTED ON PUBLIC ACCESS

Councilmember Delligatti stated that he was still waiting for a work session to be scheduled regarding public access.

IN RE: WEB SITE UPDATE

Councilmember Delligatti asked when the web site was going live.

Eileen Layman, Finance Director, responded by saying that they have reviewed the web page and everyone has signed off on it and they are working on the detailed pages in addition to the main page. She noted they are almost ready to go live.

IN RE: GROUND BREAKING CEREMONY

Mayor Sears announced that on Wednesday, July 11, there will be a ground breaking at 11:00 a.m. for the CGP Development at the old drag strip property at the Marion Regional Development Park. He said that this is the first large job creation that this Council has been involved in since this new Council was sworn-in in January. He then reported that this was with RC Cola moving back to Fairmont with a distribution center and with the possibility of creating 40 new jobs. He encouraged Council to attend the ground breaking.

CITIZENS PETITIONS

IN RE: REQUEST TO CONTROL 12TH STREET POOL

ALAN PARKS, on behalf of the Marion County Commission, addressed Council requesting that the County Commission take control of the 12th Street Pool. He said that the County

Commission has the resources and the manpower to get it ready for next summer. He then asked Council to consider this request and, hopefully, next summer the pool will be open.

The Mayor said that he and Council would highly recommend this. He noted this is a situation that Council has been battling for several years. He then said that with the new school being beside it and with the growth of the stadium, for something that has been deteriorating for years, it would probably get to the point that if we do not turn this over, it would probably need to be filled in or torn down. He mentioned that this is something that Council should move on very quickly and adopt a resolution at the next meeting.

Mr. Parks said the whole revitalization of the beltway is on a roll and the County would like to keep it going.

Councilmember Smith asked if it would be open to the general public.

Mr. Parks replied he did not know. He said right now they would just like to get water in it.

The City Manager said that it was actually opened as a community pool and used for swimming purposes at the same time. He then said that before the pool was shut down, the bulk of the pool traffic would go to the wave-tek pool and we would have some traffic at 12th Street but it never made money or broke even but Council, at that time, understood that and it was a community service. He then noted that it was shut down primarily because it was losing water and because of health purposes. He mentioned that this was a big deal especially since we need a pool in this community and Marion County.

Mayor Sears asked the City Manager to have a resolution or ordinance prepared for the July 24 meeting.

Councilmember Bussey asked if they will be partnering with any other entities.

Mr. Parks said to get the pool up and running, he would have to say no. He then explained that the County Commission can get stuff done pretty quickly so if the Commission takes this pool over and we get it up and running and then maybe turn it over to Marion County Parks and Recreation Commission and let them run the pool. He then said that it would not be fair for him to say that they would turn it over to MCPARC without getting it up and running first.

Councilmember Bussey asked if Mr. Parks knew how much it would take to get it up and running.

Mr. Parks replied that he would have no idea.

IN RE: PROPOSED WATSON SCHOOL PLAYGROUND

LEAH HEIMBACH, Scottsdale Road, addressed Council concerning a project that she is spearheading with the help of a number of people in the community. She said that she is trying to get the word out about a playground being built on the property at Watson School which will be completely handicapped accessible, special needs and ADA compliant. She said this playground will be available to all children in Marion County and will serve approximately 840 children with special needs. She reported that they have a plan for maintenance of the playground once it is built. She then stated that they have raised half of their funding which is $50,000 and they need another $50,000; however, they have grants pending in excess of that amount. She then asked for Council's support of the project either through a letter of support, a resolution, or word to the Governor and local legislatures.

They Mayor said they definitely have Council's support.

Councilmember Delligatti asked about a donation of labor force.

The City Manager said that he would have to check into that. He noted that it was a situation that we would need to check into because we have a labor force that we have to pay and if they do this work on weekends, we are talking overtime.

CITY MANAGER'S REPORT

IN RE: PAVING PROGRAM

Mr. McDaniel reported that a meeting was held last week with the WV Division of Highways regarding our paving program for this year. He said that we are currently putting together our priorities for paving and he will be submitting that list to Council soon.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1357, PERSONNEL RULES, TO AMEND THE PAY PLAN TO PROVIDE FOR AN INCREASE IN THE SPECIAL DUTY ASSIGNMENT PAY FOR THE POSITION OF FIRE PREVENTION/TRAINING OFFICER

Mayor Sears entertained a motion for the adoption of an ordinance amending the pay plan to provide for an increase in the special duty assignment pay for the position of fire prevention/training officer from $2,700 annually to $8,000 annually.

Motion:

Councilmember Tennant moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Warner.

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. 1389 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, RATES AND CHARGES, WHICH TARIFFS, RATES AND CHARGES ARE SET OUT IN P.S.C. W.VA. TARIFF NO. 16, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 8, 2006, TO PROVIDE FOR INCREASED RATES FOR ALL GENERAL DOMESTIC, COMMERCIAL AND INDUSTRIAL CUSTOMERS

Mayor Sears entertained a motion for the adoption of an ordinance increasing the water rates.

Motion:

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

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

Councilmember Warner	Yes	Councilmember Seifrit	No
Councilmember Smith	Yes	Councilmember Tennant	Yes
Councilmember Delligatti	Yes	Councilmember Mills	Yes
Councilmember Bussey	Yes	Mayor Sears	Yes

The Mayor declared the ordinance adopted by majority vote of those Councilmembers present and the ordinance designated as Ordinance No. 1390 was duly adopted.

IN RE: ADOPTION, A RESOLUTION APPROVING THE VOLCANO ISLAND TIF APPLICATION AND AUTHORIZING THE SUBMITTAL OF SUCH APPLICATION TO THE WEST VIRIGNIA DEVELOPMENT OFFICE

Mayor Sears entertained a motion for the adoption of a resolution approving the Volcano Island TIF Application.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution. The motion was seconded 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 those Councilmembers present.

IN RE: ADOPTION, A RESOLUTION PROVIDING AUTHORIZATION TO ENTER INTO A CONTRACTUAL AGREEMENT AND TO RECEIVE FUNDING FROM THE DEPARTMENT OF JUSTICE FOR A JUSTICE ASSISTANCE GRANT

Mayor Sears entertained a motion for the adoption of a resolution accepting grant funding from the Department of Justice for the Police Department.

Motion:

Councilmember Delligatti moved for the adoption of the proposed resolution. The motion was seconded 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 those Councilmembers present.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING FOR THE PUBLIC AUCTION OF SURPLUS PERSONAL PROPERTY OF THE CITY OF FAIRMONT

Mayor Sears entertained a motion for the introduction of an ordinance providing for the sale of surplus personal property.

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 Warner.

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

The Mayor asked the Clerk to set a public hearing date for July 24, 2007.

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 7:50 p.m.

AFFIDAVIT OF PUBLICATION

007306

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 Rates was duly published in said newspaper once weeks for 2 successive weeks (Class II), commencing with the issue of the 16 day of July, 2007, and ending with the issue of the 23 day of July, 2007, and was posted at the front door of the Marion County Courthouse on the 16 day of July, 2007; that said annexed notice was published on the following dates: July 16, 23, 2007

and the cost of publishing said annexed notice as aforesaid was $ 187.57.

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 24 day of July, 2007.

My commission expires Jan 24, 2010.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Sherry L. Gillett
Times West Virginian
300 Quincy Street
Fairmont, WV 26554
My Commission Expires Jan. 24, 2010

Notary Public of Marion County, West Virginia

RECEIVED
2007 JUL 31 AM 8:43
W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

RECEIVED
2007 JUL 31 AM 8:43
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

PUBLIC NOTICE OF ESTABLISHMENT OF RATES BY THE CITY OF FAIRMONT

TARIFF FORM NO. 12

NOTICE is hereby given that the City of Fairmont, a public utility, has adopted by ordinance on Tuesday, July 10, 2007, a tariff containing increased rates, tools and charges for furnishing potable water service to 13,397 residential, commercial and industrial customers at Fairmont and its environs in Marion County, West Virginia.

The proposed rates and charges will become effective on August 25, 2007, unless otherwise ordered by the Public Service Commission and will produce approximately $895,115.00 annually in additional revenue, an increase of 16.38%. The average monthly bill for the various classes of customers will be changed as follows:

	($)INCREASE	INCREASE (%)
Residential	4.10	21.4
Commercial	18.45	21.4
Industrial	125.21	21.4
Resale	NONE	NONE
Other	NONE	NONE

In addition to the 13,397 residential, commercial and industrial customers, the City has nine (9) resale customers. The nine (9) resale customers of the City of Fairmont are:

Grant Town Public Service District
Ice's Run Public Service District
Little Creek Public Service District
Montana Water Works
monumental Public Service District
Paw Paw Public Service District
Town of Rivesville, a municipal corporation
Tri-County Water Association
Valley Falls Public Service District

The increases shown, are based on averages of all customers in the indicates class. Individual customers may receive increases that are greater or less than average. Furthermore the required rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service District Commission of West Virginia in its review of the filing. The Commission shall review and approve or modify the increases rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges by:

(1) Any customer aggrieved by the rates or changes who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by the municipality operated public utility; or

(2) Any customer who is served by a municipality operated public utility and who resides outside the corporate limits and who is affected by the rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group or customers who are affected by said rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, PO Box 812, Charleston,WV 25323.

A complete copy of the proposed rates, as well as a representative of the City of Fairmont to provide information requested concerning it, if available to all customers, prospective customers or their agents at any of the following offices of the City:

Office of the City Clerk,
City of Fairmont
Rm 312 City County Complex
200 Jackson Street
Fairmont,WV 26554

A Copy of the proposed rate is available for public inspection at the aforementioned Clerks Office of the Office of the Executive Secretary of the Public Service Commission at 201 Brooks St. PO Box 812, Charleston,WV.

Times: July 16, 23, 2007

AFFIDAVIT OF PUBLICATION

007283

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 day for 1 successive day (Class I), commencing with the issue of the 2 day of July 2007, and ending with the issue of the 2 day of July, 2007, and was posted at the front door of the Marion County Courthouse on the 2 day of July, 2007; that said annexed notice was published on the following dates: July 2, 2007

and the cost of publishing said annexed notice as aforesaid was $ 61.28

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 13 day of July, 2007.

My commission expires Jan 24, 2010

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Shelly L. Gilcrist
Times West Virginian
Fairmont, WV 26554
My Commission Expires Jan. 24, 2010

Notary Public of Marion County, West Virginia

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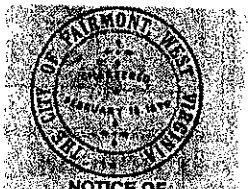

NOTICE OF PUBLIC HEARING ON PROPOSED WATER RATE ORDINANCE

The Council of the City of Fairmont at its regular meeting held June 26, 2007, introduced and read by synopsis for the first time the following City Ordinance:

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE CITY OF FAIRMONT'S WATER TARIFFS, RATES AND CHARGES, WHICH TARIFFS, RATES AND CHARGES ARE SET OUT IN P. S. C. W. VA TARIFF NO. 16, ISSUED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON AUGUST 8, 2005, TO PROVIDE FOR INCREASED RATES FOR ALL GENERAL DOMESTIC, COMMERCIAL AND INDUSTRIAL CUSTOMERS.

Copies of the proposed Ordinance are available for inspection in the Office of the City Clerk, Room 912, 200 Jackson Street, Fairmont, West Virginia.

The Public Hearing on the proposed Ordinance will be held at 7:00 p.m. or as soon thereafter as the matter may heard on Tuesday, July 10, 2007, in Council Chambers, City of Fairmont Public Safety Building, 500 Quincy Street, Fairmont, West Virginia.

Any interested person may appear at the public hearing be held as to whether or not said proposed ordinance shall be enacted. All objections and suggestions shall be hear and Council shall take such action as it deems necessary in the premises.

Council of the City of Fairmont shall vote on the adoption of the proposed Ordinance following the above Public Hearing.

Times: July 2, 2007

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

EXCERPT OF MINUTES ON ADOPTION OF
SUPPLEMENTAL RESOLUTION AND SWEEP RESOLUTION

The undersigned CLERK of the City of Fairmont of hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said Council:

*** *** ***

The Council of the City of Fairmont met in regular session, pursuant to notice duly posted, on the 24th day of June, 2008, in Marion County, West Virginia, at the hour of 7:00 p.m.

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

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.

Thereupon, the Mayor then 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 WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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 John Dahlia and seconded by Charles Warner it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Mayor presented a proposed Sweep Resolution for the authorization of electronic monthly debt service and reserve fund payments to the Municipal Bond Commission. Thereupon, on motion duly made by Charles Warner and seconded by John Dahlia, it was unanimously odered that the said Sweep Resolution be adopted.

*** *** ***

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

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CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the City of Fairmont and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 26th day of June, 2008.

Janet L. Kellen
Clerk

06.10.08
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Document Number: 4923659

April 22, 2008

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 22nd day of April, 2008, 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	William H. (Bill) Burdick
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	James W. Snider
City Clerk	Janet L. Keller
Finance Director	Eileen Layman
City Planner	Jay Rogers
City Attorney	Kevin V. Sansalone
Utility Manager	David Sago

IN RE: WELCOME NEW CITY MANAGER

Mayor Sears and Council extended a hearty welcome to the new City Manager, James W. Snider. This is his first meeting as City Manager.

IN RE: OPENING CEREMONIES

Rev. Richard Bowyer gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Delligatti.

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 8, 2008 and from the Levy Meeting held on April 15, 2008. He asked if there were any corrections, deletions, or amendments.

Councilmember Warner 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.

PUBLIC HEARINGS

IN RE: AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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

Pursuant to a notice duly published in the Times-West Virginian on April 8, 2008 and April 15, 2008, a public hearing was convened to obtain citizen input on an ordinance adopting the Water Revenue Bonds for the Mannington Water Project.

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

VINCE COLLINS, Bond Counsel to the City of Fairmont, said this is for the Mannington Water Project. He explained that a few years ago the City of Mannington undertook a water project because they needed to have more capacity, better water and so forth and the City of Fairmont intervened in that case and said we can do a better job at serving the City. He then said that the Public Service Commission agreed and now Fairmont is doing the project. He stated that these bonds will pay for a portion of the project and the other portion will be paid through grant money. He said you have bonds to be issued in the amount of $2,750,000 and $2,220,000 in grant money in this project which is from Infrastructure Council and Small Cities Block Grant. He said the interest rate on the bonds is 0%; however, there is a 1% administrative fee and the terms of the bonds are 30 years. He went on to say that the project itself consists primarily of about 70,000 feet of 12 inch and 16 inch lines to the City of Mannington and a booster station. He mentioned that the lending agency is the State of West Virginia, the DWTRF which is an agency that makes subsidized loans to entities that quality for them. He said that Fairmont would not normally qualify for them because the rates are too low and Fairmont is too big but since this is a Mannington project, we were able to convince them that Fairmont should get the benefits of the terms that Mannington could have received had they done the project themselves. He noted this was only because it was serving Mannington that Fairmont was able to get the 0% loan and the grant money.

The Mayor asked that having Mannington as a resale customer, will the revenues cover the debt service.

Mr. Collins replied that was correct. He said Fairmont will be received revenues from Mannington that will cover the debt service so it will essentially be a wash for Fairmont.

Councilmember Warner asked if it would still cover the debt service if we go over budget.

Mr. Collins said that he cannot answer that question because he did not know how much coverage we have built in. He also noted that it would depend on how much over budget.

Councilmember Warner asked what our chances are of coming in on budget or under.

Mr. Collins replied about 25% or less of the projects bid actually come in or under estimates. He said on the other hand, construction is slowing down in West Virginia and maybe the contractors are a little hungrier.

DAVID SAGO, Utility Manager, stated that the City of Fairmont has handled every part of the design aspect for the top cost and we are hoping that those bid prices come in. He added that if bids are over, they are going to look at grant money to overcome that instead of having to borrow more money. He then mentioned that it will be for 13 miles of water line.

Councilmember Warner asked if any of the project has started yet.

Mr. Sago replied no. He said that they went for advertisement last Thursday and the first advertisement was on April 17 and second advertisement will go on April 24; pre-bid meeting is May 6; and bids will be opened on May 20. He said that everything is in place financially so hopefully the bid will be awarded with construction to begin in late July and completion in spring of 2009.

Councilmember Burdick asked when Mannington will become a resale customer.

Mr. Collins said when you start delivering the first drop of water.

Councilmember Burdick asked what the financial liability of the City is.

Mr. Collins replied that the City is obligated to pay these bonds from its entire water revenues, not just Mannington. He said that you have your own customers, you have other resale customers, wholesale customers, and Mannington and all of those revenues basically flow into one big pot and that pot has to be sufficient to pay not only all of the expenses of the water system but also all of the debt service. He also mentioned that there are other bonds outstanding, not just this one. He then noted that it was the City of Fairmont's responsibility and if the revenues are not sufficient to pay all of the expenses, including debt service on bonds, then you have two choices. He explained that you can somehow reduce expenses, which is usually very difficult or you can raise rates which is typically what is done under those circumstances. He then said that if the rates are not enough to make your payments, you have to raise rates.

The Mayor then asked that when construction starts on this project, when the timeline starts on payback of the debt service versus revenue coming in.

Mr. Collins replied that you will not have any payments until after the project goes online.

Mayor Sears then asked that after this line is installed and the service is being delivered, there is also a potential resale for other customers off this line.

Mr. Sago stated that this has really not been addressed other than the line directly for the City of Mannington but we have had several communities often ask us about that. He said that we will address those issues as they come after the project is complete.

The Mayor then stated that if that is the situation, say a year, two or three down the road that we pick up other resale customers then the revenue stream increases because the profit margin is greater on that customer.

Mr. Sago said that the Mannington PSD has a large project that is going on as a resale customer for Mannington and they are wanting to go Seven Pines, Metz and that area and you will be talking another 400 to 500 customers so as Mannington sells them water, they will have to draw more water from us. He then said that there will be other potential sources of revenue from the original 350,000 gallons that we projected to sell Mannington.

Councilmember Tennant asked what would happen if Mannington, say in a year or so, does not want to buy our water.

Mr. Collins replied that the City of Fairmont will have a contractual agreement with them that they have to buy your water. He added that the PSC will step in to enforce that agreement if necessary. He said that there is no guarantee how much water they will buy; he did not think the contract calls for a minimum amount but there is no other source.

Mr. Sago stated that it is for the life of the bonds.

JOE DEBELLIS from the audience asked if city residences are free from increases if something would happen with this project.

Mr. Collins said for the City of Fairmont, there is no rate increase associated with this bond issue. He then stated that there may be rate increases for increases in operating costs, maybe other bonds that will be issued, etc. He said that this one is revenue neutral.

There being no one else to speak, the public hearing was declared closed at 7:17 p.m.

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 14, 2008, a public hearing was convened to obtain citizen input on an ordinance approving the replacement pages to the Fairmont City Code.

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

There being no one to speak, the public hearing was declared closed at 7:18 p.m.

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1392, PERSONNEL RULES, TO AMEND THE PAY PLAN TO PROVIDE FOR THE RECLASSIFICATION OF FIRE CHIEF, DIRECTOR OF PUBLIC WORKS AND CITY CLERK; TO FIX THE SALARY OF THE CITY MANAGER; TO PROVIDE FOR A ONE TIME CASH PAYMENT IN LIEU OF BASE INCREASE OR PERCENTAGE PAY RAISE; AND TO MAKE STYLISTIC CHANGES TO CERTAIN CLASS TITLES TO REFLECT A GENDER NEUTRAL POSITION

Pursuant to a notice duly published in the Times-West Virginian on April 14, 2008, a public hearing was convened to obtain citizen input on an ordinance amending the pay plan to provide for a reclassification of the Fire Chief, City Clerk and Director of Public Works and to provide for a one time cash payment to all employees in lieu of an increase.

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

There being no one to speak, the public hearing was declared closed at 7:19 p.m.

ANNOUNCEMENTS

IN RE: WELCOME TO MR. SNIDER

Councilmember Tennant extended a welcome to Mr. Snider as the new City Manager.

IN RE: NEW GROCERY STORE ON EAST SIDE

Councilmember Seifrit reported that she heard on the news that a new grocery store will be opened in East Fairmont. She said that it was reported that a company will start constructing it and the building should be done by the end of the year. She noted that they did not mention the name of the store but it will be coming.

IN RE: THREE RIVERS FESTIVAL PARADE

Councilmember Seifrit asked about the Three Rivers Festival Parade.

The Mayor noted that it would be very nice if all of Council would ride in the parade on Thursday, May 22. He mentioned that Mr. Snider will be the Grand Marshall of this year's parade. He added that the line up will begin at 5:00 p.m. at 12th Street and Fairmont Avenue and disband at Palatine Park.

IN RE: BAND SPECTACULAR

Councilmember Seifrit noted that the Bank Spectacular will be held on September 13 and since none of the bands are going to be able to be in the July 4 parade, she thought maybe something could be done at the band spectacular to honor Mary Lou Retton.

The Mayor mentioned that it might be very difficult for Mary Lou Retton to be at the Band Spectacular.

IN RE: CHANGE MAY 13, 2008 COUNCIL MEETING

Councilmember Seifrit asked if Council could have a resolution prepared to change the May 13 meeting because of the Primary Election.

The Mayor said that he cannot be here on May 14 and also we have a very important work session already scheduled on May 13 with Strand and Associates regarding the Water Plant.

Mr. Snider said that if the work session has to be rescheduled, it can be.

The Mayor asked if that meeting can be scheduled the day before.

Mr. Snider said that by resolution the meeting date can be changed.

Councilmember Delligatti mentioned that Councilmember Smith, Warner and Tennant will probably want it changed because of the Primary Election.

The Mayor asked the City Manager to see if the work session with Strand can be changed and if it cannot be changed he did not think the Council meeting should be changed because of the importance of that meeting. He then took a poll of Council to see who would like the meeting changed to May 12.

KEVIN SANSALONE, City Attorney, stated that Council will have to hold a Special Council Meeting to vote on the resolution since that resolution was not on this agenda.

It was the consensus of Council to hold a Special Council Meeting on Monday, May 5, at 5:00 p.m., in order to adopt a resolution to move the Council meeting from Tuesday, May 13 to Monday, May 12.

IN RE: COMMEND THE CITY MANAGER

Councilmember Warner commended the City Manager for taking the initiative to go out with the Councilmembers one on one and tour the City.

IN RE: EARTH DAY

Councilmember Delligatti reported that he had the opportunity to go to Fairmont State University today for the Earth Day celebration. He noted that it was a very nice event.

IN RE: COMMEND CITY STAFF FOR WEB SITE

Councilmember Delligatti commended City staff for getting the emails live on the web site.

IN RE: VETERANS MEMORIAL

The Mayor reported that a Veterans Memorial will be held on Wednesday, at 2:00 p.m., at Pricketts Fort.

IN RE: REV. DOBBS ANNIVERSARY CELEBRATION

The Mayor announced that Rev. Wesley Dobbs will be celebrating his 21st anniversary at Morningstar Baptist Church on Sunday, May 4, with a celebration event starting at 3:00 p.m. He then invited all Councilmembers to attend.

IN RE: PALATINE PARK CONSTRUCTION PROJECT

Mayor Sears reported that the first phase of the construction with the dressing rooms is almost complete and should be complete by next week. He said the City Planner has been working with 84 Lumber and the City Attorney has been working with Omni getting the bid package ready for Phase II.

CITIZENS PETITIONS

There were no petitions for this meeting.

CITY MANAGER'S REPORT

IN RE: MAYOR AND COUNCIL THANKED

Mr. Snider took this opportunity to thank the Mayor and Council for the way the community has received him. He stated that he has really enjoyed his first week in Fairmont and the staff has warmly received him. He then publicly acknowledged Bruce McDaniel and the work that he did to establish the Department Heads that we have and noted that we have excellent people to work with.

IN RE: STAFF MEETING CHANGE

The City Manager went on to say that he has instituted one change this week. He has gone to a weekly staff meeting; previously the Department Heads met every two weeks.

IN RE: MARION COUNTY HEALTH DEPARTMENT

Mr. Snider stated that he has received a request to look at the status of our relationship with the Marion County Health Department and the status of our previous appointment to that Board. He said he asked the City Attorney to do some research so he could provide some kind of feedback to Council. He then asked the City Attorney to take a few minutes to address Council and expand on his report.

KEVIN SANSALONE said from what he could determine from a review of the current statute and the statutes that existed before and the documents in the record room, it appears that the legislation that was in effect from about 1955 until 2000, pursuant to that in 1957 the Marion County Commission decided to create a Board of Health and they did that under the alternative plan which was §16-2A of the State Code. He said that it was important to know that it was not a combined board, a combined City of Fairmont / Marion County Health Board; it is just the County's Health Board. He said the old statute required the appointment of five members. He went on to explain that the bylaws provided that the County Commission could nominate or appoint one member, the City of Fairmont had the opportunity to nominate one member or to designate who that person was going to be and the Board of Education had the authority to designate or nominate one person and then two persons were nominated at large. He said that all of the nominations had to be an appointment that was made by the Marion County Commission and were not really City of Fairmont appointments, they were just a nomination from Council to the County Commission and the County Commission was the entity that was obligated to appoint the Board. He went on to explain from the records he found all the way back to 1957 that initially was what had occurred. He said the School Board would go to the County Commission with their nominee and say this is the person that we want to have appointed to the Health Board and the City would do the same thing but at some point from what the City Clerk had given to him, that all changed and the City began to nominate and appoint the person to the Health Board. He said that in the early 1990's, we made an appointment to the Health Board and even further back than that. He went on to say that he talked to Lloyd White about that and he had some concerns; however, he then referred him to the County's attorney as to what the consequences of those actions were. Mr. Sansalone then said that in 2005, really before that, there was a nomination from the City of Nancy Parks under the old scheme and she sat on the Board of an expired term of an individual named Myers and in 2005 his term was up and on June 13, 2006, City Council then re-appointed her to the Board according to the minutes of Council for a five year term ending September 30, 2010. He went on to inform Council that in 2000 the statute again changed, they repeals the 1955 version of the statute and created a whole new statutory scheme and they again adopted bylaws and removed the language regarding the nomination by the various entities he just previously discussed and made all of the appointments the responsibility of the County Commission. He then said that on June 13, 2006, even according to the Health Department's own bylaws and the statute, City Council would not have had any ability to appoint Nancy Parks to the Board. He then stated that it was his opinion that her appointment was void from the beginning since there was no authority on the part of the City to make the appointment. He said that he thought it was the responsibility of the County Commission and Health Department to resolve this situation and Council does not have any real interest in the outcome of it. He mentioned there was a relationship between the City and the Board, we own the building where it is located and have leased that to them pursuant to a written

release in 1997 which was approved by Ordinance for a term of 25 years and we also contract with them on an annual basis for health services for $6,000.00. He reiterated that the Board that exists in Marion County is not a combined Municipal/County Board; it is exclusively a County Board.

Councilmember Warner asked if the County should resolve the issue on their own.

Mr. Sansalone said that the only say that Council has in it is the fact that we contract with them for $6,000.00 for health services. He said that the City of Fairmont does not have the ability to appoint any members to the Health Department's Board with pursuant to the statutory scheme or their current bylaws and that was the circumstances that existed in 2006 when Nancy Parks was re-appointed to the Board by Council.

Councilmember Dahlia asked that when her term expires what the City of Fairmont should do.

Mr. Sansalone said that he did not think the City had any authority to appoint anybody at any time including her. He said her appointment to the Board does not appear to be valid unless the County Commission by some act of ratification confirmed her appointment.

Councilmember Warner asked if there is any possible repercussion for having done this.

Mr. Sansalone replied that if Ms. Parks voted and someone wanted to challenge her vote then the actions that were predicated on her vote would be subject to challenge. He noted this would not affect this Council.

The Mayor stated that this time, Council has no position in this matter because Council is not involved in any type of appointment. He noted that it was strictly up to the Health Board and the County Commission.

Mr. Sansalone said they need to resolve that for themselves upon advice from their attorney.

Councilmember Bussey asked if that was a paid board position.

Mr. Sansalone said he thought they were entitled to receive compensation for their services; however, there is nothing in the bylaws that talked about a set salary.

The Mayor said that on behalf if this Council, we are not involved in it and will not be involved in the future and it is a discussion among the County Commission to go back and re-visit the situation from her appointment from that date forward as they see fit.

Mr. Snider noted that the City Attorney has communicated this to the County Commission and he placed a call to Ms. Parks to advise her of the question and what we feel is our position and it would be the duty of the County Commission to resolve the issue.

Councilmember Dahlia suggested removing that Board from our City Board and Commission listing.

IN RE: MEETINGS WITH COUNCILMEMBERS

Mr. Snider reported that he already spent time with Councilmember Warner and was looking forward to the rest of Council taking the time to meet with him and tour the City.

IN RE: STRATEGIC PLANNING

Mayor Sears stated that after the City Manager is comfortable and getting familiar with the projects, he would like for him to set up a work session with Council on Strategic Planning to look at the projects and prioritize them. He then suggested having these Strategic Planning meetings every six months.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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

Mayor Sears entertained a motion for the adoption of an ordinance approving the Water Revenue Bonds for the Mannington Water Project.

Motion:

Councilmember Dahlia moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Warner.

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. 1413 was duly adopted.

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 approving the replacement pages to the Fairmont City Code.

Motion:

Councilmember Dahlia moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Smith.

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. 1414 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING CITY ORDINANCE NO. 1392, PERSONNEL RULES, TO AMEND THE PAY PLAN TO PROVIDE FOR THE RECLASSIFICATION OF FIRE CHIEF, DIRECTOR OF PUBLIC WORKS AND CITY CLERK; TO FIX THE SALARY OF THE CITY MANAGER; TO PROVIDE FOR A ONE TIME CASH PAYMENT IN LIEU OF BASE INCREASE OR PERCENTAGE PAY RAISE; AND TO MAKE STYLISTIC CHANGES TO CERTAIN CLASS TITLES TO REFLECT A GENDER NEUTRAL POSITION

Mayor Sears entertained a motion for the adoption of an ordinance amending the pay plan to provide for a reclassification of the Fire Chief, City Clerk and Director of Public Works and to provide for a one time cash payment to all employees in lieu of an increase.

Motion:

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

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

Councilmember Warner	Yes	Councilmember Delligatti	Yes
Councilmember Smith	Yes	Councilmember Dahlia	Yes
Councilmember Tennant	No	Councilmember Bussey	Yes
Councilmember Seifrit	Yes	Councilmember Burdick	Yes
Mayor Sears	Yes		

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1415 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING AND AUTHORIZING A VARIANCE FROM THE CITY OF FAIRMONT SUBDIVISION REGULATIONS FOR THAT CERTAIN PARCEL OF REAL ESTATE, SITUATE IN THE CITY OF FAIRMONT, FAIRMONT DISTRICT, MARION COUNTY, WEST VIRGINIA, SAID PARCEL BEING PARCEL NO. 127 OF

MARION COUNTY TAX MAP 01-03, KNOWN AS 621 WALNUT AVENUE, TO PERMIT THE CREATION OF A LOT FRONTING 34.20 FEET ON WALNUT AVENUE

Mayor Sears entertained a motion for the introduction of an ordinance authorizing a variance from the subdivision regulations for 621 Walnut Avenue to permit the creation of a lot fronting 34.20 feet on Walnut Avenue.

Motion:

Councilmember Bussey moved for the introduction of the proposed ordinance and the reading of a synopsis in lieu of the entire ordinance. The motion was seconded by Councilmember Smith.

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

The Mayor asked the Clerk to set a public hearing for May 12, 2008. He noted this will be based upon Council adopting a resolution to change the May 13 meeting to May 12.

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 8:20 p.m.

March 25, 2008

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 25th day of March, 2008, 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	William H. (Bill) Burdick
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:

Interim City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Planner	Jay Rogers
City Attorney	Kevin Sansalone
Finance Director	Eileen Layman
Utility Manager	David Sago
Public Works Director	Joe Feltz
Police Chief	Mark Hayes
Fire Chief	Roger Wilson

IN RE: OPENING CEREMONIES

Rev. Roger Waybright of Faith United Methodist Church gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Smith.

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 11, 2008. He asked if there were any corrections, deletions, or amendments.

Councilmember Dahlia 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.

PUBLIC HEARINGS

IN RE: AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2007-2008 ANNUAL BUDGET: GENERAL FUND

Pursuant to a notice duly published in the Times-West Virginian on March 17, 2008, a public hearing was convened to obtain citizen input on an ordinance providing for a General Fund budget revision.

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

EILEEN LAYMAN, Finance Director, spoke in favor of the proposed ordinance. She noted this was the third revision for this current fiscal year and then went over some of the revisions.

There being no one else to speak, the public hearing was declared closed at 7:07 p.m.

IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING ORDINANCE NO. 1366, CODIFIED AS PART THIRTEEN OF THE FAIRMONT CITY CODE, PLANNING AND ZONING CODE, AND MORE PARTICULARLY, CHAPTER FIVE, CONDITIONAL USES, ARTICLE 1331 USES PERMITTED WITH CONDITIONS, SECTION 1331.2 CONDITIONS, SUBSECTION 1331.2.5 BED AND BREAKFAST INNS, THEREOF, TO PROVDE FOR CERTAIN CONDITIONS, RESTRICTIONS AND LIMITATIONS UPON A BED AND BREAKFAST AS A CONDITIONAL USE IN A GENERAL RESIDENTIAL NEIGHBORHOOD

Pursuant to a notice duly published in the Times-West Virginian on March 17, 2008, a public hearing was convened to obtain citizen input on an ordinance providing for certain conditions and limitations upon a Bed and Breakfast as a conditional use in a General Residential Neighborhood.

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

SUSAN SPADAFORE, 3 Crestwood Circle, stated that she desires to open a bed and breakfast as a conditional use in a general residential neighborhood. She explained that several weeks ago the Planning Commission voted unanimously, again, to send her back to City Council. She said that not one person on that commission has a problem with her proposed bed and breakfast. She stated that if she was allowed to have this bed and breakfast, absolutely nothing in the neighborhood will change from the way it has been for the last 25 years that she had lived there. She went on to say that they have a private drive that goes to the back of the pool house and have private parking in the back of the pool house and no one would even see any guests that might be

there. Mrs. Spadafore then said that according to the Zoning Code, we are allowed to have, as a conditional use in her neighborhood, a school, a church, recreational facilities, art gallery and a cemetery. She said that any of these things would bring more people into their neighborhood than the one or two people that she is allowed to have. She then stated that she recently found out at the last Planning Commission meeting that there is a church group in Fairmont that wants to build a church right across the street from her house, directly in front of her, but if they can build a church practically in her front yard, she thought it was only fair that she be allowed to have one or two people in her back yard. She said that the guests that she would have would be business travelers and be a place for people's company to stay if they did not have room in their own home. She went on to say that for those that believe this was going to open a can of worms and everybody is going to want a bed and breakfast; she has a hard time with that. She said that Fairmont and Marion County has the most elderly population in West Virginia and she does not foresee a line of people waiting to get a license to open and bed and breakfast. She then said that she has been told by several people, one being the City Planner Jay Rogers, that if she would subdivide her property, she can rent the pool house as long as the renter stays for 30 days; therefore, it could become a guest house for people working in the area or staying in the area for any reason. She then said that she fails to see how staying there for 30 days is any different than staying there for one night at a time. Mrs. Spadafore went on to tell Council that she has found 13 businesses in a half-mile radius of her house and all of them have more than one or two people frequenting them. She closed by saying that she has no desire to devalue her property or anyone's property and she has as much to lose there as anyone. She then said that she has heard nothing but good thoughts from people about this project and her neighbors were excited when she approached them about this idea and they all signed a piece of paper saying that they had no problem with this and encouraged her to go on with it.

CHARLES HAISLIP, 1662 Fairmont Avenue, stated that the driveway they will utilize for this is right next to their driveway that goes to his back garage. He said that a bed and breakfast in this country are usually occupied by a couple, possibly one or two children, and are usually in a higher economic class and are usually professionals. He said the building that the Spadafore's propose has a very nice appearance and is an asset in the neighborhood and is not visible from the street. He closed by saying that he has no opposition to this bed and breakfast.

JOSH LINN, 1637 Otlahurst Drive, spoke on behalf of Mrs. Spadafore's bed and breakfast. He said she has put forth a lot of effort just to get this approved. He said a bed and breakfast usually represents a homey higher standard of hospitality and the type of customers that she will attract are people looking for a quiet stay with an inviting homelike atmosphere. He said that if her building meets the required health, safety, and fire code, City Council should seriously consider approving this adventure. He then noted that his next door neighbor at 1639 Otlahurst Drive does realty appraisals out of their home.

RALPH SPADAFORE, 3 Crestwood Circle, confessed that they have been operating a bed and breakfast for nearly 25 years but they did not call it a bed and breakfast, they called it a guest house. He mentioned that many of people have stayed there and they have never received a complaint of any sort. He said their setting was so remote; the backside of their pool house is wooded on three sides and you cannot see the pool house from the front of their property. He

noted they have a private drive that goes to the pool house. He went on to say that if he thought for one moment that this would be a hindrance or interference in any way to any of their neighbors, he would certainly not be in favor of it. He then asked Council for favorable consideration to this request.

CLAUDE KENDALL, 1626 Otlahurst Drive, stated that he has nothing against the Spadafore's having a guest house, but when you have a bed and breakfast, you have transient people that you do not know. He said that we do not need transient people around that neighborhood because it will devaluate the property.

DOUG WISE, 11 Aztec Court, stated that other cities in the area do not allow a bed and breakfast in their residential zones. He went on to say that this particular request will affect all residential properties in the City of Fairmont which are the most protective areas and the high price homes. He then stated that this request sounds more like a variance request not an ordinance change because you have one individual requesting a change by ordinance that affects every single family home in the City of Fairmont. He then said that Mrs. Spadafore even said that she did not see people coming out of the woodwork requesting a bed and breakfast. He then said, if that was the case, why in the world would this Council or the Planning and Zoning Commission want to change the whole city for one property. He said that the Spadafore's were speaking for their single property and that is not the issue here. He then said that the ordinance should be passed first and then the Spadafore's should be here to request that their property be changed. He then told Council that there are a lot of homes in the City of Fairmont that this ordinance is going to affect and that is the issue that most of the people have. Mr. Wise then said that at the last Planning & Zoning Commisison meeting, Norman Kronjaeger said just to throw it back in Council's face and let Council deal with it. He said at the same meeting, City Planner Jay Rogers made the comment that this change would never stand up in court if it ever went to court. He closed by saying that most of the people are looking at the effect as a whole and that is what Council needs to vote on and that is what the Planning and Zoning Commission should have voted on and failed.

Councilmember Dahlia asked Mr. Wise to describe the community in question.

Mr. Wise replied that it was a 1970 subdivision. He said that usually a bed and breakfast are seen in older stately homes, like Locust Avenue, Oakwood Road, etc. He mentioned that Harper's Ferry has them, and the Charles Town area, but to go into a development that was put in during the 1970's, you do not see them because that is not the place for those types of businesses. He repeated again that this affects everyone in a general residential zone and that is were it is wrong and the ordinance itself is the problem.

PAM WEIN, 229 Braddock Street, stated that she and her family relocated to Fairmont from Kettering, Ohio, which is close to Dayton, Ohio and she was the Planning and Code Official while living there. She said that she did research the Zoning Code to find the restricted neighborhoods and did eventually move into one. She went on to say that the property that is in question tonight will not affect her regardless of the decision but she does agree that it does open a can of worms because Council will be allowing all of the other restricted neighbors to do the

same thing, open a business in a restrictive neighborhood. She stated that she was not in favor of the amendment because she would not want to offer that opportunity to her neighbors.

JOSEPH LARRY, Fairmont Farms, spoke against the proposed ordinance. He said he bought in Fairmont Farms because it was zoned residential and he is very much against any ordinance that would change the residential zoning in the City. He said any business in a residential area would depreciate the value of the property and that is what he is concerned about. He said one requirement of this proposed ordinance is that a property owner would have to have one acre of ground in order to have a bed and breakfast if this were to pass. He said there are very few neighborhoods that this might apply to, but in Fairmont Farms, there are seven pieces of property which that particular sector would allow a bed and breakfast to come into. He said he was definitely against that and he was wrong to think a bed and breakfast on a residential street will increase the value of a home. He said this was definitely wrong. He went on to say the streets are not paved in order to handle that type of traffic. Mr. Larry said if this was allowed to pass, he could almost assure Council that within a month that there would be a bed and breakfast in Fairmont Farms. He said that Fairmont Farms should be maintained for what it is and Council should not allow any type of business to come into a residential area or should City Council change the laws to allow business to come into a residential area.

MIKE URAM, 103 Idlewyle Lane, stated that this ordinance is for the changing of all residential areas in the City of Fairmont. He noted this would definitely depreciate the value of homes and more traffic will be in the residential areas. He also mentioned that he thought the Planning and Zoning Commission passed the buck when they sent this ordinance back to Council. He said that when you make a change, you make the change for the positive. He then asked what positive thing does this have because you have a lot of people that is irritated about it and you are changing the general residential areas and that is not good. He then asked Council to think about what positive thing is this amendment going to do and think about how you would feel if this bed and breakfast was right beside your house.

MAX CRUM, 1636 Otlahurst Drive, stated that due to the reasons already stated tonight, he was in opposition to this ordinance.

ROGER NUZUM, 1688 Fairmont Avenue, stated that he is against this ordinance simply because it is an infringement upon him in case one of his neighbors wanted to create a bed and breakfast in their neighborhood. He said this ordinance change only benefits the Spadafore's not the vast majority of the homeowners of Fairmont and he thought Council should be responsible to the majority and not any one person.

JEFF WISE, 100 Idlewyle Lane, stated that he was the most affected adjacent property owner by a proposed bed and breakfast at the Spadafore's. He explained that the last time he addressed Council, Council rescinded this ordinance and sent it back to Planning and Zoning for what reasons we gave. He said the bottom line, in considering this, it is not a variance; it is a change in the law that would affect 14,000 plus or minus citizens of the City of Fairmont who live in general residential areas. He said that he asked Planning and Zoning how do you amend the law without following one or two ways to amend it. He said one is by the governing body and the

other is by citizens petitions. He said they have 100% of Idlewyle Lane and Tygart River Estates opposed to this amendment. He then informed Council that if it was by petition, it would have been signed by 50% of the owners in the area and if that were to proceed, then the notification process would had to have taken place to all of the adjacent property owners within 200 feet and after presenting that to Planning and Zoning, they just brushed it off. He said their whole point was that they gave it to Council and Council sent it back and they are not going Council's dirty work. He noted that was the comment that was told to him during the meeting. Mr. Wise said that the City Planner told the Planning Commissioners that it was their job and they still voted unanimously to send it back to Council. He then said that if it were to be supported by the governing body, then there is another test to take place. He said that there had to be major changes of an economic, physical, or social nature within the area involved which was not anticipated when the Comprehensive Plan was adopted. He said not the case, no report, no response from Planning and Zoning. He added that those changes have substantially altered the basic characteristics of the area, not presented, no reports, brushed off. He told Council these were key issues of how our laws are changed, brushed off by the Planning and Zoning and sent back to Council which should not have been here in the first place because the procedures were not followed. Mr. Wise did say that Planning and Zoning said that have not received any other requests for a bed and breakfast so as far as the economic impact on the City of Fairmont, why would we change the laws for the entire City when we have a "pool house" not even in the spirit of a bed and breakfast which is occupied and then the guests monitored by that person living, it's a pool house, again, no response. He added that it was clearly inconsistent with the Comprehensive Plan which is to preserve general residential areas, no response. He said that once enacted, this pool house can essentially become a rental unit and not only can the pool house become a rental unit, any auxiliary structure can become a bed and breakfast. Mr. Wise then said that we have a paid position in this city, Mr. Rogers, who advises the Planning Commission that this is clearly inconsistent with the Comprehensive Plan, clearly a bad idea to compromise our general residential areas, no response. They voted unanimously and kicked it back to City Council because they did not want to do the dirty work and it should never have come to Council in the first place. He said the key issue is, the current zoning ordinance allows bed and breakfast but you just have to put them in the appropriate areas. He then mentioned that we should not have business ventures in our general residential areas. He closed by saying that if you are passionate about a bed and breakfast, there are places to go do that in an appropriate areas in the City of Fairmont and Council should not change the laws to allow a business of any kind to compromise the general residential areas. He then urged Council to do the right thing and kill this ordinance so the protections will continue in the general residential areas.

KEITH WADE, 1614 Otlahurst Drive, stated that it sounds like the Spadafore's have an ideal situation and he is not specifically concerned about their situation but he does support some of the other concerns about opening up a can of worms. He said that he is concerned about what could take place in other neighborhoods, not specifically the Spadafore's, but what is going to happen in other neighborhoods in the city.

JOHN KEELING, 34 Hollen Circle, stated that this ordinance change will set a bad precedent with respect to zoning plans. He said that he has nothing against this particular bed and breakfast

but making this kind of change does establish a precedent and can allow other changes with a greater concern. He stated that such an amendment to an ordinance is not proper.

There being no one else to speak, the public hearing was declared closed at 7:50 p.m.

IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING ORDINANCE NO. 1366, CODIFIED AS PART THIRTEEN OF THE FAIRMONT CITY CODE, PLANNING AND ZONING CODE, AND MORE PARTICULARLY, CHAPTER THREE, DISTRICTS AND REGULATIONS, ARTICLE 1317 DISTRICTS, SECTION 1317.1 GENERAL RESIDENTIAL, CONDITIONAL USES, THEREOF, TO PERMIT A BED AND BREAKFAST INN AS A CONDITIONAL USE IN A GENERAL RESIDENTIAL NEIGHBORHOOD

Pursuant to a notice duly published in the Times-West Virginian on March 17, 2008, a public hearing was convened to obtain citizen input on an ordinance to permit a Bed and Breakfast as a conditional use in a General Residential Neighborhood.

The Mayor said, before opening up this public hearing, he would like the comments made at the last public hearing to apply to this public hearing. He said that everyone has very clearly made their point and out of respect for everyone, he asked that the comments would apply to the second ordinance. He then asked if anyone had anything new to add.

There being no one else to speak, the public hearing was declared closed at 7:52 p.m.

IN RE: 2008-2009 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 28, 2008 and March 6, 2008, a public hearing was convened to obtain citizen input on the 2008-2009 City Budget.

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

EILEEN LAYMAN, Finance Director, stated that she had made all of the changes as recommended by Council in the last work session.

The Mayor stated that there are so many hours that Council spends on the budget and Council spent numerous hours working on this budget because it was a very tight budget. He said that they looked at several different issues, one being pay raises and the other being capital improvements.

DAVID SAGO, Utility Manager, thanked Council for the hours spent on the Water Fund budget. He noted that he has made all of the changes recommended in the work sessions to the Water Fund budget.

DAVID WHITEMAN, President of IAFF Local 318, addressed Council regarding the budget. He said that in February the firefighters presented Council with a pay parity issue regarding the difference between base pay between firefighters and police officers. He said, that evening, he felt as though the Mayor tried to stop his presentation before they barely started and had to request to be allowed to finish before Council made judgment. He said upon completion of the presentation, at least all Councilmembers that were there, and the City Manager, he was led to believe that Council agreed there was a pay disparity problem. He then asked if there has been anything done to possibly correct the problem.

The Mayor said that during the work session, he and Council felt throughout those work sessions that the firefighters presented the best presentation and really made Council aware of a lot of situations. He then apologized to Mr. Whiteman if he thought there was any misunderstanding on not listening to their arguments. He then said that information was brought to Council and issues were brought to the table that he had not been aware of and he understood that some of these issues went back to 1996 when the parity problem started. He then said did Council just listen and not pay attention, absolutely not. He said this Council from the beginning working on the budget; our main goal was to look at pay raises, not just for firefighters and not just for police officers, but for everybody. He said everything that was mentioned at the work sessions was taken into very serious consideration.

Mr. Whiteman asked if Council knows there is a problem.

Councilmember Dahlia replied yes. He said that he did not know how Council can fix that problem immediately because it is a monster of a problem. He said something that happened 10 or 12 years ago that was a crime and he did not know how some people sleep at night letting that happen.

Mr. Whiteman said that he is aware of other problems in the City and other necessities and desires. He said that he understood that Council was considering one-time pay bonuses to all city employees and evidently Council feels that this is the right decision. He noted that it was a great jester and he agrees that all city employees deserve a raise and that Council felt that they did what was right. He said the key word is "right" and he found to be able to do what was right, you first had to correct the problems that exist. He asked Council how they can tell him they are doing what is right and they have admitted they have a major problem. He asked how can Council justify if we have this "monster" of a problem and just let it go.

The Mayor said that is not the case.

Councilmember Smith noted that the major problem is that we do not have a lot of money. He said that Council was handed this problem.

Mr. Whiteman added that just their bonus in the Fire Department would cover over one-third of the problem. He mentioned that the money is there somewhere and it was just not chosen to go in that direction.

Councilmember Dahlia mentioned that it was not personal and he would like to see every employee get a raise and he wants to see parity as well because the employees of this city have suffered for two or three years of not getting anything and what happened to the Fire Department is terrible.

Mr. Whiteman then asked Council if they honestly thought there was going to be money available to correct this problem in the near future.

The Mayor replied he would hope so.

Mr. Whiteman stated again that this problem has been going on since 2000 and that is far too long.

Councilmember Burdick asked how many times this issue has been brought to Council.

Mr. Whiteman replied this is the first year that we have attempted to bring it to Council's attention as a group. He noted that he has talked to individual Councilmembers in the past. He stated that he knows that this Council did not create the problem and he knows that this Council will not solve the problem evidently and he has a problem with that.

Mayor Sears asked how Mr. Whiteman knows that.

Mr. Whiteman said because Council is getting ready to pass a budget and it is not in there.

The Mayor said that it will not be solved in this fiscal budget and that is to not say that this Council is not going to address this . . .

Mr. Whiteman stated that he had misspoke. He then noted that this Council is not going to resolve the problem in this fiscal year.

The Mayor replied that was correct.

Councilmember Warner asked Mr. Whiteman to describe as he understands it how this disparity occurred in the first place.

Mr. Whiteman said that he cannot say all of the exacts but a recollection would be something similar to there was some federal money involved for a cops program and they had hired some additional police officers and the federal money stopped to exist and somebody was very intelligent and made the offer that instead of hiring new police officers as they left through attrition that they will take that money and divide it up somehow. He noted that was their decision. He then explained that the Fire Department is contractually bound to a minimum manning clause that in no way, shape or form allows them to even consider that. He said if they would consider it, the only thing we do is cost the City overtime so they were not eligible to follow suit. He then said that his point is that if you go back and check the numbers, the

numbers are right back up above and beyond where they were when they cut it; howevever, he did not know that for a fact. He said the have less people now than they had back in . . .

The Finance Director interrupted him to say it was the same number.

The Mayor said that we have representatives here from all three unions that work for the City and everyone representing the unions has sat through work sessions and very good dialog was created. He said that Council has to be financially responsible to run the City and based on the information that is given to Council, the last thing we wanted to do was not give any type of pay raises to any employees and we found a way for the first time in over three years to come up with something that was not going to put this City in a financial despair and that is the beginning of creating a good faith relationship. He said Council was looking out for the interest of trying to create pay raises and it is all not going to happen . . .

Mr. Whiteman interrupted to say that he could not see that because he got nothing more than anybody else got. He then said that because of the parity issue, they do deserve something.

The Mayor said that everyone deserves something. He then informed Mr. Whiteman that the parity issue will be addressed at the next budget session.

Councilmember Dahlia stated that Council will talk about it all the time. He said that it is unfortunate that it has been this many years and it is wrong. He mentioned that this was the beginning of the City of Fairmont really looking out for all of the employees, including the Fire Department.

Mr. Whiteman said another problem that stems from this is that he knows for a fact that there always seems to be money in the budget for selected personnel to get raises. He noted that the City has given a number of large raises in the recent past and it was always due to a parity issue from surrounding cities. He said the Fire Department cannot even get parity between two public safety entities within the same city and he has a problem with that.

The Mayor said that Mr. Whiteman has a problem with it and Council has a problem with it and the best way to answer the question is that Council took a hard serious look at it and Council will continue. . .

Mr. Whiteman interrupted to say that he wants everyone to understand what he feels and what he knows. He said that he did not say one thing that was not true.

Mayor Sears said that during the work session Mr. Whiteman enlightened Council on information that Council never had before and that got the ball rolling on this whole thing.

Mr. Whiteman then read from an article that appeared in the Times-West Virginian on March 21, 2008 regarding Fairmont plans to cut the Outside Agencies. He said the last paragraph read that the money saved from cuts will be used in other areas of the budget and officials said one of

these is a one-time pay adjustment for all city workers and salary reclassifications for several selected employees. He said once again "selected employees".

The Mayor told Mr. Whiteman that one of the selected employees happens to be his Fire Chief.

Mr. Whiteman said that much more proves that the Fire Department deserves parity with the Police Department.

Councilmember Delligatti said that Mr. Whiteman's points were well taken. He said one thing about it is that we are either going to take care of it or binding arbitration will take care of it.

Councilmember Bussey asked Mr. Whiteman if he knew where the money was within the Fire Department budget.

Mr. Whiteman said that he made a statement that the amount of money their particular bonus was going to be was approximately one-third of what it would be for the whole pay parity issue for base pay with the Police Department.

JEFF BIAFORE, 611 College Street, Barrackville, spoke against the proposed ordinance. He said that he attended most of the budget work sessions and he thought if there was not enough money for everyone a raise then no one would get a raise. He then asked Council how they found money for a selected few and why are they so much more important than the rest of the employees.

The Mayor said that you have a reclassification situation. He noted that it started with the Fire Chief and with that you have reclassifications of the City Clerk and the Public Works Director who are being paid way below scale and their classifications were way below scale.

Mr. Biafore said that he feels his classification is way below scale. He said that all of the reclassifications are for upper management.

Mayor Sears explained that you have Department Heads that are the Department Heads and with classifications being as low as they were with the Fire Chief, City Clerk, and Public Works Director . . .

Mr. Biafore said that the City Clerk and Public Works Director received a reclassification last time. He said that in 2005 they both received a reclassification at that time. He said that he cannot understand why it is always the upper people that get a raise and not the workers.

The Mayor explained that is what Council is working toward and is trying to get to that point.

There being no one else to speak, the public hearing was declared closed at 8:15 p.m.

ANNOUNCEMENTS

IN RE: TOOL SIGNS

Councilmember Dahlia reported that there have been a lot of signs in the area regarding a tool sale.

The Interim Manager replied that most of the signs are outside the city limits and the tool sale was being held outside the city limits.

IN RE: FIRE DEPARTMENT COMMENDED

Councilmember Burdick commended the firefighters for the two fires that had taken place in his district.

IN RE: STREET CLEANING FEE

Councilmember Burdick asked regarding the street cleaning fee that is going to be charged if there was any way to recycle that debris to the asphalt plant or something.

Joe Feltz, Public Works Director, replied that we cannot recycle the cinders but we could get into the situation to where we would actually purchase a shaker screen; however, it cannot separate the trash that would be collected. He then explained the procedures that would take place and it was decided that there was nothing simple about it.

CITIZENS PETITIONS

IN RE: INTRODUCTION TO COUNCIL

FRANK JARMAN, Associate Director for the Union Mission, stated that as of July 1, 2008, he will become the Executive Director. He noted that he personally wanted to come to this meeting and introduce himself to Council. He went on to say that they would like to volunteer some time with the Parks and Recreation to help those parks that may need grass cut. He said they have some manpower, about 27 staff members, and would love to partner with the City in helping with the Parks and Recreation.

JOHN ERVIN, 130 Cadet Street, stated that he has been with the Union Mission for about five years and informed Council about their Youth Outreach Program.

The Mayor suggested that they touch base with Public Works Director Joe Feltz on the programs for the Parks.

CITY MANAGER'S REPORT

IN RE: 2008-2009 ANNUAL BUDGET

The Interim Manager stated that each of the employee groups have pleaded their case to Council for more money, for benefits, and working conditions including equipment. He said each made compelling arguments through their situations and he would like to see us better able to compensate each employee. He went on to say that when the Police came before Council, they felt that they need a better overall package to recruit, hire, and retain quality law enforcement officers. He noted that we have lost some officers to other departments. He said the Firefighters want parity with the Police in base pay and he can understand the uniform public safety services feeling that they should be paid on the same base rate but we have to look at the whole $11 million budget as the whole and understand that parity can also include manpower, chances for advancement, training opportunities and equipment. He then said that both the police officers and the firefighters put their lives on line to protect this community. He then said that the Public Works and Utility employees do have some of the lower pay grades and those need to be looked at but also you have to understand you have to look at the whole package as a whole and some of our operational folks at the Water and Wastewater Plant are in some of the higher pay grades so we have to look at this overall pay plan in order to do any real good. He added that we will never compete with private sector and he knew that some people we have lost in Utilities is now working with Mylan and he did not know if government service is ever going to be able to compete with the private sector. Mr. McDaniel then said that he would like to acknowledge the Department Heads. He said those that are in the field and in the front lines look at the pay grades for our Department Heads and mid-level management people and certainly they have to be kept in line also and need to be compensated adequately. He then said that he can assure Council and everyone that we do not have a department head working for the City of Fairmont that is for the most part with any of their peers in other Class II communities and that he knows for a fact that several of them have turned down offers and opportunities with the private sector. He then told all employees in the audience not to begrudge them for what they have and what we have to provide them so they can do their job. He closed by saying that he wished we had enough to correct all of the wrongs but listening to this Council and talking to our Finance Director, he thought over the course of time this can be looked at and taken care of.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2007-2008 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 Delligatti.

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

Councilmember Burdick	Yes	Councilmember Smith	Yes
Councilmember Dahlia	Yes	Councilmember Warner	Yes
Mayor Sears	Yes	Councilmember Delligatti	Yes
Councilmember Seifrit	Yes	Councilmember Bussey	Yes
Councilmember Tennant	No		

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1411 was duly adopted.

IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING ORDINANCE NO. 1366, CODIFIED AS PART THIRTEEN OF THE FAIRMONT CITY CODE, PLANNING AND ZONING CODE, AND MORE PARTICULARLY, CHAPTER FIVE, CONDITIONAL USES, ARTICLE 1331 USES PERMITTED WITH CONDITIONS, SECTION 1331.2 CONDITIONS, SUBSECTION 1331.2.5 BED AND BREAKFAST INNS, THEREOF, TO PROVDE FOR CERTAIN CONDITIONS, RESTRICTIONS AND LIMITATIONS UPON A BED AND BREAKFAST AS A CONDITIONAL USE IN A GENERAL RESIDENTIAL NEIGHBORHOOD

Mayor Sears entertained a motion for the adoption of an ordinance providing for certain conditions and limitations upon a Bed and Breakfast as a conditional use in a General Residential Neighborhood.

Motion:

Councilmember Delligatti moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Tennant.

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

Councilmember Warner	No	Councilmember Bussey	No
Councilmember Burdick	No	Councilmember Smith	No
Mayor Sears	No	Councilmember Dahlia	No
Councilmember Seifrit	Yes	Councilmember Delligatti	Yes
Councilmember Tennant	Yes		

The Mayor declared the ordinance defeated by a majority vote of Council.

IN RE: AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING ORDINANCE NO. 1366, CODIFIED AS PART THIRTEEN OF THE FAIRMONT CITY CODE, PLANNING AND ZONING CODE, AND MORE PARTICULARLY, CHAPTER THREE, DISTRICTS AND REGULATIONS, ARTICLE 1317 DISTRICTS, SECTION 1317.1 GENERAL RESIDENTIAL, CONDITIONAL USES, THEREOF, TO PERMIT A BED AND

BREAKFAST INN AS A CONDITIONAL USE IN A GENERAL RESIDENTIAL NEIGHBORHOOD

Councilmember Delligatti moved that this item be removed from the agenda. The motion was seconded by Councilmember Dahlia.

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

Councilmember Bussey	Yes	Councilmember Delligatti	Yes
Councilmember Seifrit	Yes	Councilmember Dahlia	Yes
Councilmember Warner	Yes	Councilmember Tennant	No
Councilmember Smith	Yes	Councilmember Burdick	Yes
Mayor Sears	Yes		

The Mayor declared this ordinance removed from the agenda by majority vote of Council.

IN RE: SECOND READING, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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

Mayor Sears entertained a motion for the second reading of an ordinance authorizing the issuance of water revenue bonds for the Mannington Water Project.

Motion:

Councilmember Bussey 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 Smith.

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

The Mayor asked the Clerk to set a public hearing for April 22, 2008.

IN RE: ADOPTION, A RESOLUTION APPROVING THE CITY OF FAIRMONT'S FISCAL YEAR 2008-2009 CITY BUDGETS: GENERAL FUND, WATER FUND, PARKING FUND, COAL SEVERANCE AND OUTSIDE AGENCIES

Mayor Sears entertained a motion for the adoption of a resolution approving the 2008-2009 City Budgets.

Motion:

Councilmember Delligatti moved for the adoption of the proposed 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 BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE ACCEPTANCE OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT ON BEHALF OF MAIN STREET FAIRMONT TO IMPLEMENT A SIGN AND FAÇADE GRANT PROGRAM

Mayor Sears entertained a motion for the adoption of a resolution authorizing a Sign and Façade Grant for Main Street Fairmont.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution. The motion was seconded 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 BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR FUNDING TO PURCHASE A FULLY EQUIPPED MINI PUMPER UNDER THE VEHICLE ACQUISITION CATEGORY OF THE ASSISTANCE TO FIREFIGHTER GRANT PROGRAM

Mayor Sears entertained a motion for the adoption of a resolution authorizing the filing of a grant application for funding to purchase a fully equipped mini pumper for the Fire Department.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution. The motion was seconded by Councilmember Delligatti.

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 BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL EMERGENCY AMANGEMENT AGENCY FOR FUNDING TO PURCHASE EQUIPMENT UNDER THE OPERATIONS AND SAFETY CATEGORY OF THE ASSISTANCE TO FIREFIGHTER GRANT PROGRAM

Mayor Sears entertained a motion for the adoption of a resolution authorizing the filing of a grant application for funding to purchase equipment for the Fire Department.

Motion:

Councilmember Bussey moved for the adoption of the proposed 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 BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE FILING OF AN APPLICATION WITH THE GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM ON BEHALF OF THE FAIRMONT COMMUNITY DEVELOPMENT PARTNERSHIP FOR PHASE II OF THE TRACTION SQUARE DEVELOPMENT PROJECT

Mayor Sears entertained a motion for the adoption of a resolution authorizing the filing of a grant application on behalf of the Fairmont Community Development Partnership for Phase II of the Traction Square Development Project.

Motion:

Councilmember Bussey moved for the adoption of the proposed resolution. The motion was seconded by Councilmember Delligatti.

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: RECEPTION FOR INTERIM MANAGER TO BE HELD

Mayor Sears announced Bruce McDaniel's last day as Interim City Manager will be on Friday, April 11; therefore, after the April 8 City Council meeting a small reception will be held to honor Mr. McDaniel. He then invited all employees to attend.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Delligatti moved to adjourn the meeting. The motion was seconded by Councilmember Smith.

The Mayor declared the meeting adjourned by voice vote of Council at 8:45 p.m.

As per WV Code §11-8-14, this meeting will be adjourned until the third Tuesday of April, April 15, 2008, at 4:30 p.m., at which time the meeting shall reconvene to lay the levy rates.

March 11, 2008

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 11th day of March, 2008, 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	William H. (Bill) Burdick
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:

Interim City Manager	Bruce McDaniel
City Clerk	Janet L. Keller
City Planner	Jay Rogers

IN RE: OPENING CEREMONIES

Councilmember Smith gave the invocation followed by the Pledge of Allegiance to the Flag also led by Councilmember Smith.

APPROVAL OF MINUTES

Mayor Sears noted that each member of Council had received a copy of the minutes from the regular meeting held on February 26, 2008. He asked if there were any corrections, deletions, or amendments.

Councilmember Bussey moved to approve the minutes as submitted. Councilmember Warner seconded the motion.

The Mayor declared the minutes approved as submitted by voice vote of Council.

IN RE: PRESENTTION OF CERTIFICATES

EARL N. STRAIGHT – 97TH BIRTHDAY

On behalf of the Fairmont City Council, Mayor Sears presented a proclamation to Earl N. Straight in observance of his 97th birthday. The Mayor noted that Mr. Straight served as the first Mayor under this form of government and also served as a Councilmember.

EAST FAIRMONT HIGH SCHOOL WRESTLERS

The Mayor presented certificates to the East Fairmont High School Wrestlers that won this year's state championship. Certificates of Achievement were presented to: Hunter Wood, Eric Morris, Drew Jenkins and Mason Bailey.

FAIRMONT SENIOR HIGH SCHOOL GIRLS SWIM TEAM

The Mayor presented certificates to the Fairmont Senior High School Girls Swim Team that won the state championship in the 200 Freestyle Relay. Certificates of Achievement were presented to: Jenny Carpenter, Chelsea Clark, Sarah Cover, and Tessa Evans.

FAIRMONT SENIOR HIGH SCHOOL BOYS SWIM TEAM

The Mayor presented certificates to the Fairmont Senior High School Boys Swim Team that won the state championship. He noted the boys swim team for Fairmont Senior High School has won the state championship for the last 10 consecutive years. Certificates of Achievement were presented to: Zac Billiris, Andrew Bonasso, Travis DeVault, Kummih Govine, Lance Hearn, Ross Lawson, Matthew McLellan, Hunter Murray, Louie Romano, Corey Rumney, Jonathan Turner, Jacob Wells, and Steven Zembraski.

IN RE: NEW CITY MANAGER INTRODUCED

The Mayor introduced the new City Manager, James W. Snider, who was in attendance. He noted that Mr. Snider will start his position on April 14, 2008.

PUBLIC HEARINGS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 2 OF ORDINANCE NO. 567, AS AMENDED BY ORDINANCE NO. 1155, WHICH HAS BEEN CODIFIED AS ARTICLE 363 PARKING METERS, SECTION 363.07 "NOTICE OF PARKING VIOLATION; DUTY TO REPORT AND PAY FINE; PENALTY," OF THE FAIRMONT CITY CODE, TO PROVIDE FOR AN INCREASE IN THE FINES ASSESSED THEREUNDER AND TO CLARIFY THE NATURE OF THE OFFENSE

Pursuant to a notice duly published in the Times-West Virginian on February 28 2008 and March 6, 2008, a public hearing was convened to obtain citizen input on an ordinance providing for an increase in the parking meter fines.

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

There being no one to speak, the public hearing was declared closed at 7:25 p.m.

ANNOUNCEMENTS

IN RE: EXTREME HOME EDITION

Councilmember Dahlia reported that Sunday was the Extreme Home Edition show. He noted that it was a very rare opportunity for Fairmont and Fairmont got a real positive shot from the national media.

The Mayor thanked everyone that participated in the Extreme Home Makeover Edition and noted it was a huge success.

IN RE: FIRE DEPARTMENT COMMENDED

The Mayor noted that Fairmont had a bad house fire on Virginia Avenue a couple weeks ago and he commended the firefighters for the outstanding job they did because in that situation, we probably could have lost four or five homes since the homes were close together.

IN RE: BUDGET WORK SESSION

The Mayor reported that the budget work session scheduled for Friday, at 10:00 a.m. will be held at the Public Safety Building in the Conference Room.

CITIZENS PETITIONS

IN RE: LETTER OF SUPPORT REQUESTED FOR GRANT

GINA WAGAMAN, 406 Maple Avenue, asked Council for a letter of support for a grant application for the old building at Woodlawn Cemetery.

The City Manager stated that the City will put something together and have Ms. Wagaman look at it.

IN RE: STORMWATER FEES

JAMES WHARTON, 39 Hollen Circle, addressed Council concerning the stormwater fees. He explained that the ordinance for the stormwater fees was passed in December of 2005 and it provided for a flat rate until they could calculate a square footage on non-single family dwellings. He noted that they were supposed to have done this by July 1, 2007 and to date they

still have not done that; therefore, he is paying two and a half times as much as a single family dwelling of the same size. He mentioned that he has complained numerous times and nothing has been done.

The Mayor stated that this is a situation that is mandated through the Federal Government and is not something that the City of Fairmont enacted and took upon themselves to start charging for water runoff. He then explained that we had the opportunity through the Public Service Commission to set these rates at a lower rate and adopt that ordinance and if that event did not take place and we did not set the rates that were first issued to us, then because it was a mandated situation, those rates could have been set at a higher rate.

The Interim Manager said the money that the Sanitary Sewer Board has accumulated, obviously those are public funds and is a public budget and because of those funds, we now have the Golf Drive storm sewer project ready to go to construction and that is a project that has been on the books for over 25 years.

Mr. Wharton said that the Sanitary Sewer Board refuses to set the rates that the City Council set. He said that square footage rates were to be billed July 1, 2007 and he does not like having to pay two and a half times as much as his neighbor.

The Interim Manager mentioned that this has gone before the City Attorney and the City Attorney advised us that until we, the Sanitary Sewer Board was ready to charge all classes of customers this rate, that we not do that. He then stated that he will take this back before the City Attorney.

The Mayor told Mr. Wharton that once the City Attorney looks into it, someone will get back in touch with him.

IN RE: BUSINESSES NOT HAVING A LICENSE

GARY KNOLL, a resident of Idamay and owner of Speedway Market, stated that he knows of several businesses that do business in the City of Fairmont but does not have a business license or pay B&O tax.

The Interim Manager told Mr. Knoll that anybody operating a business in the City of Fairmont needs to register and obtain a business license.

Mr. Knoll said that he asked a clerk in the Finance Department about ten different businesses and none of them had a license.

The Interim Manager then asked Mr. Knoll to turn those businesses over to the City and they would be checked.

The Mayor thanked Mr. Knoll for making the City aware that there are people out there that are doing business in the City without a license.

IN RE: STORM SEWER COMPLAINT

RAYMOND MORGAN, 143 Fox Hill Lane, presented a letter to each Councilmember requesting information concerning the storm sewers. He even said that a few Councilmembers he had spoken to did not know that citizens were getting charged for storm sewers even if they did not have storm sewers. He then mentioned that his street had eight major water leaks and the house across the street floods when it rains and water sets in their yard like a lake. He then stated that when the Charter was drafted, it was never meant to charge residents outside the City for services.

The Mayor asked the City Manager to explain the storm water system.

Councilmember Delligatti said that one issue is that the City Council has no budgetary oversight over the stormwater or sanitary sewer.

Mr. Morgan said that Council is in charge of everything that happens in the City.

Councilmember Delligatti stated that Council is not in charge of the sanitary sewer or storm water. He said, yes, we approve the rate increases but we have no say at all.

Mr. McDaniel said the storm sewer fees were established by ordinance in 2006 which was after the City of Fairmont Sanitary Sewer Board put together the storm water management program as a mandate as part of our NPDES permit from the WV Environmental Protection. He went on to say that what that rate is charged for is $5.50 per month per residential unit and then, at some point, the commercial structures are to go to a square footage based fee. He then said that it is not to be charged to just people within the corporate limits of the City because the sanitary sewer board serves a customer base and the storm sewer is designed to serve a watershed base. He then said that if you live anywhere in the watershed, which is a drainage section, you are charged that fee. Mr. McDaniel reported that fee is collected every two months on the water bill and the sanitary sewer board's storm sewer division takes it and they maintain the existing sewers, they put together a storm water management plan that has to be filed on a quarterly basis with the Division of Environmental Protection and they have accumulated approximately $350,000. He then noted that the first $280,000 plus will be going to a storm sewer project on Golf Drive. He added that it was never intended to be a fee for those of us that have storm sewers. He told Mr. Morgan that money actually helps manage that program and, in time, will generate sufficient dollars to put together a storm sewer improvement plan for the City and for the watershed.

The Mayor said that a lot of people do not realize with our budget process that you have a general fund and a sanitary sewer fund which is a completely separate fund.

Mr. Morgan asked how the Federal Government came down and just grabbed Fairmont.

The Manager replied there are cities all over the state doing the same thing that we are doing.

The Mayor said that you have an infrastructure system throughout this whole country that is 100 plus years old and the wear and tear and environmental issues, and when it is passed down to us

and is mandated, we are not just the only small USA town in the country that is doing this. He mentioned that we are trying to replace a 100 plus year old infrastructure and unfortunately it costs everybody and we are all in the same boat together.

IN RE: PROCLAMATION FOR FIRST FATHER'S DAY

REV. D.D. MEIGHEN, 3 Park Drive, reported that on July 5 of this year will be the 100th anniversary of the observance of the first Father's Day service in America. He then asked City Council to issue a proclamation for that day and deliver it on that day in front of the church at Central United Methodist.

CITY MANAGER'S REPORT

IN RE: DUPLICATE STREET NAMES

The Interim Manager stated that several weeks ago he had given Council a memo from City Planner Jay Rogers regarding duplicate street names. He said that he would like to get this project started before he leaves so Mr. Snider will not have to deal with this in its entirety. He explained that we have identified about 41 instances of duplicate street names in the City of Fairmont that may cause some confusion with our emergency service providers. He said that Al Babcock has provided him with a sample ordinance that the state would like for all of the towns and cities in the state to adopt so the counties and cities can work together on street naming.

AL BABCOCK addressed Council representing Chris McIntire who is the Emergency Services Director for Marion County that oversees the 911 system for the county. He went on to say that there are duplicate street names and it is easy to send an emergency vehicle or a fire truck to the wrong address. The then asked Council to consider this ordinance when it is placed on the agenda.

IN RE: ADJOURN TO EXECUTIVE SESSION

Mayor Sears moved to adjourn the meeting to Executive Session as per WV Code 6-9A-4 and City Charter 2.11 under item nine regarding property. The motion was seconded by Councilmember Dahlia.

Roll call was taken by the Clerk.

The Mayor declared the meeting adjourned to Executive Session at 8:06 p.m. by unanimous vote of Council.

IN RE: MEETING RECONVENED

The Mayor declared the meeting reconvened at 8:29 p.m.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 2 OF ORDINANCE NO. 567, AS AMENDED BY ORDINANCE NO. 1155, WHICH HAS BEEN CODIFIED AS ARTICLE 363 PARKING METERS, SECTION 363.07 "NOTICE OF PARKING VIOLATION; DUTY TO REPORT AND PAY FINE; PENALTY," OF THE FAIRMONT CITY CODE, TO PROVIDE FOR AN INCREASE IN THE FINES ASSESSED THEREUNDER AND TO CLARIFY THE NATURE OF THE OFFENSE

Mayor Sears entertained a motion for the adoption of an ordinance providing for an increase in the parking meter fines.

Motion:

Councilmember Dahlia moved for the adoption of the proposed ordinance. The motion was seconded by Councilmember Delligatti.

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

Councilmember Seifrit	Yes	Councilmember Delligatti	Yes
Councilmember Burdick	No	Councilmember Tennant	Yes
Councilmember Bussey	Yes	Councilmember Warner	Yes
Councilmember Smith	Yes	Councilmember Dahlia	Yes
Mayor Sears	Yes		

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1410 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2007-2008 ANNUAL BUDGET: GENERAL FUND

Mayor Sears entertained a motion for the introduction of an ordinance providing for a General Fund budget revision.

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 Smith.

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

The Mayor asked the Clerk to set a public hearing for March 25, 2008.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AMENDING AND SUPPLEMENTING THE PROVISIONS OF

ORDINANCE NO. 624, AS AMENDED, CODIFIED AS SECTION .08 RATES OF ARTICLE 171 OF THE CITY CODE, AND MORE PARTICULARLY SECTION FOUR (4) THEROF, TO PROVIDE FOR AND ESTABLISH COMPETITIVE MONTHLY RATES TO BE PAID FOR VEHICULAR PARKING IN THAT CERTAIN PUBLIC VEHICULAR PARKING FACILITY OWNED BY THE CITY OF FAIRMONT AND SITUATE UPON ALL OR PART OF PARCEL NOS. 44, 45, 46, 49, AND 50 OF MARION COUNTY TAX MAP 01-01, COMMONLY REFERRED TO AS THE PARKING GARAGE AT THE CORNER OF ADAMS AND MADISON STREETS

Mayor Sears entertained a motion for the introduction of an ordinance providing for a reduction in the rates at the Parking Garage located at the corner of Adams and Madison Streets.

Motion:

Councilmember Dahlia 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 April 8, 2008.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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.

Mayor Sears entertained a motion for the introduction of an ordinance authorizing the construction and improvements to the existing water system by providing for the Mannington water project.

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 Smith.

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

The Mayor asked the Clerk to set a public hearing for April 22, 2008.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING ORDINANCE NO. 1366, CODIFIED AS PART THIRTEEN OF THE FAIRMONT CITY CODE, PLANNING AND ZONING CODE, AND MORE PARTICULARLY, CHAPTER FIVE, CONDITIONAL USES, ARTICLE 1331 USES PERMITTED WITH CONDITIONS, SECTION 1331.2 CONDITIONS, SUBSECTION 1331.2.5 BED AND BREAKFAST INNS, THEREOF, TO PROVDE FOR CERTAIN CONDITIONS, RESTRICTIONS AND LIMITATIONS UPON A BED AND BREAKFAST AS A CONDITIONAL USE IN A GENERAL RESIDENTIAL NEIGHBORHOOD

Mayor Sears entertained a motion for the introduction of an ordinance providing for certain conditions and restrictions upon a bed and breakfast as a conditional use in a General Residential Neighborhood.

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 Smith.

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

The Mayor asked the Clerk to set a public hearing for March 25, 2008.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT, AMENDING AND SUPPLEMENTING ORDINANCE NO. 1366, CODIFIED AS PART THIRTEEN OF THE FAIRMONT CITY CODE, PLANNING AND ZONING CODE, AND MORE PARTICULARLY, CHAPTER THREE, DISTRICTS AND REGULATIONS, ARTICLE 1317 DISTRICTS, SECTION 1317.1 GENERAL RESIDENTIAL, CONDITIONAL USES, THEREOF, TO PERMIT A BED AND BREAKFAST INN AS A CONDITIONAL USE IN A GENERAL RESIDENTIAL NEIGHBORHOOD

Mayor Sears entertained a motion for the introduction of an ordinance permitting a bed and breakfast as a conditional use in a General Residential Neighborhood.

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 Delligatti.

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

The Mayor asked the Clerk to set a public hearing for March 25, 2008.

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 providing for authorization to file an application for grant funding for Scott Place Shelter.

Motion:

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

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

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION 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 providing for authorization to file an application for grant funding for Hope, Inc.

Motion:

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

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

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, ENDORSING THE ANNUAL JOHNNIE JOHNSON BLUES AND JAZZ FESTIVAL TO BE HELD AT PALATINE PARK IN THE CITY OF FAIRMONT ON JULY 11, 12, & 13, 2008

Mayor Sears entertained a motion for the adoption of a resolution endorsing the Johnnie Johnson Festival to be held July 11, 12, & 13, 2008 at Palatine Park.

Motion:

Councilmember Dahlia moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. Councilmember Warner 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 Delligatti moved to adjourn the meeting. The motion was seconded by Councilmember Tennant.

The Mayor declared the meeting adjourned by voice vote of Council at 8:40 p.m.

Legals

NOTICE OF PUBLIC HEARING ON CITY OF FAIRMONT BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Fairmont (the "City") to be held on Tuesday, April 22, 2008, 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 actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATER SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA DWTRF 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; AU-

AFFIDAVIT OF PUBLICATION

008052

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 8 day of April, 2008, and ending with the issue of the 15 day of April, 2008, and was posted at the front door of the Marion County Courthouse on the 8 day of April, 2008; that said annexed notice was published on the following dates: April 8, 15, 2008

and the cost of publishing said annexed notice as aforesaid was $ 156.94.

Beverly A. Miller

Taken, subscribed and sworn to before me in said county this 17 day of April, 2008.

My commission expires Jan 24, 2010

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Stacey L. Gillett
Times West Virginian
Fairmont, WV 26554
My Commission Expires Jan. 24, 2010

Notary Public of Marion County, West Virginia

SIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-entitled Ordinance was approved by the Council on March 25, 2008.

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 water 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 water 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: March 28, 2008
/s/ Janet L. Keller
City Clerk
03.26.08
268460.00009
Times: April 8, 15, 2008

WV MUNICIPAL BOND COMMISSION
8 Capitol Street
Terminal Building, Suite 500
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: June 26, 2008

(See Reverse for Instructions)

ISSUE: City of Fairmont
Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program)

ADDRESS: P.O Box 1428, Fairmont, WV 26555 COUNTY: Marion

PURPOSE OF ISSUE:
New Money: x
Refunding:

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: June 26, 2008 CLOSING DATE: June 26, 2008

ISSUE AMOUNT: $2,750,000 RATE: 0% (1% admin fee)

1ST DEBT SERVICE DUE: December 1, 2009 1ST PRINCIPAL DUE December 1, 2009

1ST DEBT SERVICE AMOUNT $22,917 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm: Jackson Kelly, PLLC
Contact: Samme Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK:
Bank: The Huntington National Bank
Contact: Margaret Byrd
Phone: 304.623.7106

ESCROW TRUSTEE:
Firm:
Contact:
Phone:

KNOWLEDGEABLE ISSUER CONTACT
Contact: Eilleen Layman
Position: Finance Director
Phone: 304.333.3471 ext 322
elayman@fairmontwv.gov

OTHER:
Agency: West Virginia DWTRF Program
Contact: Robert DeCrease, P.E.
Position: manager
Phone: (304) 558-2981

DEPOSITS TO MBC AT CLOSE

By:				
x	Wire		Accrued Interest:	$
	Check		Capitalized Interest:	$
		x	Reserve Account:	$ 91,668
			Other:	$

REFUNDS & TRANSFERS BY MBC AT CLOSE

By:				
	Wire		To Escrow Trustee	$
	Check		To Issuer	$
	IGT		To Cons. Invest. Fun	$
			To Other:	$

NOTES: The Series 2008 B Bonds Reserve Account to be fully funded with bond proceeds

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED:
TRANSFERS REQUIRED:

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

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

The Huntington National Bank, Fairmont, West Virginia, hereby accepts appointment as Depository Bank in connection with the Bond Ordinance of the City of Fairmont (the "Issuer") enacted April 22, 2008, and the Supplemental Resolution of the Issuer adopted June 24, 2008 (the "Bond Legislation"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the principal amount of $2,750,000 (the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 26th day of June, 2008.

HUNTINGTON NATIONAL BANK

By: Margaret M Byrd
Its: Authorized Officer

06.09.08
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF 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 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), dated June 26, 2008, issued in the principal amount of $2,750,000 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 26th day of June, 2008.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

06.09.08
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF 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 Water Revenue Bond, Series 2008 A (West Virginia DWTRF Program), of the Issuer, dated June 26, 2008, in the principal amount of $2,750,000, numbered AR-1, was registered as to principal only, in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 26th day of June, 2008.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

06.09.08
268460.00009

CITY OF FAIRMONT

Water Revenue Bonds, Series 2008 A
(West Virginia DWTRF Program)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 26th day of June, 2008, 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 $2,750,000 Water Revenue Bonds, Series 2008 A (West Virginia DWTRF Program), in fully registered form (the "Bonds"), pursuant to the Bond Ordinance of the Issuer duly enacted April 22, 2008, and the Supplemental Resolution of the Issuer duly adopted June 24, 2008 (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 exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, 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, WV 26555
Attention: City Manager

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 Intentionaly 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

By: _____
Its: City Manager

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

06.09.08
268460.00009

EXHIBIT A

Bond Legislation included in bond transcript as Documents Nos. 1 and 2.

SCHEDULE OF COMPENSATION

(Please see attached)

Private Financial Group
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date June 26, 2008

City of Fairmont
Account Number 6089001809

City of Fairmont
Water Revenue Bonds, Series 2008 A
John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

****

FEE CALCULATION FOR June, 2008

****

TOTAL AMOUNT	$	500.00
TOTAL DUE	**$**	**500.00**

* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT *
* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN *
* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: BARRY. . *
* .. GRIFFITH, PO BOX 633, CHARLESTON, WV 25322-0633 . . . . . .*

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304)348-5035

CITY OF FAIRMONT

(WEST VIRGINIA)

WATER REVENUE BONDS, SERIES 1998

BOND ORDINANCE

ORDINANCE NO. 1072

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CITY OF FAIRMONT
(WEST VIRGINIA)

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $31,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1998; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING 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 8, Article 19 of the West Virginia Code of 1931, as amended (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 waterworks 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 waterworks system of the Issuer, consisting of rehabilitation and renovations of the existing storage and distribution system, a new water treatment facility, two new water storage tanks and transmission mains, together with all appurtenant facilities (collectively, the "Project") (the existing public waterworks 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 or to be prepared by the Consulting Engineers.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all Operating Expenses of the System and the principal of and interest on the Series 1998 Bonds and the Prior Bonds (as hereinafter defined) and to make payments into all funds, accounts and other payments provided for herein.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 1998, in the total aggregate principal amount of not more than $31,000,000 (the "Series 1998 Bonds"), to permanently finance the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 1998 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 1998 Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; premiums for municipal bond insurance; reserve account insurance or reserve account surety bonds, letter of credit fees; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale or issuance of the Series 1998 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 1998 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that the Series 1998 Bonds be sold to the Original Purchaser pursuant to the terms and provisions of a bond purchase agreement to be entered into by and between the Issuer and the Authority, as shall be approved by supplemental resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 1998 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000 (the "Prior Bonds").

The Series 1998 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 1998 Bonds, the Issuer will obtain a certificate of an Independent Accountant stating that the parity test of the Prior Bonds is met. 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.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 1998 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a certificate of convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the date of issuance of the Series 1998 Bonds or such final order will not be subject to appeal or rehearing.

Section 1.03. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 19 of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Series 1998 Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer and Redemption Digest.

"Authorized Officer" means the City Manager of the Issuer or any other officer of the Issuer specifically designated by resolution of the Council of the Issuer.

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

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal

Bonds, appointed by the Issuer and shall initially mean Steptoe & Johnson, Clarksburg, West Virginia.

"Bondholder," "Holder," "Owner," "Registered Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Series 1998 Bonds, and in the event the Series 1998 Bonds are insured, shall initially mean the Bond Insurer set forth in the Supplemental Resolution.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"Bond Year" means with respect to each series of Bonds, 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.

"Bonds" means, collectively, the Series 1998 Bonds, the Prior Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1998 Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference.

"City" or "Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Council and any successor thereto.

"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 1998 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.

"Construction Fund" means the Construction Fund created by Section 4.01 hereof.

"Consulting Engineers" means Chapman Technical Group, St. Albans, West Virginia, or any qualified engineer or engineers or firm or firms of engineers, licensed by the State, that shall at any time now or hereafter be retained 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.

"Costs" means, collectively, those costs described in Section 1.02D hereof.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

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

"Depository Bank" means the bank or banks 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 Issuer as Depository Bank.

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

"DTC" means The Depository Trust Company, New York, New York, or its successor thereof.

"DTC-eligible" means, with respect to the Series 1998 Bonds, meeting the qualifications prescribed by DTC.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or 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.

"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.

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

"Independent 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 purpose except keeping the accounts of the System in the normal operations of its business and affairs.

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

"Mayor" means the Mayor of the Issuer.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Series 1998 Bonds, insuring the payment of the principal of and interest on all or any of the Series 1998 Bonds in accordance with the terms thereof.

"Net Proceeds" means the face amount of the Series 1998 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1998 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 1998 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any investment property which is acquired with the gross proceeds of the Series 1998 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1998 Bonds.

"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, fees and expenses of fiscal agents, the Depository Bank, the Registrar and the Paying Agent, 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 any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Ordinance" means this Ordinance and all ordinances, orders and resolutions supplemented hereto or amendatory hereof.

"Original Purchaser" means, collectively Ferris Baker Watts, Inc., Charleston, West Virginia, and Crews & Associates, Inc., Little Rock, Arkansas, as the purchasers of the Series 1998 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 1998 Bonds with interest rates and other terms allowable under the Act, 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 1998 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 1998 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adopted by the Council at the time of approval of such sale of said Series 1998 Bonds.

"Outstanding," when used with reference to the Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior 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 Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds or Prior Bonds for the purpose of consents, notices and the like, any Bond or Prior Bond registered to the Issuer. Notwithstanding the foregoing, in the event that the Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as the Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar or any other Paying Agent designated as such for the Series 1998 Bonds in the Supplemental Resolution, and any successor thereto, appointed in accordance with Section 8.12 hereof.

"Prior Bonds" means the Issuer's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000.

"Prior Ordinance" means the bond ordinance enacted by the Issuer on April 8, 1997, and a supplemental resolution adopted by the Issuer on June 5, 1997, authorizing 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.

"Purchase Price," for the purpose of computation of the Yield of the 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 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 Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the 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 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

"Qualified Investments" means, collectively, the Qualified Investments defined in the Prior Ordinance, with such modifications as set forth in the Supplemental Resolution.

"Rebate Fund" means the Rebate Fund created by Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Series 1998 Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of the Prior Bonds, the Series 1998 Bonds or any other Bonds of the Issuer called for redemption.

"Redemption Price" means the price at which the Prior Bonds, the Series 1998 Bonds or any other Bonds of the Issuer may be called for redemption and includes the principal amount of such Bonds to be redeemed, plus interest and the premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the Registrar for the Series 1998 Bonds, and any successor thereto, appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

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

"Series 1998 Bonds" means the Water Revenue Bonds, Series 1998, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 1998 Bonds Redemption Account" means the Series 1998 Bonds Redemption Account created by Section 4.02 hereof.

"Series 1998 Bonds Reserve Account" means the Series 1998 Bonds Reserve Account created by Section 4.02 hereof.

"Series 1998 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1998 Bonds in any year.

"Series 1998 Bonds Sinking Fund" means the Series 1998 Bonds Sinking Fund created by Section 4.02 hereof.

"State" means the State of West Virginia.

"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 or Resolutions to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Series 1998 Bonds, authorizing the sale of the Series 1998 Bonds to the Original Purchaser and setting forth provisions specific to the Bond Insurer, if any; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means, collectively, the complete existing municipal waterworks system of the Issuer, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for 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.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

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 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 Ordinance; and the term "hereafter" means after the date of enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 1998 Bonds by those who shall own or hold the same from time to time, this Ordinance 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 such Bondholders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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 $31,000,000, in accordance with the plans and specifications prepared or to be prepared by the Consulting Engineers.

ARTICLE III

THE SERIES 1998 BONDS

Section 3.01. Form and Payment of Bonds. No Series 1998 Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Series 1998 Bonds issued pursuant to this Ordinance, may be issued only as fully registered Bonds without coupons, in the denomination of $5,000 or any integral multiple thereof for any year of maturity. All Series 1998 Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. All Series 1998 Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Bonds surrendered, all as shall be set forth in the Bonds.

The principal of and the premium, if any, on the Series 1998 Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Series 1998 Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of $500,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Series 1998 Bonds shall be executed in the name of the Issuer by the Mayor and City Manager, by their manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City 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 Bonds shall cease to be such officer of the Issuer before the 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 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 such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Series 1998 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference with respect to the Series 1998 Bonds, shall have been duly manually executed by the Registrar. Any such manually 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 Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 1998 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 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, 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 any of the Series 1998 Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. 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 Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of 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 the initial exchange or 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 Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 1998 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and 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 the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Gross Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Series 1998 Bonds Redemption Account in accordance

with Subsection 4.03.A(1) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory Redemption Date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Series 1998 Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Series 1998 Bonds Sinking Fund), as will exhaust as nearly as practicable the Series 1998 Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section.

Such redemption shall be by random selection made on the 45th day preceding the mandatory Redemption Date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of $5,000.

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Series 1998 Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer 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 Bond Insurer, the Original Purchaser and the registered owner of the Series 1998 Bond or 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 Registrar.

So long as DTC (as CEDE & CO.) is the registered Owner of the Series 1998 Bonds, the Registrar shall send all notices of redemption to DTC and shall verify that DTC has received notice. Copies of all redemption notices relating to optional redemption of the Series 1998 Bonds shall also be sent to registered securities depositories, nationally recognized municipal securities information repositories and to *Standard & Poor's Called Bond Record*.

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 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such 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 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 Bonds.

If funds sufficient to redeem all Bonds called for optional redemption have not been deposited with the Paying Agent at the time of mailing any notice of optional redemption, such notice shall also state that such optional redemption is subject to the deposit of such moneys with the Paying Agent on or before the Redemption Date. If such moneys are not so deposited, the Registrar shall notify all holders of Bonds called for redemption of such fact.

Official notice of redemption having been given as aforesaid, the Series 1998 Bonds or portions of 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 Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such 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 Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unredeemed principal of such Bond. All Bonds which have been redeemed shall be canceled and destroyed by the 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 Bonds, and failure to mail or otherwise send such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Bonds. For the purposes of paying Costs of the Project not otherwise provided for, capitalizing interest on the Series 1998 Bonds, funding the Series 1998 Bonds Reserve Account and paying costs of issuance and related costs, there shall be and hereby are authorized to be issued the Series 1998 Bonds of the Issuer, in an aggregate principal amount of not more than $31,000,000. The Series 1998 Bonds may be issued from time to time in one or more series as shall be determined by the Issuer. The Series 1998 Bonds shall be designated "City of Fairmont (West Virginia) Water Revenue Bonds, Series 1998". In the event a portion of the Series 1998 Bonds are issued in a subsequent year, they shall bear an appropriate series designation relating to such year. The Series 1998 Bonds shall be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof for any year of maturity, not exceeding the aggregate principal amount of Series 1998 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 1998 Bonds shall be numbered from R-1 consecutively upward (with appropriate series designation). The Series 1998 Bonds shall be designated; shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Bonds. A. The Series 1998 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 1998 Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Series 1998 Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Series 1998 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Series 1998 Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a Series 1998 Bond or any other evidence of ownership of the Series 1998 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Series 1998 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Series 1998 Bonds, the Issuer and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Series 1998 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption

Price of or interest on such Series 1998 Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Bondholder under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Registrar with respect to the principal or Redemption Price of or interest on the Series 1998 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Series 1998 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Series 1998 Bonds so redeemed, but DTC may return such Series 1998 Bonds and make an appropriate notation on the Series 1998 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Series 1998 Bonds of such maturity which have been redeemed.

D. The Issuer, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Series 1998 Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Series 1998 Bonds, selecting the Series 1998 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Series 1998 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Series 1998 Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder with respect to (i) the Series 1998 Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Series 1998 Bonds, (iv) any notice which is permitted or required to be given to Bondholders under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Series 1998 Bonds or (vi) any consent given or other action taken by DTC as Bondholder.

E. The book entry system for registration of the ownership of the Series 1998 Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Series 1998 Bonds; or (ii) the Issuer determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Series 1998 Bonds. In either of such events (unless in the case described in clause (ii) above, the Issuer appoints a successor securities depository), the Series 1998 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the

Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Series 1998 Bonds.

Section 3.12. Delivery of Bonds. The Issuer shall execute and deliver the Series 1998 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 1998 Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) If not registered in the name of DTC or its nominee, a list of the names in which the Series 1998 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1998 Bonds to DTC for the benefit of the Original Purchaser;

(C) Copies of this Ordinance and the Supplemental Resolution certified by the Clerk;

(D) The unqualified approving opinion of Bond Counsel regarding the Series 1998 Bonds; and

(E) A copy of such other documents and certificates as the Original Purchaser may reasonably require.

Section 3.13. Form of Bonds. The definitive Series 1998 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 1998 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 1998 Bonds shall have the form of the opinion of Steptoe & Johnson, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 1998 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1998 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1998 Bonds Sinking Fund and applied to payment of interest on the Series 1998 Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 1998 Bonds equal to the Series 1998 Bonds Reserve Requirement shall be remitted to the Bond Commission for deposit in the Series 1998 Bonds Reserve Account, provided that, to the extent the Series 1998 Bonds Reserve Requirement is satisfied in whole or in part from a reserve account letter of credit, surety bond or other credit facility, proceeds of the Series 1998 Bonds shall be deposited in the Series 1998 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1998 Bonds Reserve Requirement.

C. An amount of the proceeds of the Series 1998 Bonds necessary to pay costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1998 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this 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 within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1998 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

D. The balance of the proceeds of the Series 1998 Bonds shall be deposited with the Depository Bank in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay Costs of the Project at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

(1) Revenue Fund (established by Prior Ordinance);

(2) Depreciation Fund (established by Prior Ordinance);

(3) Construction Fund;

(4) Costs of Issuance Fund; and

(5) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. 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 Bond Commission separate and apart from all other fund or accounts of the Bond Commission and from each other:

(1) Series 1997 Bonds Sinking Fund (established by Prior Ordinance);

(2) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account (established by Prior Ordinance);

(3) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Redemption Account (established by Prior Ordinance);

(4) Series 1998 Bonds Sinking Fund;

(5) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account; and

(6) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Redemption Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the interest on and principal of the Prior Bonds; (ii) commencing 6 months prior to the first interest payment date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1998 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1998 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1998 Bonds deposited therein; and (iii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund and in the Series 1998 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1998 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 Bonds Reserve Account, the amount required by the Prior Ordinance; and (ii) for deposit in the Series 1998 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the

Series 1998 Bonds Reserve Account below the Series 1998 Bonds Reserve Requirement or any withdrawal from the Series 1998 Bonds Reserve Account, beginning with the first full calendar month following the date on which (i) the valuation of investments in the Series 1998 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1998 Bonds Reserve Account is less than the Series 1998 Bonds Reserve Requirement, or (ii) any amount is withdrawn from the Series 1998 Bonds Reserve Account for deposit into the Series 1998 Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 1998 Bonds Reserve Account to an amount equal to the Series 1998 Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 1998 Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 1998 Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 1998 Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 1998 Bonds Reserve Requirement.

Amounts in the Series 1998 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1998 Bonds when due, when amounts in the Series 1998 Bonds Sinking Fund are insufficient therefor and for no other purpose.

(3) The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

(4) The Issuer shall next, each month, from the moneys remaining in the Revenue Fund, transfer to the Depreciation Fund (as previously set forth in the Prior Ordinance and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, 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, emergency 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 account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

Moneys in the Series 1998 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1998 Bonds as the same shall become due. Moneys in the Series 1998 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1998 Bonds, as the same shall come due, when other moneys in the Series 1998 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Bonds, and then to the next ensuing principal payment due thereon.

Except with respect to transfers to the Rebate Fund, any withdrawals from the Series 1998 Bonds Reserve Account which result in a reduction in the balance of the Series 1998 Bonds Reserve Account to below the Series 1998 Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

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

The Issuer shall not be required to make any further payments into the Series 1998 Bonds Sinking Fund or the Series 1998 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the 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 be made on a parity and pro rata, with respect to the Prior Bonds and the Series 1998 Bonds, in accordance with the respective principal amounts then Outstanding.

The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account and the Series 1998 Bonds Redemption Account created hereunder, and all amounts required for said accounts shall be remitted to the Bond Commission from the Revenue Fund by the Issuer at the times provided herein.

The Issuer shall, on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Bond Commission the required principal, interest and reserve payments with respect to the Series 1998 Bonds, 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 Bond Legislation.

Moneys in the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account and the Series 1998 Bonds Redemption Account shall be invested and reinvested by the Bond Commission in accordance with Section 8.01 hereof.

Except with respect to transfers to the Rebate Fund, the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1998 Bonds Outstanding under the conditions and restrictions hereinafter set forth.

B. 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.

C. The Issuer shall remit from the Revenue Fund to the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Bond 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 any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund, the Depreciation Fund and the Rebate Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. 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 4.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

F. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

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

Section 4.04. Reserve Account Letter of Credit or Surety Bond. In lieu of funding the Series 1998 Bonds Reserve Account with cash or Qualified Investments, the Series 1998 Bonds Reserve Requirement may be satisfied by the deposit by the Issuer into the Series 1998 Bonds Reserve Account of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Bond Insurer in an amount at least equal to the Series 1998 Bonds Reserve Requirement. The Issuer hereby authorizes the purchase of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Bond Insurer and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in the Supplemental Resolution; provided that, if there is no Bond Insurer, then a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Original Purchaser.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The Issuer 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 Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the 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 Issuer 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 Issuer 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 (unless otherwise required by the Bond Insurer and as set forth in the Supplemental Resolution):

(A) Qualified Investments acquired for the Series 1998 Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to semiannually transfer from the Series 1998 Bonds Reserve Account to the Series 1998 Bonds Sinking Fund, any earnings on the moneys deposited therein and any other funds in excess of the Series 1998 Bonds Reserve Requirement; provided, however, that there shall at all times remain on deposit in the Series 1998 Bonds Reserve Account an amount at least equal to the Series 1998 Bonds Reserve Requirement.

(C) 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. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Series 1998 Bonds Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Series 1998 Bonds Reserve Account shall, at any time, be less than the Series 1998 Bonds Reserve Requirement, the Bond Insurer shall be notified immediately of such deficiency and such deficiency shall be made up from the first available Gross Revenues after required deposits to the Series 1998 Bonds Sinking Fund and otherwise in accordance with Section 4.03 hereof.

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 1998 Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Series 1998 Bonds Sinking Fund may be invested by the Bond Commission in 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.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 1998 Bonds in such manner and to such extent as may be necessary, so that the Series 1998 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 the Series 1998 Bonds) so that the interest on the Series 1998 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. 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 1998 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1998 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 Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, 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 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 at the time and the address prescribed by the Regulations as the same may be in effect from time to time 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. The Issuer at its expense, 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 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 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 amounts and any and all penalties and interest 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 Series 1998 Bonds from gross income for federal income tax purposes.

Section 5.04. Continuing Disclosure Agreement. The Issuer shall deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance 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 1998 Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Series 1998 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 the Series 1998 Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Series 1998 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account therein and the unexpended proceeds of the Series 1998 Bonds, all as herein provided. No Holder or Holders of the Series 1998 Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1998 Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Series 1998 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and all moneys in the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1998 Bonds and to make the payments into all funds and accounts and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds and the Series 1998 Bonds as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Prior to the issuance of the Series 1998 Bonds, rates or charges for the use of the services and facilities of the System will be 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 City Clerk of the Issuer, which copy 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 make the prescribed payments into the funds and accounts created hereunder. 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 Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to pay all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 120% of the maximum amount required in any year for payment of principal of and interest on the Series 1998 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1998 Bonds, including the Prior Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or 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.

Section 6.05. Completion of Project; Operation and Maintenance. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and state requirements and standards.

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

Section 6.06. Sale of the System. So long as the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, except as provided by the Prior Ordinance. Additionally, so long as the Series 1998 Bonds are Outstanding, 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, or to defease the pledge created by this Ordinance and the Prior Ordinance. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the Series 1998 Bonds Sinking Fund and the Series 1997 Bonds Sinking Fund, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the Gross Revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of $50,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer 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 shall be in excess of $50,000 but not in excess of $200,000, the Issuer shall first, 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, approve and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Depreciation Fund. Payment of such proceeds into the Depreciation Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of $200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of 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 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Bonds; and all obligations hereafter issued by the Issuer 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, pledge and source of and security for payment from such Revenues and in all other respects to the Bonds; provided that, no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of issuance of such subordinate obligations.

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, except with respect to such additional parity Bonds, being on a parity with the lien of the Bonds, and the

interest thereon, upon any of the income and Gross Revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no 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 purposes of financing the costs of the design, acquisition and construction of additions, betterments or improvements to the System, refunding all or a portion of the Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of 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 City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during the Fiscal Year 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 three succeeding years after the date of issuance of such parity Bonds, shall not be less than 120% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Series 1998 Bonds and the Prior Bonds then Outstanding;

(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 required in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such additional parity Bonds, provided that, in the event the implementation of such 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 additional parity Bonds is, by the terms of the ordinance providing for such increase in rates, deferred pending completion of the acquisition and construction of any additions, betterments or improvements for the System, and further provided, that the debt service on such additional parity Bonds during such construction period is payable from proceeds of such additional parity Bonds deposited in the Sinking Fund held by the Bond Commission, 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, may be assumed to mean "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years commencing on the date of completion of such acquisition and construction."

The Net Revenues actually derived from the System during the preceding Fiscal Year 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 Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

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 Gross Revenues of the System on a parity with the Series 1998 Bonds and the Prior 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 1998 Bonds and the Prior 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 Gross Revenues of the System, and their source of and security for payment from the Gross Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this 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.

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 Gross Revenues of the System is subject to the prior and superior lien of the Bonds on such Gross Revenues. The Issuer shall not issue any obligations whatsoever payable from the Gross 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 Gross Revenues, with the Bonds except in the manner and under the conditions provided in this section.

No additional parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance with respect to 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 issuance of the additional parity Bonds.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. 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 the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during acquisition and construction of any additions, betterments and improvements to the System in the full insurable value thereof.

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

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing 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 any additions, betterments or improvements to the System in compliance with West Virginia Code Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the Gross 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.

Section 6.10. Services Rendered to the Issuer. The Issuer will not render or cause to be rendered any free services of any nature by the System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail 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. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be Gross Revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other Gross Revenues derived from such operation of the System.

Section 6.11. 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 and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other changes, if not paid, 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 and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all bills for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 6.12. 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 or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Books and Records. 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 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, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Issuer. The Issuer 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 Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall file with the Original Purchaser and the Bond Insurer, within 120 days following the end of each Fiscal Year, and shall mail to any Bondholder requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance, and the status of all said funds.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.14. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the charter of the Issuer, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by 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 such 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 to the Original Purchaser 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 Original Purchaser, the Bond Insurer and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.15. Statutory Mortgage Lien. For the further protection of the Holders of the Series 1998 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Series 1998 Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 6.16. 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 1998 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 1998 Bonds during the term thereof is, under the terms of the Series 1998 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) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1998 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 1998 Bonds during the term thereof is, under the terms of the Series 1998 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 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 1998 Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1998 Bonds or $5,000,000 are

used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1998 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 Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1998 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 all actions that may be required of it so that the interest on the Series 1998 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 6.17. Covenants Regarding the Municipal Bond Insurance Policy. The Issuer may apply for a Municipal Bond Insurance Policy for the Series 1998 Bonds. In the event such a Municipal Bond Insurance Policy is obtained, certain additional covenants of the Issuer may be required by the Bond Insurer as a condition to insuring the Series 1998 Bonds. These additional covenants shall be set forth in full in the Supplemental Resolution, shall apply to the Series 1998 Bonds and any other Bonds which may be insured by such Bond Insurer, and shall be controlling in the event any other provisions of this Ordinance may be in conflict therewith.

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 1998 Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Series 1998 Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Series 1998 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 Issuer by any Bondholder; or

(C) 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

(D) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his 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 the Bondholders, including the right to require the Issuer to perform its duties under the Act and this Ordinance; (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 Bondholders; and (v) by action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Bondholders; provided that, all rights and remedies of the Holders of the Series 1998 Bonds shall be on a parity with the Holders of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the 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 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 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 Bondholder (or any Bond Insurer if the defaulted Bonds are insured) 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 Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the 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 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 Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and 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 Ordinance 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 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 Issuer and for the joint protection and benefit of the Issuer and the Holders of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, 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 Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this 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 Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

ARTICLE VIII

REGISTRAR AND PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 1998 Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer 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 1998 Bonds shall be taken as statements of the Issuer, 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 1998 Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Series 1998 Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this 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 Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in 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 Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 1998 Bonds or this Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Series 1998 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 Ordinance by giving not less than 60 days written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or Bondholders, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer, the Bond Insurer or by the Holders of a majority in principal amount of the Series 1998 Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer, the Bond Insurer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as 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 1998 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such 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 Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any 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 Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records 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 1998 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 Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar may 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 if so appointed. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this 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 Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Bonds shall be and remain DTC-eligible.

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 Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer 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 Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the 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 Ordinance, be held in trust for the purposes for which they were received.

ARTICLE IX

DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1998 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Gross Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Series 1998 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 1998 Bonds from gross income for federal income tax purposes.

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 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All 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, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. 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 Bonds; provided, that any cash received from such principal, redemption premium, if any, and 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 redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer 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, as such term is limited by the provisions in Section 1.01 hereof or such additional securities as shall be set forth in the Supplemental Resolution.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendment of Ordinance. Prior to issuance of the Series 1998 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Series 1998 Bonds, this Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person, solely for the purpose of maintaining the tax-exempt status of the Series 1998 Bonds, provided that, in the event any of the Series 1998 Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the City Clerk of the Issuer 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 Bond without the express written consent of the Holder of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such 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 Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer 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 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, a trust company or a financial firm or corporation satisfactory to the

Issuer 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 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 fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such 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 Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer 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 Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any 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 Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this 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 Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer 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 Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment to the Issuer, 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 Issuer. If any of said Bonds is a coupon Bond, the Registrar or said Paying Agent shall also publish such notice, not less than 30 days prior to the date such moneys will be returned to the Issuer, in an Authorized Newspaper.

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 Issuer, the Registrar, the Paying Agent, the Depository Bank or the Original Purchaser 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:

ISSUER

City of Fairmont
City Hall
200 Jackson Street
Fairmont, West Virginia 26555

REGISTRAR AND PAYING AGENT

[Name(s) and address(es) to be set forth in Supplemental Resolution]

DEPOSITORY BANK

[Name(s) and address(es) to be set forth in Supplemental Resolution]

ORIGINAL PURCHASER

Ferris Baker Watts, Inc.
170 Laidley Tower
500 Lee Street, East
Charleston, West Virginia 25301

and

Crews & Associates, Inc.
2000 Union National Plaza
124 West Capitol
Little Rock, Arkansas 72201

BOND INSURER

[Name(s) and address(es) to be set forth in Supplemental Resolution]

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 Issuer shall be individually or personally liable for the payment of the principal of or the interest on any 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 Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 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. Conflicting Provisions Repealed. All ordinances, orders, resolutions 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 10.13. 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, City Manager, City Clerk and members of the Council were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 10.14. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereon.

Section 10.15. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Council 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 qualified 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 Bonds, and that any person interested may appear before the Council 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 Council for review by interested persons during office hours of the Council. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Passed on First Reading: October 20, 1998

Passed on Second Reading: October 27, 1998

Passed on Third Reading
Following Public Hearing: November 10, 1998

Mayor

City Manager

ATTEST:

City Clerk

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on November 10, 1998.

Dated this 30th day of December, 1998.

[SEAL]

Janet L. Keller
City Clerk

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on November 10, 1998.

Dated this 14th day of January, 1999.

[SEAL]

Janet L. Keller
City Clerk

EXHIBIT A - BOND FORM

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-_____ $_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
(WEST VIRGINIA)
WATER REVENUE BOND,
SERIES 1998

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), 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 Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest

on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on _____ 1 and _____ 1, in each year, beginning _____ 1, 199___ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the same meanings set forth in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by _____, _____, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each _____ 15 and _____ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by _____, _____, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in _____, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of $_____ designated "City of Fairmont (West Virginia) Water Revenue Bonds, Series 1998" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated _____, 199___, the proceeds of which are to be used to (i) finance the costs of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) fund a reserve account for the Bonds; and (iii) pay costs of issuance hereof and related costs. 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 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an ordinance duly enacted by the council of the Issuer on _____, 199___, as supplemented by a supplemental resolution duly adopted by the council on _____, 199___ (collectively, the "Ordinance"), and is subject to all the terms and conditions of the 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. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights,

obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Fairmont, West Virginia.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by _____.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after _____, _____ are subject to redemption prior to maturity at the option of the Issuer on and after _____, _____, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed (Dates Inclusive)	Redemption Price

(B) Mandatory Sinking Fund Redemption. The Bonds maturing _____, are subject to annual mandatory redemption prior to maturity by random selection on _____ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing

Year (___)	Principal Amount

Bonds Maturing

Year ( )	Principal Amount

* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing 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 Registered Owner of the Bond or 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 Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of 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 Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

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 this Bond.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $10,260,000 (THE "PRIOR BONDS").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Prior Bonds, and from moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds

Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross 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 Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer 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 leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to pay all costs of the Project, fund a reserve account for the Bonds and pay all costs of issuance of the Bonds, 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.

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 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

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 Ordinance.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof.

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.

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, CITY OF FAIRMONT (WEST VIRGINIA) has caused this Bond to be signed by its Mayor and 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]

(Manual or Facsimile Signature)
Mayor

(Manual or Facsimile Signature)
City Manager

ATTEST:

(Manual or Facsimile Signature)
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto 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

ASSIGNMENT

Social Security or Other Identifying Number of Assignee _____

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

_____

_____

the within Bond and does hereby irrevocably constitute and appoint_____

_____

_____

to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____
(Bank, Trust Company or Firm)

_____
(Authorized Officer)

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.

STATEMENT OF INSURANCE

10/19/98
268460/98001

CITY OF FAIRMONT

(WEST VIRGINIA)

WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997

BOND ORDINANCE

ORDINANCE NO. 1029

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CITY OF FAIRMONT
(WEST VIRGINIA)

WATER REVENUE BONDS, SERIES 1998
and
WATER REVENUE BONDS, SERIES 1999

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO AMOUNT, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE WATER REVENUE BONDS, SERIES 1998 AND SERIES 1999 OF THE CITY; AMENDING THE ORDINANCE TO REFLECT THE ISSUANCE OF THE BONDS IN TWO SERIES; AMENDING THE PARITY BOND PROVISIONS OF THE ORDINANCE FOR THE SERIES 1997 BONDS; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT, COMMITMENTS FOR BOND INSURANCE, AN OFFICIAL STATEMENT, CONTINUING DISCLOSURE AGREEMENTS AND OTHER INSTRUMENTS RELATING TO THE BONDS; IMPLEMENTING PROVISIONS REQUIRED AS A CONDITION TO OBTAINING MUNICIPAL BOND INSURANCE POLICIES INSURING THE BONDS FROM AMBAC ASSURANCE CORPORATION; APPOINTING A REGISTRAR, A PAYING AGENT, AND A DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

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 this Council;

WHEREAS, this Council duly enacted on November 10, 1998, an ordinance (the "Ordinance") entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC

WATERWORKS SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $31,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1998; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Ordinance;

WHEREAS, the Ordinance provided generally for the issuance of the Issuer's Water Revenue Bonds, Series 1998, (the "Series 1998 Bonds") in an aggregate principal amount not to exceed $31,000,000 for the purposes of paying a portion of the costs of acquisition and construction of additions, betterments and improvements (the "Project") for the Issuer's water treatment and distribution system (the "System"); funding a reserve account for the Series 1998 Bonds; and paying costs of issuance thereof, all in accordance with Chapter 8, Article 19, of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Ordinance further provided, at Sections 3.10 and 6.17 thereof and elsewhere, that the exact principal amount of the Series 1998 Bonds to be sold and the dates, maturities, interest rates, redemption provisions, price and other terms of the Series 1998 Bonds should be established, that splitting of the issue into two or more series be provided for if desired, that investment securities constituting "Qualified Investments" be designated, that a Bond Insurer, a Registrar and Paying Agent be designated, that a Registrar Agreement be approved, that additional covenants and provisions relating to the Series 1998 Bonds be provided herein as may be required by any Bond Insurer as a condition to insuring such Series 1998 Bonds and that other matters pertaining to the Series 1998 Bonds be provided for by resolution of this Council upon receipt of a Bond Purchase Agreement acceptable to this Council;

WHEREAS, the Council has determined, as provided under the Ordinance, to issue the Bonds approved by the Ordinance in two series, being the City of Fairmont Water Revenue Bonds, Series 1998, in the aggregate principal amount of $9,600,000 (hereinafter the "Series 1998 Bonds"), and the City of Fairmont Water Revenue Bonds, Series 1999, in the aggregate principal amount of $19,945,000 (hereinafter the "Series 1999 Bonds", and collectively with the Series 1998 Bonds, the "Bonds").

WHEREAS, the Bonds are proposed to be purchased by Ferris, Baker Watts, Incorporated and Crews & Associates, Inc. (collectively, the "Original Purchaser"), pursuant to a Bond Purchase Agreement dated the date of adoption hereof (the "Bond Purchase Agreement");

WHEREAS, the Issuer has obtained commitments for Municipal Bond Insurance for the Bonds from Ambac Assurance Corporation (the "Bond Insurer") and has determined that it is advantageous for the Issuer to obtain such Municipal Bond Insurance Policies and provide herein for certain matters required by the Bond Insurer as a condition to issuing such Municipal Bond Insurance Policies;

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Bond Purchase Agreement, the Continuing Disclosure Agreements and the Registrar Agreements hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Bonds, hereinafter described, be approved, that the date and price of the Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amounts of the Bonds be fixed hereby in the manner stated herein, that Qualified Investments be herein designated, that provisions required by the Bond Insurer as a condition to issuing its Municipal Bond Insurance Policies be provided herein, that certain provisions of the Ordinance be hereby amended and modified to reflect the issuance of the Bonds in two series and that other matters relating to the Bonds be herein provided for, all in accordance with said Ordinance;

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 Bonds. The 1998 Bonds shall be dated December 15, 1998, upon original issuance, and the Series 1999 Bonds shall be dated January 1, 1999, upon original issuance. The Bonds shall be issued in the aggregate principal amount, bear interest payable semiannually on January 1 and July 1 of each year, commencing July 1, 1999, shall mature on July 1 in such years and shall have

such redemption provisions as are set forth in EXHIBIT A - SERIES 1998 BOND TERMS and EXHIBIT B - SERIES 1999 BOND TERMS, attached hereto and incorporated by reference herein. Except as otherwise set forth herein, all other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance.

Section 2. The Bond Purchase Agreement between the Original Purchaser and the Issuer, dated the date of adoption of this resolution, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager and the Mayor on this day of the Bond Purchase Agreement on behalf of the Issuer are hereby authorized, approved, and directed. The City Manager and the Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the City Manager and the Mayor. Execution of the Bond Purchase Agreement by the City Manager and the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond Purchase Agreement relating to the issuance and sale of the Bonds, including the payment of all necessary fees and expenses in connection therewith. The price of the Series 1998 Bonds, pursuant to the Bond Purchase Agreement, shall be $9,403,415.60 ($9,600,000 par amount, less $134,079.40 Original Issue Discount and less $62,505.00 Underwriters' Discount), plus interest accrued from the date of the Series 1998 Bonds to the date of delivery thereof, expected to be on or about December 30, 1998. The price of the Series 1999 Bonds, pursuant to the Bond Purchase Agreement, shall be $19,803,753.55 ($19,945,000 par amount, less $12,798.95 net Original Issue Discount and less $128,447.50 Underwriters' Discount), plus interest accrued from the date of the Series 1999 Bonds to the date of delivery thereof, expected to be on or about January 14, 1999.

Section 3. The Continuing Disclosure Agreements of the Issuer, one for each series of Bonds, each to be dated the closing date of its applicable series, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager thereof shall be and the same are hereby authorized, approved and directed. The City Manager shall execute and deliver the Continuing Disclosure Agreements with such changes, insertions and omissions as may be approved by the City Manager.

Section 4. The Official Statement dated the date of adoption of this resolution, to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the City Manager and the Mayor), and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The City Manager and the Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the City Manager and the Mayor. The execution of the Official Statement by the City Manager and the Mayor shall be conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary

Official Statement dated December 8, 1998 (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the City Manager is hereby ratified and approved.

Section 5. The Registrar Agreements, one for each series of Bonds, each to be dated the closing date of its applicable series, by and between the Issuer and the Registrar designated herein, substantially in the forms submitted to this meeting, shall be and the same are hereby approved. The City Manager shall execute and deliver the Registrar Agreements with such changes, insertions and omissions as may be approved by the City Manager. The execution of the Registrar Agreements by the City Manager shall be conclusive evidence of any approval required by this Section.

Section 6. The Issuer does hereby determine that the Municipal Bond Insurance Policies offered by the Bond Insurer for each series of Bonds will result in an interest cost savings for the Issuer in excess of the premium to be paid by the Issuer for such Municipal Bond Insurance Policies, and accordingly hereby ratifies acceptance of the Commitments for Municipal Bond Insurance (the "Commitments"), dated December 7, 1998. The City Manager is hereby authorized and directed to execute the approval of the Commitments and deliver the same to the Bond Insurer. Execution of the Commitments shall be conclusive evidence of any approval required by this Section.

Section 7. Pursuant to the Commitments, and, as permitted by Section 6.17 of the Ordinance, the following covenants and provisions which are required by the Bond Insurer as a condition precedent to issuance of its Municipal Bond Insurance Policies are hereby set forth, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to, the Ordinance and applicable to the Bonds:

Additional Definitions.

"Ambac Assurance" shall mean Ambac Assurance Corporation, a Wisconsin-domiciled stock insurance corporation.

"Municipal Bond Insurance Policies" shall mean, collectively, the municipal bond insurance policies issued by Ambac Assurance insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Defeasance Securities" means:

(a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (b) below); or

(b) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

"Permitted Investments" means any of the following obligations or securities to the extent permitted by law, on which neither the Authority nor the Issuer is the obligor:

(a) Defeasance Securities;

(b) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export-Import Bank
- Farm Credit System Financial Assistance Corporation
- Rural Economic Community Development Administration (formerly the 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
- Federal Financing Bank;

(c) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

- Senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)
- Obligations of the Resolution Funding Corporation (REFCORP)
- Senior debt obligations of the Federal Home Loan Bank System
- Senior debt obligations of other Government Sponsored Agencies approved by Ambac;

(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 S&P 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 S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase;

(f) Investments in a money market fund rated "AAAm" or "Aam-G" or better by S&P;

(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

(i) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto; or

(ii) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Defeasance Securities, which escrow 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 (B) which escrow 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 specified in the irrevocable instructions referred to above, as appropriate;

(h) General obligations of States with a rating of at least "A2/A" or higher by both Moody's and S&P;

(i) Investment agreements approved in writing by Ambac Assurance Corporation [supported by appropriate opinions of counsel] with notice to S&P;

(j) Other forms of investments (including repurchase agreements) approved in writing by Ambac with notice to S&P; and

(k) As long as the Municipal Bond Insurance Policies are in effect, any other investments which are approved in advance by the Bond Insurer.

The value of the Permitted Investments, which shall be determined as of the end of each month, shall be calculated as follows:

(1) As to 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 investments so published on or most recently prior to such time of determination;

(2) As to 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 investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(3) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(4) As to any investment not specified above: the value thereof established by prior agreement between the Issuer, the Trustee and Bond Insurer.

Definition of "Outstanding".

The definition of "Outstanding" shall include the following:

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by Ambac Assurance Corporation pursuant tot he Municipal Bond Insurance Policies, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considere3d paid by the Issuer, and the assignment and pledge of security under this Ordinance and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of Ambac Assurance, and Ambac Assurance shall be subrogated to the rights of such registered owners.

Bond Insurer Consent Provisions.

(A) Consent of Bond Insurer. Any provision of this Ordinance expressly recognizing or granting rights in or to Bond Insurer may not be amended in any manner which affects the rights of Bond Insurer hereunder without the prior written consent of Bond Insurer.

(B) Consent of Bond Insurer in Addition to Bondholder Consent. Unless otherwise provided in this Section, Bond Insurer's consent shall be required in addition to Bondholder consent, when required, for the following purposes: (i) execution and delivery of any supplemental Ordinance, or any amendment, supplement or change to or modification of the Loan Agreement; (ii) removal of the Paying Agent and selection and appointment of any successor paying agent; and (iii) initiation or approval of any action not described in (i) or (ii) above which requires Bondholder consent.

(C) Consent of Bond Insurer in the Event of Insolvency. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to Bond Insurer. In the event of any reorganization or liquidation, Bond Insurer shall have the right to vote on behalf of all bondholders who hold bonds insured by Bond Insurer absent a default by Bond Insurer under the applicable Municipal Bond Insurance Policies insuring such Bonds.

(D) Consent of Bond Insurer Upon Default. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined herein, Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders or the Trustee for the benefit of the Bondholders under this Ordinance, including, without limitation: (i) the right to accelerate the principal of the Bonds as described in this Ordinance, and (ii) the right to annul any declaration of acceleration, and Bond Insurer shall also be entitled to approve all waivers of events of default.

Information to be Provided to Bond Insurer.

(A) While the Municipal Bond Insurance Policies are in effect, the Issuer shall furnish to Bond Insurer (to the attention of the SURVEILLANCE DEPARTMENT, unless otherwise indicated):

(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 Bonds, including, without limitation, notice of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this Ordinance relating to the security for the Bonds; and

(iii) such additional information it may reasonably request.

(B) While the Municipal Bond Insurance Policies are in effect, the Issuer shall furnish to Bond Insurer (to the attention of the GENERAL COUNSEL OFFICE, unless otherwise indicated):

(i) The Issuer shall notify Bond Insurer of any failure of the Issuer to provide relevant notices, certificates, etc; and

(ii) Notwithstanding any other provision of this Ordinance, the Issuer shall immediately notify Bond Insurer 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 (i) any Event of Default hereunder.

(C) While the Municipal Bond Insurance Policies are in effect, the Issuer will permit Bond Insurer to discuss the affairs, finances and accounts of the Issuer or any information Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer. The Issuer will permit Bond Insurer to have access to the Project and have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

(D) While the Municipal Bond Insurance Policies are in effect, the Bond Insurer shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from Bond Insurer shall be deemed a 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 Bonds.

(E) To the extent that the Issuer has entered into a continuing disclosure agreement with respect to the Bonds, Bond Insurer shall be included as party to be notified.

Payment Procedure Pursuant to the Municipal Bond Insurance Policies.

As long as the Municipal Bond Insurance Policies shall be in full force and effect, the Issuer and the Paying Agent agree to comply with the following provisions:

(A) At least one (1) day prior to all Interest Payment Dates, the Paying Agent will determine whether there will be sufficient funds in the Funds and Accounts to pay the principal of or interest on the Bonds on such Interest Payment Date. If the Paying Agent determines that there will be insufficient funds in such Funds or Accounts, the Paying Agent shall so notify Bond Insurer. Such notice shall specify the amount of the anticipated deficiency, the Bonds to which such deficiency is applicable and whether such Bonds will be deficient as to principal or interest, or both. If the Paying Agent has not so notified Bond Insurer at least one (1) day prior to an Interest Payment Date, Bond Insurer will make payments of principal or interest due on the Bonds on or before the first (1st) day next following the date on which Bond Insurer shall have received notice of nonpayment from the Paying Agent.

(B) The Paying Agent shall, after giving notice to Bond Insurer as provided in (a) above, make available to Bond Insurer and, at Bond Insurer's direction, to the United States Trust Company of New York, as insurance trustee for Bond Insurer or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer

maintained by the Paying Agent and all records relating to the Funds and Accounts maintained under this Ordinance.

(C) The Paying Agent shall provide Bond Insurer and the Insurance Trustee with a list of registered owners of Bonds entitled to receive principal or interest payments from Bond Insurer under the terms of the Municipal Bond Insurance Policies, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of Bonds entitled to receive full or partial interest payments from Bond Insurer and (ii) to pay principal upon Bonds surrendered to the Insurance Trustee by the registered owners of Bonds entitled to receive full or partial principal payments from Bond Insurer.

(D) The Paying Agent shall, at the time it provides notice to Bond Insurer pursuant to (a) above, notify registered owners of Bonds entitled to receive the payment of principal or interest thereon from Bond Insurer (i) as to the fact of such entitlement, (ii) that Bond Insurer 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 Bond Insurer, they must surrender their Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Bonds to be registered in the name of Bond Insurer) for payment to the Insurance Trustee, and not the Paying Agent, and (iv) that should they be entitled to receive partial payment of principal from Bond Insurer, they must surrender their Bonds for payment thereon first to the Paying Agent, who shall note on such 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 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 Bond Insurer 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 Bond Insurer to the extent of such recovery if sufficient funds are not otherwise available, and the Paying Agent shall furnish to Bond Insurer its records evidencing the payments of principal of and interest on the 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 Bond Insurer under this Ordinance, Bond Insurer shall, to the extent it makes payment of principal of or interest on Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policies, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Paying Agent shall note Bond Insurer's rights as subrogee on the registration books of the Issuer maintained by the Paying Agent upon receipt from Bond Insurer of proof of the payment of interest thereon to the registered owners of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Paying Agent shall note Bond Insurer's rights as subrogee on the registration books of the Issuer maintained by the Paying Agent upon surrender of the Bonds by the registered owners thereof together with proof of the payment of principal thereof.

Provisions Related to Paying Agent.

1. The Paying Agent may be removed at any time, at the request of Bond Insurer, for any breach of its duties as set forth herein.

2. Bond Insurer shall receive prior written notice of any Paying Agent resignation.

3. Any successor Paying Agent shall not be appointed unless Bond Insurer approves such successor in writing.

4. Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the Paying Agent shall consider the effect on the Bondholders as if there were no Municipal Bond Insurance Policies.

5. Notwithstanding any other provision of this Ordinance, no removal, resignation or termination of the Paying Agent shall take effect until a successor, acceptable to Bond Insurer shall be appointed.

Interested Parties.

(A) Bond Insurer As Third Party Beneficiary. To the extent that this Ordinance confers upon or gives or grants to Bond Insurer any right, remedy or claim under or by reason of this Ordinance, Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

(B) Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Issuer, Bond Insurer, the Paying Agent and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance, contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, Bond Insurer, the Paying Agent and the registered owners of the Bonds.

Defeasance Provision.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by Bond Insurer pursuant to the Municipal Bond Insurance Policies, the 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 Trust Estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of Bond Insurer, and Bond Insurer shall be subrogated to the rights of such registered owners.

Section 8. In order to reflect the issuance of the Bonds in two series, the Ordinance is modified and amended as follows:

A. Any references in the Ordinance to the Series 1998 Bonds shall be deemed to include the Series 1999 Bonds, and all covenants and provisions of the Ordinance related to the Series 1998 Bonds and the rights of the Holders of the Series 1998 Bonds shall be equally applicable to the Series 1999 Bonds and the rights of the Holders of the Series 1999 Bonds, where applicable.

B. Section 1.03 of the Ordinance is hereby supplemented and amended by the substitution or addition of the following definitions:

"Bonds" means, collectively, the Series 1998 Bonds, the Series 1999 Bonds, the Prior Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Redemption Accounts" means, collectively, the Series 1998 Bonds Redemption Account and the Series 1999 Bonds Redemption Account.

"Reserve Accounts" means, collectively, the Series 1998 Bonds Reserve Account and the Series 1999 Bonds Reserve Account.

"Reserve Requirements" means, collectively, the Series 1998 Bonds Reserve Requirement and the Series 1999 Bonds Reserve Requirement.

"Series 1998 Bonds Reserve Requirement" means, as of any date of calculation, the lesser of (i) 10% of the stated principal amount of the Series 1998 Bonds, (ii) maximum annual principal and interest requirements on the Series 1998 Bonds, or (iii) 125% of the average principal and interest requirements on the Series 1998 Bonds.

"Series 1999 Bonds" means the Water Revenue Bonds, Series 1999, of the Issuer, constituting a series of the bonds originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 1999 Bonds Redemption Account" means the Series 1999 Bonds Redemption Account created by Section 4.02 hereof.

"Series 1999 Bonds Reserve Account" means the Series 1999 Bonds Reserve Account created by Section 4.02 hereof.

"Series 1999 Bonds Reserve Requirement" means, as of any date of calculation, the lesser of (i) 10% of the stated principal amount of the Series 1999 Bonds, (ii) maximum annual principal and interest requirements on the Series 1999 Bonds, or (iii) 125% of the average principal and interest requirements on the Series 1999 Bonds.

"Series 1999 Bonds Sinking Fund" means the Series 1999 Bonds Sinking Fund created by Section 4.02 hereof.

"Sinking Funds" means, collectively, the Series 1998 Bonds Sinking Fund and the Series 1999 Bonds Sinking Fund.

C. The following Sections of the Ordinance are hereby amended to read as provided below:

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 1998 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1998 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1998 Bonds Sinking Fund and applied to payment of interest on the Series 1998 Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 1998 Bonds equal to the Series 1998 Bonds Reserve Requirement shall be remitted to the Bond Commission for deposit in the Series 1998 Bonds Reserve Account, provided that, to the extent the Series 1998 Bonds Reserve Requirement is satisfied in whole or in part from a reserve account letter of credit, surety bond or other credit facility, proceeds of the Series 1998 Bonds shall be deposited in the Series 1998 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1998 Bonds Reserve Requirement.

C. An amount of the proceeds of the Series 1998 Bonds necessary to pay costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1998 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this 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 within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1998 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

D. The balance of the proceeds of the Series 1998 Bonds shall be deposited with the Depository Bank in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay Costs of the Project at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1998 Bonds.

Upon the issuance and delivery of the Series 1999 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

E. All interest accrued on the Series 1999 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1999 Bonds Sinking Fund and applied to payment of interest on the Series 1999 Bonds at the first interest payment date.

F. An amount of the proceeds of the Series 1999 Bonds equal to the Series 1999 Bonds Reserve Requirement shall be remitted to the Bond Commission for

deposit in the Series 1999 Bonds Reserve Account, provided that, to the extent the Series 1999 Bonds Reserve Requirement is satisfied in whole or in part from a reserve account letter of credit, surety bond or other credit facility, proceeds of the Series 1999 Bonds shall be deposited in the Series 1999 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1999 Bonds Reserve Requirement.

G. An amount of the proceeds of the Series 1999 Bonds necessary to pay costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1999 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this 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 within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1999 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1999 Bonds.

H. The balance of the proceeds of the Series 1999 Bonds shall be deposited with the Depository Bank in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay Costs of the Project at the written direction of the Issuer. Moneys not to be applied immediately to pay such Costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Series 1999 Bonds.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. 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 Bond Commission separate and apart from all other funds or accounts of the Bond Commission and from each other:

(1) Series 1997 Bonds Sinking Fund (established by Prior Ordinance);

(2) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account (established by Prior Ordinance);

(3) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Redemption Account (established by Prior Ordinance);

(4) Series 1998 Bonds Sinking Fund;

(5) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account;

(6) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Redemption Account;

(7) Series 1999 Bonds Sinking Fund;

(8) Within the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Reserve Account; and

(9) Within the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Redemption Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the interest on and principal of the Prior Bonds; (ii) commencing 6 months prior to the first interest payment date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1998 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1998 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1998 Bonds deposited therein; (iii) commencing 6 months prior to the first interest payment date of the Series 1999 Bonds, for deposit in the Series 1999 Bonds Sinking Fund, a sum equal to 1/6th of the

amount of interest which will become due on the Series 1999 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1999 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1999 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1999 Bonds deposited therein; (iv) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1998 Bonds, for deposit in the Series 1998 Bonds Sinking Fund and in the Series 1998 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1998 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (v) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1999 Bonds, for deposit in the Series 1999 Bonds Sinking Fund and in the Series 1999 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1999 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1999 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) for deposit in the Series 1997 Bonds Reserve Account, the amount required by the Prior Ordinance; (ii) for deposit in the Series 1998 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 1998 Bonds Reserve Account below the Series 1998 Bonds Reserve Requirement or any withdrawal from the Series 1998 Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 1998 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1998 Bonds Reserve Account is less than the Series 1998 Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 1998 Bonds Reserve Account for deposit into

the Series 1998 Bonds Sinking Fund; and (iii) for deposit in the Series 1999 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 1999 Bonds Reserve Account below the Series 1999 Bonds Reserve Requirement or any withdrawal from the Series 1999 Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 1999 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1999 Bonds Reserve Account is less than the Series 1999 Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 1999 Bonds Reserve Account for deposit into the Series 1999 Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefor, the amounts so deposited shall be used to restore the amount of moneys on deposit in the Series 1998 Bonds Reserve Account and the Series 1999 Bonds Reserve Account to an amount equal to the Series 1998 Bonds Reserve Requirement and the Series 1999 Bonds Reserve Requirement, respectively, to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 1998 Bonds Reserve Account or the Series 1999 Bonds Reserve Account is due to a decrease in value of respective investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 1998 Bonds Reserve Account or the Series 1999 Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 1998 Bonds Reserve Account or the Series 1999 Bonds Reserve Account whenever and as long as the amounts on deposit therein shall be equal to the Series 1998 Bonds Reserve Requirement and the Series 1999 Bonds Reserve Requirement, respectively.

Amounts in the Series 1998 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1998 Bonds when due, when amounts in the Series 1998 Bonds Sinking Fund are insufficient therefor and for no other purpose. Amounts in the Series 1999 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1999 Bonds when due, when amounts in the Series 1999 Bonds Sinking Fund are insufficient therefor and for no other purpose.

(3) The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

(4) The Issuer shall next, each month, from the moneys remaining in the Revenue Fund, transfer to the Depreciation Fund (as previously set forth in the Prior Ordinance and not in addition thereto), a sum equal to 2 1/2% of the Gross Revenues each month, 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, emergency 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 account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

Moneys in the Series 1998 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1998 Bonds as the same shall become due. Moneys in the Series 1998 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1998 Bonds, as the same shall come due, when other moneys in the Series 1998 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Moneys in the Series 1999 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1999 Bonds as the same shall become due. Moneys in the Series 1999 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1999 Bonds, as the same shall come due, when other moneys in the Series 1999 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1998 Bonds Sinking Fund and the Series 1998 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1998 Bonds, and then to the next ensuing principal payment due thereon.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1999 Bonds, and then to the next ensuing principal payment due thereon.

Except with respect to transfers to the Rebate Fund, any withdrawals from the Series 1998 Bonds Reserve Account which result in a reduction in the balance of the Series 1998 Bonds Reserve Account to below the Series 1998 Bonds Reserve Requirement and any withdrawals from the Series 1999 Bonds Reserve Account which result in a reduction in the balance of the Series 1999 Bonds Reserve Account to below the Series 1999

Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

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

The Issuer shall not be required to make any further payments into the Series 1998 Bonds Sinking Fund or the Series 1998 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1999 Bonds Sinking Fund or the Series 1999 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the 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 be made on a parity and pro rata, with respect to the Prior Bonds, the Series 1998 Bonds and the Series 1999 Bonds, in accordance with the respective principal amounts then Outstanding.

The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account, the Series 1998 Bonds Redemption Account, the Series 1999 Bonds Sinking Fund, the Series 1999 Bonds Reserve Account, and the Series 1999 Bonds Redemption Account created hereunder and all amounts required for said accounts shall be remitted to the Bond Commission from the Revenue Fund by the Issuer at the times provided herein.

The Issuer shall, on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Bond Commission the required principal, interest and reserve payments with respect to the Series 1998 Bonds and the Series 1999 Bonds, 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 Bond Legislation.

Moneys in the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account, the Series 1998 Bonds Redemption Account, the Series 1999 Bonds

Sinking Fund, the Series 1999 Bonds Reserve Account, and the Series 1999 Bonds Redemption Account shall be invested and reinvested by the Bond Commission in accordance with Section 8.01 hereof.

Except with respect to transfers to the Rebate Fund, the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1998 Bonds Outstanding under the conditions and restrictions hereinafter set forth.

Except with respect to transfers to the Rebate Fund, the Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1999 Bonds Outstanding under the conditions and restrictions hereinafter set forth.

B. 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.

C. The Issuer shall remit from the Revenue Fund to the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Bond 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 any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund, the Depreciation Fund and the Rebate Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. 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 4.03; and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

F. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

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

Section 6.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all of the Series 1998 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and the Series 1999 Bonds and all moneys in the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein. The payment of the debt service of all of the Series 1999 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and the Series 1998 Bonds and all moneys in the Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds, the Series 1998 Bonds and the Series 1999 Bonds and to make the payments into all funds and accounts and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Prior Bonds, the Series 1998 Bonds and the Series 1999 Bonds as the same become due and for the other purposes provided in this Ordinance.

Section 6.15. Statutory Mortgage Lien. For the further protection of the Holders of the Series 1998 Bonds and the Holders of the Series 1999 Bonds, a statutory mortgage lien upon the System for each series of Bonds is granted and created by the Act, which statutory mortgage liens are hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Series 1998 Bonds and upon the issuance of the Series 1999 Bonds, respectively, and shall be on a parity with one another and with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

D. The following language is hereby added to the Ordinance as a new Section 3.15:

Section 3.15. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

Disbursements from the Construction Fund, except for payment of costs of issuance of the Bonds in excess of the moneys available in the Costs of Issuance Fund which shall be made upon request of the Issuer, shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made (except reimbursement to the Issuer for items previously paid by the Issuer);

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

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

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

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Fund.

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

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Construction Fund to the Series 1998 Bonds Redemption Account and the Series 1999 Bonds Redemption Account, to be applied to redemption of the Series 1998 Bonds and the Series 1999 Bonds at the earliest redemption date thereof, to the extent feasible.

E. The Ordinance is hereby amended to add the form of the Series 1999 Bond attached hereto as EXHIBIT C - FORM OF SERIES 1999 BOND as Exhibit B to the Ordinance.

Section 9. The Issuer does hereby appoint and designate WesBanco Bank Wheeling, Wheeling, West Virginia, for the purpose of serving in the capacity of Registrar.

Section 10. The Issuer does hereby appoint and designate One Valley Bank, Inc., Fairmont, West Virginia, for the purpose of serving in the capacity of Depository Bank.

Section 11. The firm of Steptoe & Johnson, Clarksburg, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 1998 Bonds and the Series 1999 Bonds.

Section 12. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, for the purpose of serving in the capacity of Paying Agent.

Section 13. The notice addresses for the Registrar, Paying Agent, Depository Bank, Original Purchaser and Bond Insurer shall be as follows, except as otherwise specifically provided herein:

REGISTRAR

WesBanco Bank Wheeling
One Bank Plaza
Wheeling, West Virginia 26003
Attention: Corporate Trust Department

DEPOSITORY BANK

One Valley Bank, Inc.
120 Fairmont Avenue
Fairmont, West Virginia 26554
Attention: Corporate Trust Department

PAYING AGENT

West Virginia Municipal Bond Commission
812 Quarrier Street, Suite 300
Charleston, West Virginia 25301
Attention: Executive Director

ORIGINAL PURCHASER

Ferris, Baker Watts, Incorporated
170 Laidley Tower
Charleston, West Virginia 25301
Attention: Public Finance
and
Crews & Associates
930 One Valley Square
Charleston, West Virginia 25301
Attention: Public Finance

BOND INSURER

AMBAC Assurance Corporation
One State Street Plaza
New York, New York 10004
Attention: General Counsel Office

Section 14. The City Manager, Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1998 Bond issue and the Series 1999 Bond issue to the end that the Series 1998 Bonds and the Series 1999 Bonds may be delivered on a timely basis to the Original Purchaser pursuant to the Bond Purchase Agreement.

Section 15. Under the provisions of the Act, and as provided in the Ordinance and the Series 1998 Bonds, the Series 1998 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 System of the Issuer, the Series 1998 Bonds Reserve Account and the Depreciation Fund 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 Series 1998 Bonds and the interest thereon.

Section 16. Under the provisions of the Act, and as provided in the Ordinance and the Series 1999 Bonds, the Series 1999 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 System of the Issuer, the Series 1999 Bonds Reserve Account and the Depreciation Fund 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 Series 1999 Bonds and the interest thereon.

Section 17. The Ordinance of the City adopted on April 8, 1997, authorizing the issuance of the City's Waterworks Refunding Revenue Bonds, Series 1997, dated June 1, 1997, issued in the original aggregate principal amount of $10,260,000 (the "Prior Bonds"), is, with the prior written consent of the municipal bond insurer for the Prior Bonds which has been heretofore been obtained, hereby amended by the complete substitution and replacement of Section 6.08 Additional Parity Bonds with the following language:

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 purposes of financing the costs of the design, acquisition and construction of additions, betterments or improvements to the System, refunding all or a portion of the Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of 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 City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during the Fiscal Year 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 three succeeding years after the date of issuance of such parity Bonds, shall not be less than 120% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Series 1997 Bonds then Outstanding;

(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 Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such additional parity Bonds, provided that, in the event the implementation of such 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 additional parity Bonds is, by the terms of the ordinance providing for such increase in rates, deferred pending completion of the acquisition and construction of any additions, betterments or improvements for the System, and further provided, that the debt service on such additional parity Bonds during such construction period is payable from proceeds of such additional parity Bonds deposited in the Sinking Fund held by the Bond Commission, 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, may be assumed to mean "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years commencing on the date of completion of such acquisition and construction".

The Net Revenues actually derived from the System during the preceding Fiscal Year 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 Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

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 Gross Revenues of the System on a parity with the Series 1997 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 1997 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 Gross Revenues of the System, and their source of and security for payment from the Gross Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this 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.

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 Issuer 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 shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance with respect to 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 issuance of the additional parity Bonds.

Section 18. The City Manager and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all further actions necessary to cause the Series 1998 Bonds and the Series 1999 Bonds to be insured by the Bond Insurer or such other municipal bond insurance company as is acceptable to the Original Purchaser.

Section 19. This Resolution shall be effective immediately.

Adopted this 17th day of December, 1998.

[SEAL]

Mayor

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CERTIFICATION

Certified a true, correct and complete copy of a Supplemental Resolution duly adopted by the City Council of the CITY OF FAIRMONT at a special meeting of the City Council held at 4:30 p.m., on December 17, 1998, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 30th day of December, 1998.

[SEAL]

Janet L. Keller
City Clerk

CERTIFICATION

Certified a true, correct and complete copy of a Supplemental Resolution duly adopted by the City Council of the CITY OF FAIRMONT at a special meeting of the City Council held at 4:30 p.m., on December 17, 1998, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 14th day of January, 1999.

[SEAL]

Janet L. Kellen
City Clerk

12/29/98
268460/98001

CH288121.2

EXHIBIT A - SERIES 1998 BOND TERMS

$9,600,000
City of Fairmont (West Virginia)
Water Revenue Bonds, Series 1998

Maturity (July 1)	Amount	Interest Rate	Price or Yield
2002	$ 105,000.00	3.600%	3.600%
2003	$ 100,000.00	3.700%	3.700%
2004	$ 105,000.00	3.750%	3.750%
2005	$ 110,000.00	3.850%	3.850%
2006	$ 115,000.00	3.950%	3.950%
2007	$ 120,000.00	4.000%	4.000%
2008	$ 125,000.00	4.050%	4.050%
2009	$ 130,000.00	4.100%	4.100%
2010	$ 135,000.00	4.200%	4.200%
2011	$ 140,000.00	4.250%	4.250%
2012	$ 145,000.00	4.300%	4.300%
2013	$ 145,000.00	4.350%	4.350%
2018	$1,625,000.00	4.750%	4.750%
2023	$3,055,000.00	4.900%	4.900%
2029	$3,445,000.00	4.750%	5.000%

OPTIONAL REDEMPTION

The Series 1998 Bonds shall not be subject to optional redemption prior to January 1, 2009. The Series 1998 Bonds maturing on or after July 1, 2009, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after January 1, 2009, in whole or in part at any time in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

Period During Which Redeemed (both dates inclusive)	Redemption Price
January 1, 2009 - December 31, 2009	102%
January 1, 2010 - December 31, 2010	101
January 1, 2011 and thereafter	100

If a Series 1998 Bond is called for redemption in part, the Series 1998 Bond shall be renumbered and exchanged for a Series 1998 Bond of the amount then outstanding, without charge to the Bondholder.

MANDATORY SINKING FUND REDEMPTION

The Bonds maturing July 1, 2018, July 1, 2023 and July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Series 1998 Bonds Maturing July 1, 2018

Year (July 1)	Principal Amount
2014	$295,000
2015	310,000
2016	325,000
2017	340,000
2018*	355,000

Series 1998 Bonds Maturing July 1, 2023

Year (July 1)	Principal Amount
2019	$375,000
2020	695,000
2021	675,000
2022	660,000
2023*	650,000

Series 1998 Bonds Maturing July 1, 2029

Year (July 1)	Principal Amount
2024	$635,000
2025	510,000
2026	535,000
2027	560,000
2028	590,000
2029*	615,000

* Final Maturity

EXHIBIT B - SERIES 1999 BOND TERMS

$19,945,000
City of Fairmont (West Virginia)
Water Revenue Bonds, Series 1999

Maturity (July 1)	Amount	Interest Rate	Price or Yield
2015	$1,825,000.00	5.250%	4.750%
2017	$2,020,000.00	5.250%	4.850%
2019	$2,235,000.00	5.000%	4.900%
2022	$3,000,000.00	5.250%	4.920%
2024	$2,500,000.00	4.500%	5.050%
2029	$8,365,000.00	5.000%	5.100%

OPTIONAL REDEMPTION

The Series 1999 Bonds shall not be subject to optional redemption prior to January 1, 2009. The Series 1999 Bonds maturing on or after July 1, 2009 (excepting the Series 1999 Bonds maturing July 1, 2022, which are not subject to optional redemption), shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after January 1, 2009, in whole or in part at any time in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

Period During Which Redeemed (both dates inclusive)	Redemption Price
January 1, 2009 - December 31, 2009	102%
January 1, 2010 - December 31, 2010	101
January 1, 2011 and thereafter	100

If a Series 1999 Bond is called for redemption in part, the Series 1999 Bond shall be renumbered and exchanged for a Series 1999 Bond of the amount then outstanding, without charge to the Bondholder.

MANDATORY SINKING FUND REDEMPTION

The Bonds maturing July 1, 2015, July 1, 2017, July 1, 2019, July 1, 2022, July 1, 2024 and July 1, 2029, are subject to annual mandatory redemption prior to maturity by random selection on July 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Series 1999 Bonds Maturing July 1, 2015

Year (July 1)	Principal Amount
2014	$ 890,000
2015*	935,000

Series 1999 Bonds Maturing July 1, 2017

Year (July 1)	Principal Amount
2016	$ 985,000
2017*	1,035,000

Series 1999 Bonds Maturing July 1, 2019

Year (July 1)	Principal Amount
2018	$1,090,000
2019*	1,145,000

Series 1999 Bonds Maturing July 1, 2022

Year (July 1)	Principal Amount
2020	$ 900,000
2021	1,000,000
2022*	1,100,000

Series 1999 Bonds Maturing July 1, 2024

Year (July 1)	Principal Amount
2023	$1,200,000
2024*	1,300,000

Series 1999 Bonds Maturing July 1, 2029

Year (July 1)	Principal Amount
2025	$1,515,000
2026	1,590,000
2027	1,670,000
2028	1,750,000
2029*	1,840,000

* Final Maturity

EXHIBIT C - FORM OF SERIES 1999 BOND

STATEMENT OF INSURANCE

No. R-_____ $_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
(WEST VIRGINIA)
WATER REVENUE BOND,
SERIES 1999

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), 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 Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the

Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on _____ 1 and _____ 1, in each year, beginning _____ 1, 199___ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the same meanings set forth in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by _____, _____, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each _____ 15 and _____ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by _____, _____, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in _____, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of $_____ designated "City of Fairmont (West Virginia) Water Revenue Bonds, Series 1999" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated _____, 199___, the proceeds of which are to be used to (i) finance the costs of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) fund a reserve account for the Bonds; and (iii) pay costs of issuance hereof and related costs. 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 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an ordinance duly enacted by the council of the Issuer on _____, 199___, as supplemented by a supplemental resolution duly adopted by the council on _____, 199___ (collectively, the "Ordinance"), and is subject to all the terms and conditions of the 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. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Fairmont, West Virginia.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by _____.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after _____, _____ are subject to redemption prior to maturity at the option of the Issuer on and after _____, _____, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed (Dates Inclusive)	Redemption Price

(B) Mandatory Sinking Fund Redemption. The Bonds maturing _____, are subject to annual mandatory redemption prior to maturity by random selection on _____ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing _____

Year (___)	Principal Amount

Bonds Maturing

Year ( )	Principal Amount

* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing 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 Registered Owner of the Bond or 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 Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of 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 Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

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 this Bond.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, DATED JUNE 1, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $10,260,000 (THE "PRIOR BONDS") AND THE ISSUER'S WATER REVENUE BONDS, SERIES 1998, DATED DECEMBER 15, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,560,000 (THE "SERIES 1998 BONDS").

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 1998 Bonds and the Prior Bonds, and from moneys in the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross 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 Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1999 Bonds Sinking Fund and the Series 1999 Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer 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 leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 1998 Bonds and the Prior 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to pay all costs of the Project, fund a reserve account for the Bonds and pay all costs of issuance of the Bonds, 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.

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 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

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 Ordinance.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof.

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.

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, CITY OF FAIRMONT (WEST VIRGINIA) has caused this Bond to be signed by its Mayor and 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]

(Manual or Facsimile Signature)
Mayor

(Manual or Facsimile Signature)
City Manager

ATTEST:

(Manual or Facsimile Signature)
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto 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

ASSIGNMENT

Social Security or Other Identifying Number of Assignee

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

_____

_____

the within Bond and does hereby irrevocably constitute and appoint_____

_____

_____

to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____

(Bank, Trust Company or Firm)

_____

(Authorized Officer)

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.

CITY OF FAIRMONT
(WEST VIRGINIA)

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATERWORKS REFUNDING REVENUE BONDS, SERIES 1987, OF THE CITY OF FAIRMONT, WEST VIRGINIA; THE ISSUANCE OF WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $12,500,000, 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 RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, the City of Fairmont (the "Issuer") presently owns and operates a municipal waterworks system (the "System") and has heretofore financed and refinanced the acquisition and construction of the System and certain additions, extensions and improvements thereto by issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Waterworks Refunding Revenue Bonds, Series 1987, dated January 15, 1987, issued in the original aggregate principal amount of $11,420,000, of which $10,285,000 is presently outstanding (the "Prior Bonds");

WHEREAS, the Prior Bonds were issued pursuant to an ordinance of the Issuer duly enacted by the Council of the Issuer on January 6, 1987, as supplemented by a supplemental resolution duly adopted by the Council of the Issuer on January 15, 1987 (collectively, the "Prior Ordinance");

WHEREAS, the Issuer is advised that current market conditions are such that interest savings would be realized from the refunding of the Prior Bonds;

WHEREAS, under the provisions of Chapter 13, Article 2E and Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act"), the

Issuer is authorized and empowered to issue refunding revenue bonds to refund, pay or discharge all or any part of the outstanding Prior Bonds;

WHEREAS, the Issuer has determined and hereby determines that it would therefore be to the benefit of the Issuer and its residents to refund the Prior Bonds to their first permitted Redemption Date, being July 1, 1997, in the manner set forth herein with proceeds of a series of bonds to be designated "City of Fairmont (West Virginia) Waterworks Refunding Revenue Bonds, Series 1997" (the "Series 1997 Bonds"), in the maximum aggregate principal amount of not more than $12,500,000, and other moneys of the Issuer;

WHEREAS, the Issuer now desires to authorize the refunding of the Prior Bonds as aforesaid, and to provide for the financing thereof by the issuance of the Series 1997 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 in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 13, Article 2E and Chapter 8, Article 19 of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Series 1997 Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer and Redemption Digest.

"Authorized Officer" means the City Manager of the Issuer or any other officer of the Issuer specifically designated by resolution of the Council of the Issuer.

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

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal Bonds, appointed by the Issuer and shall initially mean Steptoe & Johnson, Clarksburg, West Virginia.

"Bondholder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Series 1997 Bonds, and in the event the Series 1997 Bonds are insured, shall initially mean the Bond Insurer set forth in the Supplemental Resolution.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"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.

"Bonds" means, collectively, the Series 1997 Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1997 Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference.

"City" or "Issuer" means the City of Fairmont, a municipal corporation and political subdivision of the State of West Virginia, in Marion County thereof, and, unless the context clearly indicates otherwise, includes the Council and any successor thereto.

"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 1997 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.

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"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 the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, premiums for municipal bond insurance and reserve account insurance or reserve account surety bonds, letter of credit fees, expenses for fiscal or other agents, legal expenses, verification agent expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Series 1997 Bonds and the refunding of the Prior Bonds.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

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

"Depository Bank" means the bank or banks 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 Issuer as Depository Bank.

"Depreciation Fund" means the Depreciation Fund created by Section 4.01 hereof.

"DTC" means the Depository Trust Company, New York, New York, or its successor thereof.

"DTC-eligible" means, with respect to the Series 1997 Bonds, meeting the qualifications prescribed by the Depository Trust Company, New York, New York.

"Escrow Agent" means the Escrow Agent under the Escrow Agreement, which shall be appointed pursuant to the Supplemental Resolution.

"Escrow Agreement" means the Escrow Agreement to be entered into between the Issuer and the Escrow Agent, providing for the defeasance and ultimate payment of the Prior Bonds, the deposit therein of proceeds of the Series 1997 Bonds, the disposition of moneys in the various funds and accounts under the Prior Ordinance and other matters in connection therewith, the form of which shall be approved by the Supplemental Resolution.

"Escrow Fund" means the Escrow Fund established pursuant to the Escrow Agreement.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or 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.

"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 .

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting

principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments as hereinafter defined), or any Tap Fees, as hereinafter defined.

"Independent 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 purpose except keeping the accounts of the System in the normal operations of its business and affairs.

"Mayor" means the Mayor of the Issuer.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Series 1997 Bonds, insuring the payment of the principal of and interest on all or any of the Series 1997 Bonds in accordance with the terms thereof.

"Net Proceeds" means the face amount of the Series 1997 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1997 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 1997 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any investment property which is acquired with the gross proceeds of the Series 1997 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1997 Bonds.

"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, fees and expenses of fiscal agents, the Depository Bank, the Registrar and the Paying Agent, 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 any

decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Ordinance" means this Ordinance and all ordinances, orders and resolutions supplemented hereto or amendatory hereof.

"Original Purchaser" means, collectively, Crews & Associates, Inc., Little Rock, Arkansas, and Ferris Baker Watts, Inc., Charleston, West Virginia, as the purchaser of the Series 1997 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 1997 Bonds with interest rates and other terms allowable under the Act, 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 1997 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 1997 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adopted by the Council at the time of approval of such sale of said Series 1997 Bonds.

"Outstanding," when used with reference to the Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior 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 Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds or Prior Bonds for the purpose of consents, notices and the like, any Bond or Prior Bond registered to the Issuer. Notwithstanding the foregoing, in the event that the Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as the Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar or any other Paying Agent designated as such for the Series 1997 Bonds in the Supplemental Resolution, and any successor thereto, appointed in accordance with Section 8.12 hereof.

"Prior Bonds" shall have the meaning set forth in the recitals hereto.

"Prior Ordinance" shall have the meaning set forth in the recitals hereto.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental

unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Purchase Price," for the purpose of computation of the Yield of the 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 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 Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the 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 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

"Qualified Investments" means and includes the investments set forth in the Supplemental Resolution and designated as such.

"Rebate Fund" means the Rebate Fund created by Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Series 1997 Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of the Prior Bonds, the Series 1997 Bonds or any other Bonds of the Issuer called for redemption.

"Redemption Price" means the price at which the Prior Bonds, the Series 1997 Bonds or any other Bonds of the Issuer may be called for redemption and includes the principal amount of such Bonds to be redeemed, plus interest and the premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the Registrar for the Series 1997 Bonds, and any successor thereto, appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Revenue Fund" means the Revenue Fund created by Section 4.01 hereof.

"Series 1997 Bonds" means the Waterworks Refunding Revenue Bonds, Series 1997, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 1997 Bonds Redemption Account" means the Series 1997 Bonds Redemption Account created by Section 4.02 hereof.

"Series 1997 Bonds Reserve Account" means the Series 1997 Bonds Reserve Account created by Section 4.02 hereof.

"Series 1997 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1997 Bonds in any year.

"Series 1997 Bonds Sinking Fund" means the Series 1997 Bonds Sinking Fund created by Section 4.02 hereof.

"State" means the State of West Virginia.

"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 to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Series 1997 Bonds, authorizing the sale of the Series 1997 Bonds to the Original Purchaser and setting forth provisions specific to the Bond Insurer, if any; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means, collectively, the complete existing municipal waterworks system of the Issuer, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for 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.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

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 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 Ordinance; and the term "hereafter" means after the date of enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

Section 1.02. Authority for this Ordinance. This 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 Issuer is a municipal corporation and political subdivision of the State of West Virginia, in Marion County of said State.

B. The Issuer now owns and operates the System, the acquisition and construction of which has been financed and refinanced in part by the proceeds of the Prior Bonds.

C. The Issuer derives revenues from the System which are pledged for payment of the Prior Bonds. Except for such pledge thereof to secure and pay the Prior Bonds, such revenues are not pledged or encumbered in any manner.

D. The Issuer intends to refund the Prior Bonds in their entirety with proceeds of the Series 1997 Bonds and other funds of the Issuer, to issue the Series 1997 Bonds and to pledge the Gross Revenues of the System for payment thereof.

E. The estimated revenues to be derived in each year from the operation of the System after the refunding of the Prior Bonds will be sufficient to pay all Operating Expenses of the System and the principal of and interest on the Series 1997 Bonds and to make all other payments provided for in this Ordinance.

F. Based upon the assumed principal amount, maturity schedule and interest rates for the Series 1997 Bonds presented to the Issuer by the Original Purchaser, and after making allowance for the use of cash on hand of the Issuer, the Series 1997 Bonds show a net present value debt service savings to the Issuer, after deducting all expenses of the refunding and the costs of issuing the Series 1997 Bonds.

G. The Issuer shall not sell the Series 1997 Bonds without setting forth in the Supplemental Resolution the determination set forth in paragraph F above, based upon the actual principal amount, maturity schedule and interest rates for the Series 1997 Bonds, and the Issuer shall not issue the Series 1997 Bonds without having 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 saved, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 1997 Bonds and the net interest cost in dollars of the Prior Bonds.

H. Subject to the determination and certification required by paragraph G above, it is in the best interest of the Issuer and its residents, that the Issuer issue the Series 1997 Bonds and secure the Series 1997 Bonds by a pledge and assignment of the Gross Revenues derived from the operation of the System, the moneys in the Series 1997 Bond Sinking Fund and the Series 1997 Bonds Reserve Account, unexpended proceeds of the Series 1997 Bonds and as further set forth herein.

I. The Series 1997 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

J. All things necessary to make the Series 1997 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereunder to the payment of the principal of and interest on the Series 1997 Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Series 1997 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 1997 Bonds by those who shall own or hold the same from time to time, this Ordinance 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 such Bondholders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II

AUTHORIZATION OF REFUNDING

Section 2.01. Authorization of Refunding. All Prior Bonds outstanding as of the date of issuance of the Series 1997 Bonds are hereby ordered to be refunded pursuant to the terms of the Escrow Agreement, and the pledge of Gross Revenues in favor of the Holders of the Prior Bonds imposed by the Prior Ordinance, the moneys in the funds and accounts created by the Prior Ordinance and any other funds pledged by the Prior Ordinance to the payment of the Prior Bonds are hereby ordered terminated, discharged and released upon the payment into the Escrow Fund from the proceeds of the Series 1997 Bonds, together with other moneys available therefor, of the following: (a) if required by the Escrow Agreement, an amount equal to the fiscal and paying agent charges and the Escrow Agent charges to become due and payable in connection with the Prior Bonds and (b) an amount which will be simultaneously invested in Government Obligations bearing interest and having maturities sufficient, together with certain cash which may also be deposited, to provide for the payment of the principal of, redemption premium and interest on, the Prior Bonds as the same become due, to the first permitted Redemption Date, being July 1, 1997, or as soon thereafter as practicable, all as set forth in the Escrow Agreement. Contemporaneously with the deposit of the proceeds of the Series 1997 Bonds and other moneys into the Escrow Fund, the amounts on deposit in the sinking fund, including the reserve account therein, created and maintained on behalf of the Prior Bonds, shall be released from the lien created by the Prior Ordinance and deposited in the Escrow Fund, the Series 1997 Bonds Reserve Account or such other fund or account as shall be set forth in the Escrow Agreement or in the Supplemental Resolution, and invested as provided thereunder.

ARTICLE III

THE BONDS

Section 3.01. Form and Payment of Bonds. No Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Bonds issued pursuant to this Ordinance, may be issued only as fully registered Bonds without coupons, in the denomination of $5,000 or any integral multiple thereof for any year of maturity. All Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Bonds surrendered, all as shall be set forth in the Bonds.

The principal of and the premium, if any, on the Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of $500,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor and City Manager, by their manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City 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 Bonds shall cease to be such officer of the Issuer before the 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 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 such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference with respect to the Series 1997 Bonds, shall have been duly manually executed by the Registrar. Any such manually 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 Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, 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 any of the Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. 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 Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the

Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of 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 the initial exchange or 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 Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and 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 the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Series 1997 Bonds Redemption Account in accordance with Subsection 4.03.A(1) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory Redemption Date of said Term Bonds, a sum equal to 1/12th of the amount

required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Series 1997 Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Series 1997 Bonds Sinking Fund), as will exhaust as nearly as practicable the Series 1997 Bonds Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory Redemption Date, in such manner as may be determined by the Registrar. For

purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of $5,000.

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Series 1997 Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer 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 Bond Insurer, the Original Purchaser and the registered owner of the Series 1997 Bond or 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 Registrar.

So long as DTC (as CEDE & CO.) is the registered Owner of the Series 1997 Bonds, the Registrar shall send all notices of redemption to DTC and shall verify that DTC has received notice. Copies of all redemption notices relating to optional redemption of the Series 1997 Bonds shall also be sent to registered securities depositories and to *Standard & Poor's Called Bond Record*.

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 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such 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 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 Bonds.

If funds sufficient to redeem all Bonds called for optional redemption have not been deposited with the Paying Agent at the time of mailing any notice of optional redemption, such notice shall also state that such optional redemption is subject to the deposit of such moneys with the Paying Agent on or before the Redemption Date. If such

moneys are not so deposited, the Registrar shall notify all holders of Bonds called for redemption of such fact.

Official notice of redemption having been given as aforesaid, the Series 1997 Bonds or portions of 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 Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such 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 Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unredeemed principal of such Bond. All Bonds which have been redeemed shall be canceled and destroyed by the 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 Bonds, and failure to mail or otherwise send such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Series 1997 Bonds. For the purposes of refunding the Prior Bonds, funding the Series 1997 Bonds Reserve Account and paying costs in connection therewith, there shall be issued the Series 1997 Bonds of the Issuer, in an aggregate principal amount of not more than $12,500,000. The Series 1997 Bonds shall

be designated "City of Fairmont (West Virginia) Waterworks Refunding Revenue Bonds, Series 1997" and shall be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof for any year of maturity, not exceeding the aggregate principal amount of Series 1997 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 1997 Bonds shall be numbered from R-1 consecutively upward. The Series 1997 Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Bonds. A. The Series 1997 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 1997 Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Series 1997 Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Series 1997 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Series 1997 Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a Series 1997 Bond or any other evidence of ownership of the Series 1997 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Series 1997 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Series 1997 Bonds, the Issuer and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Series 1997 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption Price of or interest on such Series 1997 Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Bondholder under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Registrar with respect to the principal or Redemption Price of or interest on the Series 1997 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Series 1997 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Series 1997 Bonds so redeemed, but DTC may return such Series 1997 Bonds and make an appropriate notation on the Series 1997 Bond certificate as to the amount of such partial

redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Series 1997 Bonds of such maturity which have been redeemed.

D. The Issuer, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Series 1997 Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Series 1997 Bonds, selecting the Series 1997 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Series 1997 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Series 1997 Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder with respect to (i) the Series 1997 Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Series 1997 Bonds, (iv) any notice which is permitted or required to be given to Bondholders under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Series 1997 Bonds or (vi) any consent given or other action taken by DTC as Bondholder.

E. The book entry system for registration of the ownership of the Series 1997 Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Series 1997 Bonds; or (ii) the Issuer determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Series 1997 Bonds. In either of such events (unless in the case described in clause (ii) above, the Issuer appoints a successor securities depository), the Series 1997 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Series 1997 Bonds.

Section 3.12. Delivery of Bonds. The Issuer shall execute and deliver the Series 1997 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 1997 Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) A list of the names in which the Series 1997 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1997 Bonds to the Original Purchaser;

(C) Copies of this Ordinance and the Supplemental Resolution certified by the Clerk;

(D) The unqualified approving opinion of Bond Counsel regarding the Series 1997 Bonds; and

(E) A copy of the Escrow Agreement and such other documents, certificates and verifications as the Original Purchaser may reasonably require.

Section 3.13. Form of Bonds. The definitive Series 1997 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 1997 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 1997 Bonds shall have the form of the opinion of Steptoe & Johnson, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 1997 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1997 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 1997 Bonds Sinking Fund and applied to payment of interest on the Series 1997 Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 1997 Bonds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Prior Bonds (which amount shall be set forth in the Escrow Agreement) shall be deposited in the Escrow Fund.

C. An amount of the proceeds of the Series 1997 Bonds equal to the Series 1997 Bonds Reserve Requirement shall be remitted to the Bond Commission for deposit in the Series 1997 Bonds Reserve Account, provided that, to the extent the Series 1997 Bonds Reserve Requirement is satisfied in whole or in part from proceeds of any fund or account established for the Prior Bonds pursuant to the Prior Ordinance, or from a reserve account letter of credit, surety bond or other credit facility, proceeds of the

Series 1997 Bonds shall be deposited in the Series 1997 Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 1997 Bonds Reserve Requirement.

D. The balance of the proceeds of the Series 1997 Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1997 Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this 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 within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer to the Series 1997 Bonds Redemption Account. All such proceeds shall constitute a trust fund for such purposes, and there is hereby is created a lien upon such moneys until so applied in favor of the Holders of the Series 1997 Bonds.

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

(1) Revenue Fund;

(2) Depreciation Fund;

(3) Costs of Issuance Fund; and

(4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. The following special funds or accounts are hereby created with and shall be held by the Bond Commission separate and apart from all other fund or accounts of the Bond Commission and from each other:

(1) Series 1997 Bonds Sinking Fund;

(2) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account; and

(3) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Redemption Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first, on the first day of each month, (i) commencing 6 months prior to the first interest payment date of the Series 1997 Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Series 1997 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1997 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial

deposit in the Series 1997 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1997 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1997 Bonds deposited therein, and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 1997 Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Series 1997 Bonds Sinking Fund and in the Series 1997 Bonds Redemption Account therein in the case of the Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1997 Bonds on the next ensuing annual principal payment date or mandatory Redemption Date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1997 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory Redemption Date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Bond Commission for deposit in the Series 1997 Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 1997 Bonds Reserve Account below the Series 1997 Bonds Reserve Requirement or any withdrawal from the Series 1997 Bonds Reserve Account, beginning with the first full calendar month following the date on which (i) the valuation of investments in the Series 1997 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1997 Bonds Reserve Account is less than the Series 1997 Bonds Reserve Requirement, or (ii) any amount is withdrawn from the Series 1997 Bonds Reserve Account for deposit into the Series 1997 Bonds Sinking Fund. To the extent Gross Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 1997 Bonds Reserve Account to an amount equal to the Series 1997 Bonds Reserve Requirement to the full extent that such Gross Revenues are available; provided however, that if the shortfall in the Series 1997 Bonds Reserve Account is due to a decrease in value of investments therein, such shortfall shall be replenished by not less than 6 equal monthly payments, and if such shortfall is due to a withdrawal from the Series 1997 Bonds Reserve Account, such shortfall shall be replenished by not

less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Series 1997 Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Series 1997 Bonds Reserve Requirement.

Amounts in the Series 1997 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 1997 Bonds when due, when amounts in the Series 1997 Bonds Sinking Fund are insufficient therefor and for no other purpose.

(3) The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

(4) The Issuer shall next, each month, from the moneys remaining in the Revenue Fund, transfer to the Depreciation Fund, a sum equal to 2 1/2% of the Gross Revenues each month, 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, emergency 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 account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

Moneys in the Series 1997 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1997 Bonds as the same shall become due. Moneys in the Series 1997 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1997 Bonds, as the same shall come due, when other moneys in the Series 1997 Bonds Sinking Fund are insufficient therefor, and for no other purpose except for permitted transfers to the Rebate Fund.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account shall be returned, not less than once each year, by the Bond Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Bonds, and then to the next ensuing principal payment due thereon.

Except with respect to transfers to the Rebate Fund, any withdrawals from the Series 1997 Bonds Reserve Account which result in a reduction in

the balance of the Series 1997 Bonds Reserve Account to below the Series 1997 Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full to the Series 1997 Bonds Sinking Fund for payment of debt service on the Series 1997 Bonds.

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

The Issuer shall not be required to make any further payments into the Series 1997 Bonds Sinking Fund or the Series 1997 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account and the Series 1997 Bonds Redemption Account created hereunder, and all amounts required for said accounts shall be remitted to the Bond Commission from the Revenue Fund by the Issuer at the times provided herein.

The Issuer shall, on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Bond Commission the required principal, interest and reserve payments with respect to the Bonds, 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 Bond Legislation.

Moneys in the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account and the Series 1997 Bonds Redemption Account shall be invested and reinvested by the Bond Commission in accordance with Section 8.01 hereof.

Except with respect to transfers to the Rebate Fund, the Series 1997 Bonds Sinking Fund, including the Series 1997 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. 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.

C. The Issuer shall remit from the Revenue Fund to the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Bond 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 any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund, the Depreciation Fund and the Rebate Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. 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 4.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

F. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

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

Section 4.04. Reserve Account Letter of Credit or Surety Bond. In lieu of funding the Series 1997 Bonds Reserve Account with cash or Qualified Investments, the Series 1997 Bonds Reserve Requirement may be satisfied by the deposit by the Issuer into the Series 1997 Bonds Reserve Account of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Bond Insurer in an amount at least equal to the Series 1997 Bonds Reserve Requirement. The Issuer hereby authorizes the purchase of a reserve account letter of credit, a surety bond, or other credit facility satisfactory to the Bond Insurer and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in the Supplemental Resolution.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The Issuer 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 Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the 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 Issuer 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 Issuer 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) Qualified Investments acquired for the Series 1997 Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to semiannually transfer from the Series 1997 Bonds Reserve Account to the Series 1997 Bonds Sinking Fund, any earnings on the moneys deposited therein and any other funds in excess of the Series 1997 Bonds Reserve Requirement; provided, however, that there shall at all times remain on deposit in the Series 1997 Bonds Reserve Account an amount at least equal to the Series 1997 Bonds Reserve Requirement.

(C) 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. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Series 1997 Bonds Reserve Account, whereupon it shall be valued immediately after such

withdrawal. If amounts on deposit in the Series 1997 Bonds Reserve Account shall, at any time, be less than the Series 1997 Bonds Reserve Requirement, the Bond Insurer shall be notified immediately of such deficiency and such deficiency shall be made up from the first available Gross Revenues after required deposits to the Series 1997 Bonds Sinking Fund and otherwise in accordance with Section 4.03 hereof.

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 1997 Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Series 1997 Bonds Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 1997 Bonds in such manner and to such extent as may be necessary, so that the Series 1997 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 the Series 1997 Bonds) so that the interest on the Series 1997 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. 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 1997 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1997 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 Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, 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 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 at the time and the address prescribed by the Regulations as the same may be in effect from time to time 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. The Issuer at its expense, 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 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 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 amounts and any and all penalties and interest 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 Series 1997 Bonds from gross income for federal income tax purposes.

Section 5.04. Continuing Disclosure Agreement. The Issuer shall deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance 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 Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the 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 the Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the moneys in the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account therein and the unexpended proceeds of the Series 1997 Bonds, all as herein provided. No Holder or Holders of the Series 1997 Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1997 Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all of the Series 1997 Bonds issued hereunder shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System and all moneys in the Series 1997 Bonds Sinking Fund, including the Series 1997 Bonds Reserve Account therein. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Series 1997 Bonds herein authorized, and to make the payments into the Series 1997 Bonds Sinking Fund, including the Series 1997 Bonds Reserve Account therein, and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Series 1997 Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Prior to the issuance of the Series 1997 Bonds, rates or charges for the use of the services and facilities of the System will be 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 City Clerk of the Issuer, which copy 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 make the prescribed payments into the funds and accounts created hereunder. 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 Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to pay all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 120% of the maximum amount required in any year for payment of principal of and interest on the Series 1997 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1997 Bonds. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or 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.

Section 6.05. Operation and Maintenance. The Issuer will operate and maintain the System in good condition and as a revenue-producing enterprise in an efficient and economical manner, making all necessary expenditures for equipment, renewal, repair and replacement. The Issuer will also operate and maintain the System in compliance with all federal and state laws.

Section 6.06. Sale of the System. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to defease the pledge created by this Ordinance as provided by Section 9.01. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the Series 1997 Bonds Sinking Fund, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the Revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of $50,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer 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 shall be in excess of $50,000 but not in excess of $200,000, the Issuer shall first, 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, approve and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Depreciation Fund. Payment of such proceeds into the Depreciation Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of $200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of 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 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Bonds; and all obligations hereafter issued by the Issuer 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, pledge and source of and security for payment from such Revenues and in all other respects to the Bonds; provided that, no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of issuance of such subordinate obligations.

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, except with respect to such additional parity Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and Revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 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 purposes of financing the costs of the design, acquisition and construction of additions, betterments or improvements to the System, refunding all or a portion of the Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of 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 City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during the Fiscal Year 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 three succeeding years after the date of issuance of such parity Bonds, shall not be less than 120% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Series 1997 Bonds then Outstanding;

(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 Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such additional parity Bonds.

The Net Revenues actually derived from the System during the preceding Fiscal Year 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 Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

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 Gross Revenues of the System on a parity with the Series 1997 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 1997 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 Gross Revenues of the System, and their source of and security for payment from the Gross Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this 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.

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 Issuer 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 shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance with respect to 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 issuance of the additional parity Bonds.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. 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 the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during acquisition and construction of any additions, betterments and improvements to the System in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to

protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing 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 any additions, betterments or improvements to the System in compliance with West Virginia Code Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided as to every officer and employee of the Issuer 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.

Section 6.10. Services Rendered to the Issuer. The Issuer will not render or cause to be rendered any free services of any nature by the System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail 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. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be Revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other Revenues derived from such operation of the System.

Section 6.11. 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 and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other changes, if not paid, 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 and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all bills for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 6.12. 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 or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Books and Records. 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 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, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Issuer. The Issuer 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 Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall file with the Original Purchaser and the Bond Insurer, within 120 days following the end of each Fiscal Year, and shall mail to any Bondholder requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance, and the status of all said funds.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.14. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the charter of the Issuer, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by 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 such 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 to the Original Purchaser 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 Original Purchaser, the Bond Insurer and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.15. Statutory Mortgage Lien. For the further protection of the Holders of the Series 1997 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the issuance of the Series 1997 Bonds.

Section 6.16. 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 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 Bonds during the term thereof is, under the terms of the 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) in the event that both (A) in excess of 5% of the Net Proceeds of the 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 Bonds during the term thereof is, under the terms of the 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 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

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

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the 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 Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the 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 all actions that may be required of it so that the interest on the 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 6.17. Covenants Regarding the Municipal Bond Insurance Policy. The Issuer may apply for a Municipal Bond Insurance Policy for the Series 1997 Bonds. In the event such a Municipal Bond Insurance Policy is obtained, certain additional covenants of the Issuer may be required by the Bond Insurer as a condition to insuring the Series 1997 Bonds. These additional covenants shall be set forth in full in the Supplemental Resolution, shall apply to the Series 1997 Bonds and any other Bonds which may be insured by such Bond Insurer, and shall be controlling in the event any other provisions of this Ordinance may be in conflict therewith.

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 Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Bonds;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the 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 Issuer by any Bondholder; or

(C) 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.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any 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 Bondholders, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Bonds;

(D) 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 Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Bondholders.

No remedy by the terms of this Ordinance conferred upon or reserved to the 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 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 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 Bondholder (or any Bond Insurer if the defaulted Bonds are insured) 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 Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the 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 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 Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and 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 Ordinance 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 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 Issuer and for the joint protection and benefit of the Issuer and the

Holders of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, 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 Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this 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 Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

ARTICLE VIII

REGISTRAR AND PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 1997 Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer 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 1997 Bonds shall be taken as statements of the Issuer, 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 1997 Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Series 1997 Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this 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 Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in 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 Bondholders or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the 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 Ordinance by giving not less than 60 days written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or Bondholders, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer, the Bond Insurer or by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer, the Bond Insurer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as 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 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such 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 Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any 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 Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records 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 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 Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar may 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 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 Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Bonds shall be and remain DTC-eligible.

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 Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer 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 Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the 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 Ordinance, be held in trust for the purposes for which they were received.

ARTICLE IX

DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Gross Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All 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, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. 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 Bonds; provided, that any cash received from such principal, redemption premium, if any, and 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 redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer 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, as such term is limited by the provisions in Section 1.01 hereof or such additional securities as shall be set forth in the Supplemental Resolution.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendment of Ordinance. Prior to issuance of the Series 1997 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Series 1997 Bonds, this Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person, solely for the purpose of maintaining the tax-exempt status of the Bonds, provided that, in the event any of the Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the Clerk of the Issuer 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 Bond without the express written consent of the Holder of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such 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 Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer 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 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, a trust company or a financial firm or corporation satisfactory to the Issuer 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 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 fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such 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 Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer 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 Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any 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 Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this 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 Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer 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 Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment to the Issuer, 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 Issuer. If any of said Bonds is a coupon Bond, the Registrar or said Paying Agent shall also publish such notice, not less than 30 days prior to the date such moneys will be returned to the Issuer, in an Authorized Newspaper.

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 Issuer, the Registrar, the Paying Agent, the Depository Bank or the Original Purchaser 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:

ISSUER

City of Fairmont
City Hall
200 Jackson Street
Fairmont, West Virginia 26555

REGISTRAR AND PAYING AGENT

[Name(s) and address(es) to be set forth in Supplemental Resolution]

DEPOSITORY BANK

[Name(s) and address(es) to be set forth in Supplemental Resolution]

ORIGINAL PURCHASER

Crews & Associates, Inc.
2000 Union National Plaza
124 West Capitol
Little Rock, Arkansas 72201

Ferris Baker Watts, Inc.
170 Laidley Tower
500 Lee Street, East
Charleston, West Virginia 25301

BOND INSURER

[Name(s) and address(es) to be set forth in
Supplemental Resolution]

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 Issuer shall be individually or personally liable for the payment of the principal of or the interest on any 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 Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 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. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

Section 10.13. 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, City Manager, City Clerk and members of the Council were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 10.14. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereon.

Section 10.15. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Council 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 qualified 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 Bonds, and that any person interested may appear before the Council 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 Council for review by interested persons during office hours of the Council. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Passed on First Reading	March 18, 1997
Passed on Second Reading	March 25, 1997
Passed on Third Reading Following Public Hearing:	April 8, 1997

Mayor

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on April 8, 1997.

Dated this 19th day of June, 1997.

[SEAL]

Janet L Keller
City Clerk

EXHIBIT A - BOND FORM

No. R-_____ $_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
(WEST VIRGINIA)
WATERWORKS REFUNDING REVENUE BOND,
SERIES 1997

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), 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 Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on _____ 1 and _____ 1, in each year, beginning _____ 1, 199___ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the same meanings set forth in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by _____, _____, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each _____ 15 and _____ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by _____, _____, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in _____, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of $_____ designated "City of Fairmont (West Virginia) Waterworks Refunding Revenue Bonds, Series 1997" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated _____, 199___, the proceeds of which are to be used, together with other funds of the Issuer, to refund in full the Waterworks Refunding Revenue Bonds, Series 1987, of the Issuer, outstanding in the total aggregate principal amount of $_____ (the "Prior Bonds"), which Prior Bonds were issued to refinance the cost of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer. 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 13, Article 2E and Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an ordinance duly enacted by the council of the Issuer on _____, 199___, as supplemented by a supplemental resolution duly adopted by the council on _____, 199___ (collectively, the "Ordinance"), and is subject to all the terms and conditions of the 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. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Fairmont, West Virginia.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by _____.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after _____, _____ are subject to redemption prior to maturity at the option of the Issuer on and after _____, _____, in whole or in part at any time, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed (Dates Inclusive)	Redemption Price

(B) Mandatory Sinking Fund Redemption. The Bonds maturing _____, are subject to annual mandatory redemption prior to maturity by random selection on _____ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing	
Year ( )	Principal Amount

Bonds Maturing	
Year ( )	Principal Amount

* Final Maturity

If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing 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 Registered Owner of the Bond or 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 Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of 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 Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

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 this Bond.

The Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, all moneys in the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account established under the Ordinance, and the unexpended proceeds of the Bonds. Such Gross 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 Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds

the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account and unexpended proceeds of the Bonds. Under the Ordinance, the Issuer 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 leave a balance each year equal to at least _____% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the 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 Ordinance. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to refund the Prior Bonds and pay all costs in connection therewith and costs of issuance of the Bonds, 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.

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 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

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 Ordinance.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality or county commission, political subdivision or agency thereof.

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.

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, CITY OF FAIRMONT (WEST VIRGINIA) has caused this Bond to be signed by its Mayor and 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]

(Manual or Facsimile Signature)
Mayor

(Manual or Facsimile Signature)
City Manager

ATTEST:

(Manual or Facsimile Signature)
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto 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

ASSIGNMENT

Social Security or Other Identifying Number of Assignee _____
_____

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____
_____
_____
the within Bond and does hereby irrevocably constitute and appoint_____
_____
_____
to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____
(Bank, Trust Company or Firm)

_____
(Authorized Officer)

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.

06/05/97
FWATJ.A3
268460/95002

STATEMENT OF INSURANCE

CITY OF FAIRMONT

(WEST VIRGINIA)

WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO AMOUNT, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997 OF THE CITY; DESIGNATING CERTAIN INVESTMENT SECURITIES AS QUALIFIED INVESTMENTS; AUTHORIZING AND APPROVING A RESERVE ACCOUNT LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT RELATING THERETO; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT, A COMMITMENT FOR BOND INSURANCE, A REGISTRAR AND PAYING AGENT AGREEMENT, AN ESCROW AGREEMENT, AN OFFICIAL STATEMENT, A CONTINUING DISCLOSURE CERTIFICATE AND OTHER INSTRUMENTS RELATING TO THE BONDS; IMPLEMENTING PROVISIONS REQUIRED AS A CONDITION TO OBTAINING A MUNICIPAL BOND INSURANCE POLICY INSURING THE BONDS FROM MBIA INSURANCE CORPORATION; APPOINTING AN ESCROW AGENT, REGISTRAR, PAYING AGENT, 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 this Council;

WHEREAS, this Council duly enacted on April 8, 1997, an ordinance (the "Ordinance") entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATERWORKS REFUNDING REVENUE BONDS, SERIES 1987, OF THE CITY OF FAIRMONT, WEST VIRGINIA; THE ISSUANCE OF WATERWORKS REFUNDING REVENUE BONDS, SERIES 1997, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $12,500,000, 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 RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Ordinance;

WHEREAS, the Ordinance provided generally for the issuance of the Issuer's Waterworks Refunding Revenue Bonds, Series 1997 (the "Series 1997" Bonds"), in an aggregate principal amount not to exceed $12,500,000 for the purposes of paying a portion of the costs of currently refunding the Issuer's outstanding Waterworks Refunding Revenue Bonds, Series 1987 (the "Prior Bonds"); funding a reserve account for the Series 1997 Bonds; and paying costs of issuance thereof, all in accordance with Chapter 8, Article 19 and Chapter 13, Article 2E, of the West Virginia Code of 1931, as amended (collectively, the "Act");

WHEREAS, the Ordinance further provided that the exact principal amount of the Series 1997 Bonds to be sold and the dates, maturities, interest rates, redemption provisions, price and other terms of the Series 1997 Bonds should be established, that investment securities constituting "Qualified Investments" be designated, that a Bond Insurer, an Escrow Agent, Registrar and Paying Agent be designated, that an Escrow Agreement and Registrar and Paying Agent Agreement be approved, that additional covenants and provisions relating to the Series 1997 Bonds be provided herein as may be required by any Bond Insurer as a condition to insuring such Series 1997 Bonds and that other matters pertaining to the Series 1997 Bonds be provided for by resolution of this Council upon receipt of a Bond Purchase Agreement acceptable to this Council;

WHEREAS, the Series 1997 Bonds are proposed to be purchased by Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Original Purchaser"), pursuant to a Bond Purchase Agreement dated the date of adoption hereof (the "Bond Purchase Agreement");

WHEREAS, the Issuer has obtained a commitment for Municipal Bond Insurance for the Series 1997 Bonds from MBIA Insurance Corporation (the "Bond Insurer") and has determined that it is advantageous for the Issuer to obtain such Municipal Bond Insurance Policy and provide herein for certain matters required by the Bond Insurer as a condition to issuing such Municipal Bond Insurance Policy;

WHEREAS, the Issuer has determined to fund the Series 1997 Bonds Reserve Account with a letter of credit (the "Reserve Account Letter of Credit") issued by One Valley Bank, National Association (the "Letter of Credit Bank") in the amount of $1,000,000, which together with moneys to be transferred from the Prior Bonds Reserve Account, will equal the maximum annual debt service on the Series 1997 Bonds; and

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Bond Purchase Agreement, the Escrow Agreement, the Continuing Disclosure Certificate, the Reimbursement Agreement (as hereinafter defined) and the Registrar and Paying Agent Agreement hereinafter provided for be entered into by the Issuer, that the Reserve Account Letter of Credit and Official Statement relating to the Series 1997 Bonds, hereinafter described, be approved, that the date and price of the Series 1997 Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amount of the Series 1997 Bonds be fixed hereby in the manner stated herein, that Qualified Investments be herein designated, that provisions required by the Bond Insurer as a condition to issuing its Municipal Bond Insurance Policy be provided herein and that other matters relating to the Series 1997 Bonds be herein provided for, all in accordance with said Ordinance;

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 1997 Bonds. The Series 1997 Bonds shall be dated June 1, 1997, upon original issuance, shall be issued in the aggregate principal amount, bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 1998, shall mature on July 1 in such years and shall have such redemption provisions as are set forth in EXHIBIT A - SERIES 1997 BOND TERMS, attached hereto and incorporated by reference herein. Except as otherwise set forth herein, all other provisions relating to the Series 1997 Bonds shall be as provided in the Ordinance, and the Series 1997 Bonds shall be in substantially the form provided in the Ordinance.

Section 2. The Bond Purchase Agreement between the Original Purchaser and the Issuer, dated the date of adoption of this resolution, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager and the Mayor on this day of the Bond Purchase Agreement on behalf of the

Issuer are hereby authorized, approved, and directed. The City Manager and the Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the City Manager and the Mayor. Execution of the Bond Purchase Agreement by the City Manager and the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond Purchase Agreement relating to the issuance and sale of the Series 1997 Bonds, including the payment of all necessary fees and expenses in connection therewith. The price of the Series 1997 Bonds, pursuant to the Bond Purchase Agreement, shall be $10,151,308.20 ($10,260,000 par amount, plus $64.20 Original Issue Premium and less $108,756.00 Underwriters' Discount), plus interest accrued from the date of the Series 1997 Bonds to the date of delivery of the Series 1997 Bonds, expected to be on or about June 19, 1997.

Section 3. The Escrow Agreement by and among the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent, to be dated the Closing Date, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager thereof shall be and the same are hereby authorized, approved and directed. The City Manager shall execute and deliver the Escrow Agreement with such changes, insertions and omissions as may be approved by the City Manager. Execution of the Escrow Agreement by the City Manager shall be conclusive evidence of any approval required by this Section.

Section 4. The Continuing Disclosure Certificate of the Issuer to be dated the Closing Date, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the City Manager thereof shall be and the same are hereby authorized, approved and directed. The City Manager shall execute and deliver the Continuing Disclosure Certificate with such changes, insertions and omissions as may be approved by the City Manager. Execution of the Escrow Agreement by the City Manager shall be conclusive evidence of any approval required by this Section.

Section 5. The Official Statement dated the date of adoption of this resolution, to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the City Manager and the Mayor), and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The City Manager and the Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the City Manager and the Mayor. The execution of the Official Statement by the City Manager and the Mayor shall be conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary Official Statement dated June 3, 1997 (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the City Manager is hereby ratified and approved.

Section 6. The Registrar and Paying Agent Agreement to be dated the Closing Date, by and between the Issuer and the Registrar and Paying Agent designated herein, substantially in the form submitted to this meeting, shall be and the same is hereby approved. The City Manager shall execute and deliver the Registrar and Paying Agent Agreement with such changes, insertions and omissions as may be approved by the City Manager. The execution of the Registrar and Paying Agent Agreement by the City Manager shall be conclusive evidence of any approval required by this Section.

Section 7. The Issuer does hereby authorize and approve the Reserve Account Letter of Credit, the deposit thereof in the Series 1997 Bonds Reserve Account held by the Bond Commission and the execution and delivery of the reimbursement agreement (the "Reimbursement Agreement") relating thereto. The City Manager shall execute and deliver the Reimbursement Agreement with such changes, insertions and omissions as may be approved by the City Manager. Execution of the Reimbursement Agreement by the City Manager shall be conclusive evidence of any approval required by this Section.

Section 8. The Issuer does hereby determine that the Municipal Bond Insurance Policy offered by the Bond Insurer will result in an interest cost savings for the Issuer in excess of the premium to be paid by the Issuer for such Municipal Bond Insurance Policy, and accordingly hereby ratifies acceptance of the Commitment for Municipal Bond Insurance (the "Commitment"), dated April 16, 1997. The City Manager is hereby authorized and directed to execute the approval of the Commitment and deliver the same to the Bond Insurer. Execution of the Commitment shall be conclusive evidence of any approval required by this Section.

Section 9. Pursuant to the Commitment, and, as permitted by Section 6.17 of the Ordinance, the following covenants and provisions which are required by the Bond Insurer as a condition precedent to issuance of its Municipal Bond Insurance Policy are hereby set forth, such covenants and provisions to be supplemental and amendatory of, and controlling with respect to, the Ordinance and applicable to the Series 1997 Bonds:

A. Notice to the Bond Insurer. All notices required to be given by any party set forth in the Ordinance shall also be given to the Bond Insurer, Attn: Insured Portfolio Management.

B. Amendments. The Bond Insurer shall be given notice of any amendment to the Ordinance that does not require consent of Bondholders. The written consent of the Bond Insurer must be obtained prior to any amendment of the Ordinance requiring Bondholder consent. Any amendments to the Ordinance which are consented to by the Bond Insurer shall be sent to Standard & Poor's.

C. Supplemental Legal Documents. The Issuer shall first obtain the Bond Insurer's written consent prior to the issuance of any additional Bonds other than (1) refunding bonds to obtain savings or (2) bonds which meet the parity tests set forth in Section 6.08 of the Ordinance.

D. Events of Default and Remedies. The Bond Insurer, acting alone, shall have the right to direct all remedies upon the occurrence of an Event of Default. The Bond Insurer shall be recognized as the Registered Owner of each Bond which it insures for the purposes of exercising all rights and privileges available to Bondholders. For Bonds which it insures, the Bond Insurer shall have the right to institute any suit, action, or proceeding at law or in equity under the same terms as a Bondholder in accordance with applicable provisions of the Ordinance. Except as a result of optional or mandatory sinking fund redemptions, any acceleration of principal payments shall be subject to the Bond Insurer's prior written consent.

E. Defeasance of the Bonds requires the deposit of:

1. Cash, or

2. U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- "SLGs"), or

3. Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities, or

4. Resolution Funding Corp. (REFCORP) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form, or

5. Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P. If however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition, or

6. Obligations issued by the following agencies which are backed by the full faith and credit of the U.S.:

   a. U.S. Export-Import Bank (Eximbank)
   Direct obligations or fully guaranteed certificates of beneficial ownership,

   b. United States Department of Agriculture-Rural Utilities Service (RUS)
   Certificates of beneficial ownership,

   c. Federal Financing Bank,

d. General Services Administration
Participation certificates,

e. U.S. Maritime Administration
Guaranteed Title XI financing, or

f. U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

F. In the event the Series 1997 Bonds Reserve Account is replaced with either a surety bond or a letter of credit, or a surety bond or letter of credit is used to fund the reserve account for additional parity Bonds,no such surety bond or letter of credit may be used without the written consent of the Bond Insurer both as to the provider of such security and its structure.

Section 10. The following investment securities are hereby designated as Qualified Investments under the Ordinance:

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership

2. United States Department of Agriculture-Rural Utilities Service (RUS)
Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration
Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration
Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae") Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System
Consolidated systemwide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, saving and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G. Investment Agreements, including GIC's, acceptable to MBIA (Investment Agreement criteria is available upon request).

H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.

K. Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.

Repurchase Agreements must satisfy the following criteria or be approved by MBIA.

1. Repos must be between the municipal entity and a dealer bank or securities firm

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or

   b. Banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are:

      (1) Direct U.S. governments, or

      (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

   b. The term of the repo may be up to 30 days

   c. The collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

   d. Valuation of Collateral

      (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest

         (a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the

securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the municipal entity:

a. Repo meets guidelines under state law for legal investment of public funds.

L. Any state administered pool investment fund in which the Issuer is statutorily permitted or required to invest.

Section 11. Based upon the actual principal amounts, maturity schedule and interest rates for the Series 1997 Bonds, as set forth in **EXHIBIT A**, attached hereto, it is hereby determined that the Series 1997 Bonds show a net savings to the Issuer after deducting all expenses of the refunding. Prior to delivery of the Series 1997 Bonds, the Issuer shall have obtained from Smith, Cochran & Hicks, P.L.L.C., Charleston, West Virginia or such other independent certified public accountant acceptable to the Mayor and City Manager, a certification that the amount of savings stated to be achieved by the refunding shall in fact be correct, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 1997 Bonds and the net interest cost in dollars of the Prior Bonds. The Mayor and City Manager are hereby authorized and directed to employ Smith, Cochran & Hicks, P.L.L.C., Charleston, West Virginia or such other independent certified public accountant satisfactory to Bond Counsel to supply the certification required herein and to take other actions required in connection with the refunding.

Section 12. The Issuer does hereby appoint and designate Bank One, West Virginia, NA, Charleston, West Virginia, for the purpose of serving in the capacities of Registrar and Paying Agent.

Section 13. The Issuer does hereby appoint and designate One Valley Bank, Inc., Fairmont, West Virginia, for the purpose of serving in the capacity of Depository Bank.

Section 14. The firm of Steptoe & Johnson, Clarksburg, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 1997 Bonds.

Section 15. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission for the purpose of serving in the capacity of Escrow Agent under the Escrow Agreement.

Section 16. The firm of Smith, Cochran & Hicks, P.L.L.C., Charleston, West Virginia, is hereby engaged as verification agent for the purpose of verifying yield, savings and sufficiency of the Escrow Fund.

Section 17. The notice addresses for the Registrar, Paying Agent, Depository Bank, Escrow Agent, Original Purchaser and Bond Insurer shall be as follows:

REGISTRAR AND PAYING AGENT

Bank One, West Virginia, NA
Bank One Plaza
Charleston, West Virginia 25301
Attention: Corporate Trust Department

DEPOSITORY BANK

One Valley Bank, Inc.
120 Fairmont Avenue
Fairmont, West Virginia 26554
Attention: Corporate Trust Department

ESCROW AGENT

West Virginia Municipal Bond Commission
812 Quarrier Street, Suite 300
Charleston, West Virginia 25301
Attention: Executive Director

ORIGINAL PURCHASER

Crews & Associates
128 Capitol Street
Charleston, West Virginia 25301
Attention: Public Finance
and
Ferris, Baker Watts, Incorporated
170 Laidley Tower
Charleston, West Virginia 25301
Attention: Public Finance

BOND INSURER

MBIA Insurance Corporation
113 King Street
Armonk, New York 10504
Attention: Insured Portfolio Management

Section 18. The City Manager, Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1997 Bond issue, including, but not limited to, subscription forms for the purchase of United States Treasury Obligations, to the end that the Series 1997 Bonds may be delivered on a timely basis to the Original Purchaser pursuant to the Bond Purchase Agreement.

Section 19. Under the provisions of the Act, and as provided in the Ordinance and the Series 1997 Bonds, the Series 1997 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 System of the Issuer, the Series 1997 Bonds Reserve Account and the Depreciation Fund 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 Series 1997 Bonds and the interest thereon.

Section 20. The City Manager and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all further actions necessary to cause the Series 1997 Bonds to be insured by the Bond Insurer 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 Agreement.

Section 21. This Resolution shall be effective immediately.

Adopted this 5th day of June, 1997.

Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Supplemental Resolution duly adopted by the City Council of the CITY OF FAIRMONT at a special meeting of the City Council held at 4:30 p.m., on June 5, 1997, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 19th day of June, 1997.

[SEAL]

Janet L. Keller
City Clerk

06/16/97
FWATJM.J4
268460/95002

EXHIBIT A - SERIES 1997 BOND TERMS

$10,260,000
City of Fairmont (West Virginia)
Waterworks Refunding Revenue Bonds, Series 1997

CUSIP	Bond No.	Maturity (July 1)	Amount	Interest Rate	Price or Yield
305459 DG1	R-1	1999	$210,000	4.250%	100.000%
305459 DH9	R-2	2000	520,000	4.400	100.000
305459 DJ5	R-3	2001	545,000	4.500	100.000
305459 DK2	R-4	2002	565,000	4.600	100.000
305459 DL0	R-5	2003	595,000	4.700	100.000
305459 DM8	R-6	2004	625,000	4.750	99.702
305459 DN6	R-7	2005	650,000	4.800	99.668
305459 DP1	R-8	2006	685,000	4.850	99.636
305459 DQ9	R-9	2007	715,000	5.000	100.000
305459 DR7	R-10	2008	750,000	5.100	100.000
305459 DS5	R-11	2009	790,000	5.300	100.884
305459 DT3	R-12	2010	830,000	5.350	100.438
305459 DU0	R-13	2011	875,000	5.300	99.508
305459 DV8	R-14	2012	925,000	5.500	100.874
305459 DW6	R-15	2013	980,000	5.375	99.202

OPTIONAL REDEMPTION

The Series 1997 Bonds shall not be subject to optional redemption prior to July 1, 2007. The Series 1997 Bonds maturing on or after July 1, 2008, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after July 1, 2007, in whole or in part at any time in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

Period During Which Redeemed (both dates inclusive)	Redemption Price
July 1, 2007 - June 30, 2008	102%
July 1, 2008 - June 30, 2009	101
July 1, 2009 and thereafter	100

If a Series 1997 Bond is called for redemption in part, the Series 1997 Bond shall be renumbered and exchanged for a Series 1997 Bond of the amount then outstanding, without charge to the Bondholder.

PSWP #: WV3302502 & WV3302513

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

WASHINGTON and CAPITOL STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WEST VIRGINIA 25301
TELEPHONE 304-558-2981

PERMIT

(Water)
PROJECT: City of Mannington Water System Extension PERMIT NO.: 17,193

LOCATION: Mannington COUNTY: Marion DATE: 8-21-2006

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

City of Fairmont
P. O. Box 1428
Fairmont, West Virginia 26554

is hereby granted approval to: install approximately 60,479 LF of 12" and 10,269 LF of 16" water line; one (1) 1,000 G.P.M. duplex water booster station with booster chlorination; two (2) master meters; a SCADA system; and all necessary valves, controls and appurtenances.

Facilities are to serve the City of Mannington.

Note: This permit is contingent upon: 1) All new water line being disinfected, flushed and bacteriologically tested, prior to use; and 2) Maintaining a minimum ten (10) feet horizontal separation and a minimum 18" vertical separation between sewer and water line, with the water line to be above the sewer line.

The Environmental Engineering Division of the Philippi OEHS District Office (304) 457-2296, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:emt
pc: Greenhorne & O'Mara, Inc.
City of Mannington
James W. Ellars, P.E., Engineering Division-PSC
Amy Swann, PSC
Marion County Health Department
OEHS-EED Philippi District Office

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/24/2007

PRODUCER (304)592-5924 FAX: (304)592-6241
WesBanco Insurance Services, Inc.
329 Pike Street
P.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.

INSURED
City Of Fairmont
Po Box 1428

Fairmont WV 26555-1428

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: St. Paul Public Sector	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

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 [ ] PROJECT [ ] 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 STATU-TORY LIMITS [ ] OTH-ER 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

© ACORD CORPORATION 1988

CLOSING MEMORANDUM

To: **Financing Team**

From: **John C. Stump, Esquire**

Date: **June 26, 2008**

Re: **City of Fairmont Water Revenue Bonds, Series 2008 A**
(West Virginia DWTRF Program)

1. DISBURSEMENTS TO THE CITY OF FAIRMONT

Payor:	West Virginia Infrastructure and Jobs Development Council
Source:	Infrastructure Fund Grant
Amount:	$24,500
Form:	Wire Transfer
Bank:	The Huntington National Bank
ABA No.:	051903761
Acct. No.:	01531201652
Contact:	Margaret Byrd 304.623.7106
Account:	Infrastructure Fund Grant Account

Payor:	West Virginia DWTRF Program
Source:	Series 2008 A Bonds
Amount:	$-0- *(wiring instructions provided for future wires)*
Form:	Wire Transfer
Bank:	The Huntington National Bank
ABA No.:	051903761
Acct. No.:	01531205412
Contact:	Margaret Byrd 304.623.7106
Account:	Series 2008 A Bonds Construction Account

2. DISBURSEMENTS TO THE MUNICIPAL BOND COMMISSION

Payor:	West Virginia Bureau for Public Health
Source:	Series 2008 A Bonds Proceeds
Amount:	$91,668
Form:	Wire Transfer
Payee:	City of Fairmont
Bank:	BB&T for benefit of Municipal Bond Commission
Routing #:	051503394
Account:	5270517317
Contact:	Sara Boardman, 304.558.3971
Account:	Series 2008 A Bonds Reserve Account

RESOLUTION OF THE CITY OF FAIRMONT APPROVING INVOICES RELATING TO CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED WATERPROJECT AND AUTHORIZING PAYMENT THEREOF

WHEREAS, the City of Fairmont has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Mannington Water Project funded by the Drinking Water State Revolving Fund (DWSRF), the Infrastructure Fund Grant (IJDC) and a Small Cities Block Grant (SCBG) and find as follows:

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

b) That each item for which the payment is proposed to be paid is or was necessary in connection with the Project and constitutes a Cost of the project.

c) That each of such costs has been otherwise properly incurred.

d) That the payment for each of the items proposed is due and owing.

NOW, THEREFOR, BE IT RESOLVED The City of Fairmont by as follows: There is hereby authorized and directed the payment of the attached invoices as follows:

Vendor	Total	DWSRF	IJDC	SCBG
Huntington Banks (Registrar)	500.00		500.00	
Steptoe & Johnson (Bond Counsel)	24,000.00		24,000.00	
Municipal Bond Commission (Reserve Fund)	91,668.00	91,668.00		
Total	116,168.00	91,668.00	24,500	

ADOPTED BY the City of Fairmont, at the meeting held on the 10th day of June, 2008.

MAYOR

ATTEST:

CITY CLERK

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

PRECLOSING ATTENDANCE LIST

Date **June 25, 2008** Time **10:30am** LGA **City of Fairmont** Program **DWTRF/IF**

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
John Stump	Steptoe & Johnson PLLC	353.8196	353.8181	john.stump@steptoe-johnson.co
Barbara B Meadows	Water Development Authority	558-3612	558-0299	bmeadows@wvwda.org
Samuse Gee	Jackson Kelly PLLC	340.1358	340.1272	sgee@jacksonkelly.com
Ryan White	Jackson Kelly	340-1283	340-1272	srwhite@jacksonkelly.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 Eileen Layman, Finance Director Telephone 333.3471 ext 322 E-Mail elayman@fairmontwv.gov

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.

SWEEP RESOLUTION

City of Fairmont

WHEREAS, the City of Fairmont (the "Issuer") is a governmental body and political subdivision of West Virginia;

WHEREAS, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

WHEREAS, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

WHEREAS, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

WHEREAS, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

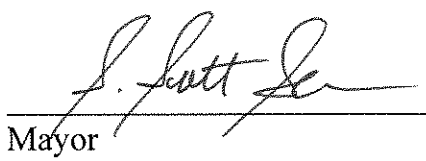
NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1) The monthly debt service payments on and reserve funds for the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.

2) The Mayor, Clerk and City Manager are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.

3) This resolution shall be effective immediately upon adoption.

Adopted this 24th day of June, 2008.



Mayor

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

Bob Wise
GOVERNOR

October 8, 2003

The Honorable Orval L. Price
Mayor
City of Mannington
206 Main Street
Mannington, West Virginia 26582-1153

Dear Mayor Price:

Thank you for your application to the Small Cities Block Grant Program (SCBG).

Your request has been approved in the amount of $1,500,000. These funds will enable you to construct a new water treatment facility to serve the residents of Mannington Public Service District and Downs Public Service District.

In order to effectively use the limited dollars available, I hereby commit $1,000,000 from our fiscal year 2003 allocation that will immediately be available to you. The remaining $500,000 necessary to complete this project will be evaluated and committed in the coming year. I encourage you to expedite this project and reach its completion as quickly as possible with this funding strategy in mind.

Please contact Mrs. Pam King of the West Virginia Development Office, at (304) 558-4010, to complete the necessary contract in order to proceed with your project.

The West Virginia Development Office reserves the right to withdraw these funds if your project does not proceed on schedule. These funds would be replaced with a letter of intent for consideration from future allocations.

I am pleased to assist with these improvements for the citizens of Mannington.

Very truly yours,

Bob Wise
Governor

BW:pks

A RESOLUTION OF COUNCIL NAMING THE CITY OF FAIRMONT AS A SUBGRANTEE OF THE CITY OF MANNINGTON'S 2003 SMALL CITIES BLOCK GRANT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MANNINGTON, MARION COUNTY, WEST VIRGINIA, that the Council does name the City of Fairmont a subgrantee, or recipient, of $1,025,000 of the City of Mannington's $1.5 million 2003 Small Cities Block Grant with the agreement that the City of Fairmont is to use these funds to construct a water line extension to the City of Mannington. This further authorizes the mayor to sign all the necessary paperwork.

Passed this 6th day of September, 2005.

Lenny Stafford, Mayor

Attest:

City Clerk & Recorder

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, dated the 6th day of September , 2005, by and among the CITY OF FAIRMONT, a West Virginia municipal corporation, and the CITY OF MANNINGTON, a West Virginia municipal corporation.

WHEREAS, Mannington has historically maintained a water filtration plant and a storage, transmission and distribution system for purposes of supplying potable water to general domestic, commercial, industrial and resale customers within its corporate limits and surrounding territory;

WHEREAS, Mannington's water filtration plant has become antiquated and in 2003, Mannington was awarded a West Virginia Small Cities Block Grant in the amount of $1,500,000.00 as a portion of the funding to provide for replacement of its filtration plant;

WHEREAS, the West Virginia Infrastructure Council Consolidation Committee has determined that it is more feasible for Mannington to purchase water for resale than to reconstruct or rehabilitate its filtration plant;

WHEREAS Fairmont owns and operates a water utility, known as the City of Fairmont Water Fund, which produces and sells quality potable filtered water to domestic, commercial, industrial, and resale customers located within the corporate limits of said City and its environs located in Marion County, West Virginia;

WHEREAS, Mannington and Fairmont contemplate and shall enter into a water purchase agreement whereby Mannington will exclusively purchase potable water for resale to its customers from Fairmont;

WHEREAS, in order to satisfy the terms and conditions of the water purchase agreement and to provide potable filtered water, Mannington and Fairmont have identified and recognize the need for a transmission line and a master metering system, together with all appurtenances necessary,

useful and convenient thereto, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction from the corporate limits of the City of Fairmont to the point of master metering at the 632,000 gallon water tank of the City of Mannington;

WHEREAS, Mannington has further identified and recognizes certain necessary upgrades to Mannington's facilities so as to enable it to continue to safely provide quality potable water to its customers;

WHEREAS, it is contemplated that Mannington will assign the residual portion of the aforementioned West Virginia Small Cities Block Grant, hereinafter defined, to Fairmont to pay a portion of the costs relating to the construction of the aforementioned line extension;

WHEREAS, both Mannington and Fairmont are empowered and authorized by the provisions of West Virginia Code §8-19-1 to acquire, construct, establish, equip, repair, maintain and operate a waterworks system and all integral parts thereof, including mains, meters, storage tanks, pumps and all other facilities necessary, appropriate, useful, convenient and incidental in connection therewith;

WHEREAS, inasmuch as the powers, privileges, authority and undertaking as aforesaid may be engaged in by either of the parties, it is recognized that pursuant to the provisions of West Virginia Code §8-23-1 et seq., that said powers, privileges, authority and undertaking may be exercised, enjoyed, engaged in or undertaken jointly by Mannington and Fairmont;

WHEREAS, it is the intention of Mannington and Fairmont by this Agreement to evidence their desire to cooperate with each other on a basis of mutual advantage and consolidate functions and, thereby, provide services and facilities in a manner and pursuant to forms of governmental organization, which will result in the most economic and expeditious construction of the project.

WHEREAS, it is the intent of these parties to enter into a written agreement with one another for joint and cooperative action as provided by law and pursuant to the terms of this Agreement as hereinafter set forth;

WHEREAS, pursuant to the provisions of West Virginia Code §8-11-3, the Council for the City of Fairmont has by Ordinance No. 1325, duly enacted on the 25th day of Oct, 2005, manifested its approval of Fairmont's participation and has authorized and empowered the City Manager to execute this agreement on its behalf; and

WHEREAS, pursuant to the provisions of West Virginia Code §8-11-3, the Council for the City of Mannington has by Ordinance No. 374, duly enacted on the 5th day of December, 200__, manifested its approval of Mannington's participation and has authorized and empowered its Mayor to execute this agreement on its behalf

NOW THEREFORE THIS AGREEMENT WITNESSETH:

That for and in consideration of the above recitals and the terms, conditions and covenants hereinafter set forth, the parties hereto do mutually covenant and agree as follows:

1. **TERM**: The initial term of this agreement shall be from the date first above written to the June 30 next succeeding, subject to renewal for additional period(s) of time needed to complete all phases of the project; provided that each renewal period shall be limited to one fiscal year.

2. **PURPOSE**: Under the terms of this agreement the City of Fairmont will develop and undertake to construct a transmission and distribution line and a master metering system, together with all appurtenances necessary, useful and convenient thereto, by which Fairmont will provide potable filtered water to Mannington for resale to its customers.

Under the terms of this agreement, the City of Mannington will undertake to provide for certain upgrades and maintenance to its distribution and storage system, address certain safety issues,

and provide for the demolition of its current filtration plant.

3. **PROJECT DESCRIPTION**: The portion of the project to be exclusively undertaken by Fairmont, in its sole discretion, is described as a line extension and will generally be comprised one or the other of the following:

Alternate #1: The construction of a 16" water line connecting to an existing 16" water line located on Route 250 (Cleveland Ave.) approximately 2000 LF from Fairmont's Allegheny Tanks. The 16" water line would follow Route 250 north for approximately 68,000 LF and connect to Mannington's water system at its existing 632,000 gallon water tank, together with a master meter and all appurtenances which may be necessary, useful and convenient, to provide Mannington at the point of master metering with potable water which shall comply with the standards established by the West Virginia Bureau of Public Health. The total preliminary cost estimate for Atlernative #1 is $4,085,000.00.

Alternate #2: The construction of a 1000 GPM booster pump and a 12" water line connecting to an existing 16" water line located on Route 250 (Cleveland Ave.) approximately 2000 LF from Fairmont's Allegheny Tanks. The 12" water line would follow Route 250 north for approximately 68,000 LF and connect to Mannington's water system at its existing 632,000 gallon water tank, together with a master meter and all appurtenance which may be necessary, useful and convenient to provide Mannington at the point of master metering with potable water which shall comply with the standards established by the West Virginia Bureau of Public Health. The total preliminary cost estimate for Alternative #2 is $3,485,000.00.

Under either of the alternatives set out above, the portion of the project to be exclusively undertaken by Mannington will generally be comprised of demolishing Mannington's existing water plant; painting the Marshall Street and Burt Hill storage tanks; fencing all tank sites located in the

Mannington corporate limits; and relocating radio telemetering to the Town Hall. The total preliminary cost estimate for Mannington's portion of the project is $325,000.00 or an amount which shall not exceed $350,000.00.

4. **LOCATION**: The line extension shall be located within the designated boundaries of Marion County, West Virginia, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction within or from the corporate limits of the City of Fairmont, or shall take such other route(s) determined more feasible by the design engineer, to the point of master metering at the 632,000 gallon water tank of the City of Mannington;

The portion of the project to be undertaken by Mannington and described above will be undertaken within the corporate limits of the City of Mannington or on property owned by the City of Mannington.

5. **METHOD OF FUNDING**: The line extension shall be funded as follows:

Fairmont project Alternate #1 will be funded as follows:

Assigned WV Small Cities Block Grant	$ 1,025,000.00
Infrastructure, Jobs & Development Council Grant	475,000.00
USDA Loan (40 years @ 4.5%)	$ 2,585,000.00
	$ 4,085,000.00

Fairmont project Alternate #2 will be funded as follows:

Assigned WV Small Cities Block Grant	$ 1,025,000.00
Infrastructure, Jobs & Development Council Grant	475,000.00
USDA Loan (40 years @ 4.5%)	$ 1,985,000.00
	$ 3,485,000.00

If alternative funding sources are deemed more economically beneficial to Fairmont, Fairmont, in its sole discretion, may fund its portion of the project via any such funding sources as it shall deem most economically beneficial.

Mannington project will be funded as follows

Balance of Retained WV Small Cities Block Grant ($475,000 less amounts expended)	$ 350,000.00

6. **GENERAL PROVISIONS:**

A. Notwithstanding the estimated costs of construction set out in Section 5 Method of Funding, above, Fairmont shall be responsible for all costs and expenses associated with the design and construction of the transmission line to the point of master metering which exceed the residual portion of Mannington's 2003 West Virginia Small Cities Block Grant of $1,500,000.00 hereinafter assigned to Fairmont. Notwithstanding the estimated costs of construction set out in Section 5 Method of Funding, above, Mannington shall be responsible for the costs and expenses associated with the design and construction of the transmission line to the point of master metering in an amount equal to the residual portion of said Small Cities Block Grant hereinafter assigned to Fairmont.

Fairmont shall have no responsibility whatsoever for any of the costs and expenses associated with Mannington's portion of the project under any circumstances.

Fairmont covenants and agrees that no surcharge, tap fee, or aid to construction charge will be imposed upon Mannington in order to pay for the project in the event of a bid overrun.

B. Subject to any terms or conditions imposed by the Community Development Division of the West Virginia Development Office, the parties covenant and agree that the City of Mannington shall assign, transfer, set over, and deliver, the residual portion of its 2003 West Virginia Small Cities Block Grant of $1,500,000.00 to the City of Fairmont. The residual portion of said Grant to be assigned, transferred, set over and delivered to the City of Fairmont shall under no circumstances be less than $1,000,000.00 nor more than $1,025,000.00, the purpose of which is to pay a portion of the costs and expenses to be incurred by the City of Fairmont in the construction of the aforementioned line extension.

C. The parties covenant and agree that the City of Mannington shall be the administrator of all of its 2003 Small Cities Grant funds awarded it and not assigned to the City of Fairmont and shall be exclusively responsible for the demolition of Mannington's existing water plant; painting the Marshall Street and Burt Hill storage tanks; fencing all tank sites located in the Mannington corporate limits; and relocating radio telemetering to the Town Hall

D. The parties covenant and agree that the City of Fairmont shall be the administrator of all of the residual portion of the 2003 Small Cities Grant funds awarded Mannington and assigned to Fairmont hereunder or otherwise awarded to it and shall be responsible for all aspects of the approval, permitting, construction, ownership and operation and maintenance of the line extension, subject to proper administrative control of any federal, state or local regulatory agency;

E. The parties covenant and agree that legal title to or ownership of all real and personal property, including but not limited to easements and rights of way, acquired by virtue of the construction of the line extension to the point of master metering shall be vested in the City of Fairmont. Further, upon the completion of the line extension and the installation of the master meter, title thereto and ownership and control thereof will be vested in the City of Fairmont and the City of Fairmont will have the exclusive right to administer, maintain, and operate the line extension to and including the point of master metering.

F. The parties covenant and agree that all required permits, authorizations and approvals shall become a part of this Agreement and incorporated herein by reference.

G. The letting and operation of any contract, either professional or construction, will be in accordance with each party's respective competitive acquisition procedures and requirements and in compliance with all federal, state, and local regulations. Non-compliance with any such regulation will be grounds for immediate cancellation of any contract or service.

H. The City of Mannington covenants and agrees that it shall indemnify and save the City of Fairmont harmless against and from any loss or obligation by reason of this Agreement or the line extension, including attorney fees incurred for defending any claim, arising from the following

(a). Any negligence, or tortuous or willful act on the part of the City of Mannington, its agents, or employees; and/or

(b) Any failure on the part of the City of Mannington to perform or comply with any of the terms, covenants, or conditions contained in and required of the City of Mannington by the terms of this Agreement.

The City of Fairmont covenants and agrees that it shall indemnify and save the City of Mannington harmless against and from any loss or obligation by reason of this Agreement or the Project, including attorney fees incurred for defending any claim, arising from the following:

(a). Any negligence, or tortuous or willful act on the part of the City of Fairmont, its agents, or employees; and/or

(b) Any failure on the part of the City of Fairmont to perform or comply with any of the terms, covenants, or conditions contained in and required of the City of Fairmont by the terms of this Agreement.

I. Default in the performance of any covenant, agreement, obligation or condition herein shall entitle the non-defaulting party, at its option, to terminate this Agreement after giving written notice to the defaulting party of its intent to do so and the notice shall specify (a) the default; (b) the action required to cure the default; (c) the time period in which the default must be cured, which can not be less than 30 days from the date of the notice. If after notice of default, the party in default does not within the time period stated cure or remedy such default, this Agreement shall

terminate at the option of the non-defaulting party.

In the event of termination of the Agreement as aforesaid, an interim audit shall be prepared by the City of Fairmont through the date of termination and the audit report shall be provided to the City of Mannington.

If the City of Mannington be in default and this Agreement terminates, the City of Mannington shall reimburse and pay over to the City of Fairmont the costs and expenses which were incurred in the design and construction of said line extension as of the date of the interim audit which exceed the amount of Mannington's 2003 Small Cities Block Grant heretofore assigned to Fairmont and Fairmont shall have no further obligation to proceed with the disposition or completion of any uncompleted work.

If the City of Fairmont be in default and this Agreement terminates, the City of Mannington may at its option, following an inspection, accept all work completed on the line extension and may at its option, without obligation to do so, proceed with the disposition or completion of any uncompleted work. The City of Fairmont shall reimburse and pay over to the City of Mannington the reasonable costs and expenses incurred in completing the work; provided however, that the City of Fairmont shall not be obligated to reimburse or pay over to the City of Mannington, under any circumstances, any amount or sum greater than the portion of Mannington's 2003 West Virginia Small Cities Block Grant which has been assigned, transferred, set over and delivered to the City of Fairmont under the terms of this agreement.

Nothing in this section shall be deemed to affect, limit, impair any other rights of termination or any other rights allowed by law.

No waiver by any party hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same

or any other term, condition, or covenant contained herein

The provisions of this Agreement are in addition to and not in derogation of any power and authority vested in these public bodies under any constitutional, statutory, or other provisions which may now or hereafter be in effect, and under no circumstances whatever shall the provisions of Chapter 8, Article 23, of the West Virginia Code, as amended, be construed as in any way limiting the power and authority to take joint or cooperative action or enter into agreements or contracts granted in other Articles of that Chapter.

To the extent that the terms and conditions of this Intergovernmental Agreement shall be in conflict with the Water Purchase Agreement dated the ____ day of _____, 2005, by and between the City of Fairmont and the City of Mannington, the terms of the Water Purchase Agreement shall be deemed to supersede the terms and conditions of this agreement.

This Agreement shall become effective upon approval hereof by the Attorney General of the State of West Virginia or upon his failure to approve the same within thirty days of this submission to him for review all pursuant to the provisions of Chapter 8, Article 23, Section 3, of said Code.

IN WITNESS WHEREOF, the public agencies hereinbefore named, as parties to this Agreement properly adopted by the governing bodies thereof, approve this Agreement and direct the Mayor or Manager, respectively, to execute this Agreement on their behalf and cause it to be filed and recorded in such manner as provided by law.

THE CITY OF MANNINGTON,
A WV Municipal Corporation

BY: _____
Its Mayor

Attest:

_____
Its Recorder/Clerk

CITY OF FAIRMONT

BY: _____
Its City Manager

Attest:

Janet L. Keller
Its Clerk

Approved by:

ATTORNEY GENERAL
STATE OF WEST VIRGINIA
Approved as to form the 23rd day of

January, 2006

BY: _____
Attorney General

ORDINANCE NO. 1325

AN ORDINANCE APPROVING THAT CERTAIN PUBLIC WORKS PROJECT TO BE JOINTLY UNDERTAKEN BY THE CITY OF FAIRMONT AND THE CITY OF MANNINGTON FOR THE CONSTRUCTION OF A TRANSMISSION LINE TO PROVIDE POTABLE WATER FOR RESALE TO THE CITY OF MANNINGTON, MARION COUNTY, WEST VIRGINIA, AND AUTHORIZING AND EMPOWERING THE CITY MANAGER TO EXECUTE THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED THE 6TH DAY OF SEPTEMBER 2005, WHICH RELATES TO SAID PROJECT

WHEREAS, the City of Mannington has historically maintained a water filtration plant and a storage, transmission and distribution system for purposes of supplying potable water to general domestic, commercial, industrial and resale customers within its corporate limits and surrounding territory; and

WHEREAS, the West Virginia Infrastructure Council Consolidation Committee has determined that it is more feasible for the City of Mannington to purchase water for resale than to reconstruct or rehabilitate its filtration plant; and

WHEREAS, the City of Fairmont owns and operates a water utility, known as the City of Fairmont Water Fund, which produces and sells quality potable filtered water to domestic, commercial, industrial, and resale customers located within Marion County, West Virginia; and

WHEREAS, in order to provide potable filtered water, the City of Mannington and the City of Fairmont have identified and recognize the need for the construction of a transmission line and master metering system, together with all appurtenances necessary, useful and convenient thereto, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction from the corporate limits of the City of Fairmont to the point of master metering at the 632,000 gallon water tank of the City of Mannington; and

WHEREAS, the City of Mannington has further identified and recognizes certain necessary upgrades to its facilities so as to enable it to continue to safely distribute quality potable water to its customers; and

WHEREAS, both cities are empowered and authorized by the provisions of West Virginia Code §8-19-1 to acquire, construct, establish, equip, repair, maintain and operate a waterworks system and all integral parts thereof, including mains, meters, storage tanks, pumps and all other facilities necessary, appropriate, useful, convenient and incidental in connection therewith; and

WHEREAS, inasmuch as the powers, privileges, authority and undertaking as aforesaid may be engaged in by either of the parties, it is recognized that pursuant to the provisions of West Virginia Code §8-23-1 et. seq., that said powers, privileges, authority and undertaking may be exercised, enjoyed, engaged in or undertaken jointly by said cities; and

WHEREAS, the City of Mannington and the City of Fairmont have negotiated an agreement defining their duties, obligations and responsibilities regarding the undertaking and have reduced said agreement to writing, which writing is attached hereto; and

WHEREAS, it is the intention of the City of Mannington and the City of Fairmont by the aforementioned agreement to evidence their desire to cooperate with each other on a basis of mutual advantage and consolidate functions and, thereby, provide services and facilities in a manner and pursuant to forms of governmental organization, which will result in the most economic and expeditious construction of the project; and

WHEREAS, the provisions of West Virginia Code §8-11-3, among others, require that the Council for the City of Fairmont manifest its approval of said City's participation in the project and authorize and empower the City Manager to execute the intergovernmental agreement on behalf of the City of Fairmont, by ordinance.

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS:

SECTION. 1. That the Council for the City of Fairmont hereby authorizes and approves of the City of Fairmont's participation in that certain public improvement project for the construction of a transmission line and master metering system, together with all appurtenances necessary, useful and convenient thereto, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction from the corporation limits of the City of Fairmont to the point of master metering at the 632,000 gallon water tank of the City of Mannington and for certain upgrades to the City of Mannington's existing water storage and distribution system, which project is being jointly undertaken by the City of Fairmont and the City of Mannington, and which project is more particularly described in that certain "Intergovernmental Agreement" by and between the City of Fairmont and the City of Mannington, dated September 6, 2005, a copy of which is attached hereto.

SECTION 2. That the conditions, provisions and terms of that certain "Intergovernmental Agreement" by and between the City of Fairmont and the City of Mannington, dated July 6, 2005, are incorporated and made a part hereof by reference as if fully set put verbatim herein.

SECTION 3. That the City Manager be and is hereby authorized and empowered to execute on behalf of the City of Fairmont that certain "Intergovernmental Agreement" dated September 6, 2005.

This Ordinance shall become effective thirty (30) days after adoption.

Passed this the 25th day of October, 2005.

MAYOR

ATTEST:

Janet L. Keller
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that **Ordinance No. 1325:**

AN ORDINANCE APPROVING THAT CERTAIN PUBLIC WORKS PROJECT TO BE JOINTLY UNDERTAKEN BY THE CITY OF FAIRMONT AND THE CITY OF MANNINGTON FOR THE CONSTRUCTION OF A TRANSMISSION LINE TO PROVIDE POTABLE WATER FOR RESALE TO THE CITY OF MANNINGTON, MARION COUNTY, WEST VIRGINIA, AND AUTHORIZING AND EMPOWERING THE CITY MANAGER TO EXECUTE THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED THE 6TH DAY OF SEPTEMBER 2005, WHICH RELATES TO SAID PROJECT

was introduced and publicly read in its entirety at the Regular Meeting of Council held October 11, 2005 and was published in the Times-West Virginian on October 17, 2005, pursuant to Charter provisions Section 2.13(d); a public hearing was held on October 25, 2005. 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 25th day of October, 2005.

MAYOR

ATTEST:

CITY CLERK

A TRUE COPY:

MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA

CERTIFICATION

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

I, Janet L. Keller, 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 **Ordinance No. 1325**, being **AN ORDINANCE APPROVING THAT CERTAIN PUBLIC WORKS PROJECT TO BE JOINTLY UNDERTAKEN BY THE CITY OF FAIRMONT AND THE CITY OF MANNINGTON FOR THE CONSTRUCTION OF A TRANSMISSION LINE TO PROVIDE POTABLE WATER FOR RESALE TO THE CITY OF MANNINGTON, MARION COUNTY, WEST VIRGINIA, AND AUTHORIZING AND EMPOWERING THE CITY MANAGER TO EXECUTE THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED THE 6TH DAY OF SEPTEMBER 2005, WHICH RELATES TO SAID PROJECT.**

The Ordinance was adopted by the Council of the City of Fairmont, West Virginia, at its regular meeting held October 25, 2005.

Given under my hand and seal this the 13th day of December, 2005.

Janet L. Keller
CITY CLERK

SYNOPSIS

ORDINANCE NO. 374

AN ORDINANCE APPROVING THAT CERTAIN PUBLIC WORKS PROJECT TO BE JOINTLY UNDERTAKEN BY THE CITY OF MANNINGTON AND THE CITY OF FAIRMONT FOR THE CONSTRUCTION OF A TRANSMISSION LINE TO PROVIDE POTABLE WATER FOR RESALE TO THE CITY OF MANNINGTON, MARION COUNTY, WEST VIRGINIA, AND AUTHORIZING AND EMPOWERING THE MAYOR TO EXECUTE THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED THE 6TH DAY OF SEPTEMBER 2005, WHICH RELATES TO SAID PROJECT.

This proposed ordinance authorizes and approves of the City of Mannington's participation in that certain public improvement project for the construction of a transmission line and master metering system, together with all appurtenances necessary, useful and convenient thereto, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction from the corporate limits of the City of Fairmont to the point of master metering at the 632,000 gallon water tank of the City of Mannington and for certain upgrades to the City of Mannington's existing water storage and distribution system, which project is being jointly undertaken by the City of Fairmont and the City of Mannington.

The project is more particularly described in that certain "Intergovernmental Agreement" by and between the City of Fairmont and the City of Mannington, dated September 6, 2005, a copy of which is attached to the ordinance.

This proposed ordinance provides the Mayor with the authority to execute the aforementioned agreement on behalf of the City of Mannington.

ORDINANCE NO. 374

AN ORDINANCE APPROVING THAT CERTAIN PUBLIC WORKS PROJECT TO BE JOINTLY UNDERTAKEN BY THE CITY OF MANNINGTON AND THE CITY OF FAIRMONT FOR THE CONSTRUCTION OF A TRANSMISSION LINE TO PROVIDE POTABLE WATER FOR RESALE TO THE CITY OF MANNINGTON, MARION COUNTY, WEST VIRGINIA, AND AUTHORIZING AND EMPOWERING THE MAYOR TO EXECUTE THAT CERTAIN INTERGOVERNMENTAL AGREEMENT DATED THE 6TH DAY OF SEPTEMBER 2005, WHICH RELATES TO SAID PROJECT.

WHEREAS, the City of Mannington has historically maintained a water filtration plant and a storage, transmission and distribution system for purposes of supplying potable water to general domestic, commercial, industrial and resale customers within its corporate limits and surrounding territory;

WHEREAS, the West Virginia Infrastructure Council Consolidation Committee has determined that it is more feasible for the City of Mannington to purchase water for resale than to reconstruct or rehabilitate its filtration plant;

WHEREAS, the City of Fairmont owns and operates a water utility, known as the City of Fairmont Water Fund, which produces and sells quality potable filtered water to domestic, commercial, industrial, and resale customers located within Marion County, West Virginia;

WHEREAS, in order to provide potable filtered water, the City of Mannington and the City of Fairmont have identified and recognize the need for the construction of a transmission line and master metering system, together with all appurtenances necessary, useful and convenient thereto, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction from the corporate limits of the City of Fairmont to the point of master metering at the 632,000 gallon water tank of the City of Mannington;

WHEREAS, the City of Mannington has further identified and recognizes certain necessary upgrades to its facilities so as to enable it to continue to safely distribute quality potable water to its customers;

WHEREAS, both cities are empowered and authorized by the provisions of West Virginia Code §8-19-1 to acquire, construct, establish, equip, repair, maintain and operate a waterworks system and all integral parts thereof, including mains, meters, storage tanks, pumps and all other facilities necessary, appropriate, useful, convenient and incidental in connection therewith;

WHEREAS, inasmuch as the powers, privileges, authority and undertaking as aforesaid may be engaged in by either of the parties, it is recognized that pursuant to the provisions of West Virginia Code §8-23-1 et seq., that said powers, privileges, authority and undertaking may be exercised, enjoyed, engaged in or undertaken jointly by said cities;

WHEREAS, the City of Mannington and the City of Fairmont have negotiated an agreement defining their duties, obligations and responsibilities regarding the undertaking and have reduced said agreement to writing, which writing is attached hereto; and

WHEREAS, it is the intention of City of Mannington and the City Fairmont by the aforementioned agreement to evidence their desire to cooperate with each other on a basis of mutual advantage and consolidate functions and, thereby, provide services and facilities in a manner and pursuant to forms of governmental organization, which will result in the most economic and expeditious construction of the project.

WHEREAS, the provisions of West Virginia Code §8-11-3, among others, require that the Council for the City of Mannington manifest its approval of said City's participation in the project and authorize and empower the Mayor to execute the intergovernmental agreement, on behalf of the City of Mannington, by ordinance;

NOW THEREFORE, THE CITY OF MANNINGTON HEREBY ORDAINS:

SECTION 1: That the Council for the City of Mannington hereby authorizes and approves of the City of Mannington's participation in that certain public improvement project for the construction of a transmission line and master metering system, together with all appurtenances necessary, useful and convenient thereto, along, adjacent to, or in the general vicinity of the right of way of U.S. Route 250 in a northerly direction from the corporate limits of the City of Fairmont to the point of master metering at the 632,000 gallon water tank of the City of Mannington and for certain upgrades to the City of Mannington's existing water storage and distribution system, which project is being jointly undertaken by the City of Fairmont and the City of Mannington, and which project is more particularly described in that certain "Intergovernmental Agreement" by and between the City of Fairmont and the City of Mannington, dated September 6, 2005, a copy of which is attached hereto.

SECTION 2: That the conditions, provisions and terms of that certain "Intergovernmental Agreement" by and between the City of Fairmont and the City of Mannington, dated September 6, 2005, are incorporated and made a part hereof by reference as if fully set out verbatim herein.

SECTION 3: That the Mayor be and is hereby authorized and empowered to execute on behalf of the City of Mannington that certain "Intergovernmental Agreement" dated September 6, 2005.

This Ordinance shall become effective upon adoption or as otherwise provided by the Charter of the City of Mannington.

Passed this 5th day of December, 2005.

MAYOR

ATTEST:

CLERK

CERTIFICATION

I hereby certify that this is a true copy of Ordinance #374 which was duly enacted by the Council of the CITY OF MANNINGTON on the 5th day of December, 2005.

Dated this 6th day of December, 2005.

Michele Flaherty

City Clerk & Recorder

IC-2

(7/30/01)

GRANT AGREEMENT

This Grant Agreement entered into by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the CITY OF FAIRMONT (the "Governmental Agency").

RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed $913,668 (the "Grant") for the purposes of the design, acquisition or construction of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purposes of designing, acquiring or constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Grant Agreement sets forth the Council, the Authority and the Governmental Agency's understandings and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Authority and the Governmental Agency hereby agree as follows:

TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.

2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority.

3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.

4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.

5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

6. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

7. The Governmental Agency shall list the Grant provided by the Authority and the Council 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 groundbreaking or dedication of the Project.

8. This Grant Agreement shall be governed by the laws of the State of West Virginia.

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

CITY OF FAIRMONT

By: _____
Its: Mayor
Date: June 26, 2008

(SEAL)

Attest:

_____
Its: Clerk

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: _____
Its: Executive Director
Date: June 26, 2008

(SEAL)

Attest:

_____
Its: Secretary-Treasurer

Exhibit A

Project Description

The Project consists of the acquisition and construction of certain extensions, additions, betterments and improvements to the System of the Issuer, consisting of providing the City of Mannington with a potable water supply through the installation of approximately 67,000 lineal feet of 12" and 16" diameter line and the construction of a 1,000 gpm booster pump station (from PSC technical review dated 9.23.05), together with all appurtenant facilities.