DISTRIBUTION LIST

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

Issuer
City of Montgomery
706 Third Avenue
Montgomery, WV 25136
James F. Higgins, Jr., Mayor
Greg Ingram, Recorder
(304) 442-5181 Telephone
(304) 442-5395 Telecopier
cityofmontgomery@yahoo.com E-Mail Add.

Issuer's Counsel
James C. Blankenship, III, Esq.
P.O. Box 326
Fayetteville, WV 25840
(304) 574-3556 Telephone
(304) 574-2365 Telecopier
jcb@suddenlinkmail.com E-Mail Address

Bond Counsel
Goodwin & Goodwin, LLP
P.O. Box 2107
300 Summers Street, Suite 1500
Charleston, WV 25328-2107
William K. Bragg, Jr., Esq.
(304) 346-7000 Telephone
(304) 344-9692 Telecopier
wkb@goodwingoodwin.com E-mail Address

Municipal Bond Commission
WV Municipal Bond Commission
1207 Quarrier Street, Suite 401
Charleston, WV 25301
Sara Boardman, Executive Director
(304) 558-3971 Telephone
(304) 558-1280 Telecopier
sboardman@state.wv.us E-Mail Address

Lender
United States Department of Agriculture
Rural Utilities Service
481 Ragland Road
Beckley, WV 25802
Attn: Audrey Gwinn, Rural
Development Technician
(304) 253-9597 Ext. 170 Telephone
(304) 252-5809 Telecopier
Audrey.Gwinn@wv.usda.gov E-Mail Add.

Consulting Engineer
Terradon Corporation
P.O. Box 519
Nitro, WV 25143
Jim Downey, Project Manager
Harvey A. McCallister, Jr., Project Engineer
(304) 729-9152 Telephone
(304) 755-2636 Telecopier
Jim.Downey@terradon.com E-Mail Address

Accountant
Smith, Cochran & Hicks, P.L.L.C.
405 Capitol Street, Suite 908
Charleston, WV 25301
Todd F. Dingess, CPA
(304) 345-1151 Telephone
(304) 346-6731 Telecopier
TFDCPA@hotmail.com E-mail Address

Project Administrator
Region 4 Planning & Development Council
Terri Kiser, Project Assistant
425 Main Street
Summersville, WV 26651
(304) 872-4970 Ext. 13 Telephone
kiserr4@yahoo.com E-Mail Address

TABLE OF CONTENTS

CITY OF MONTGOMERY

Sewer Revenue Bond
Series 2009

BOND TRANSCRIPT

Pre-Closing: September 8, 2009
Closing: September 10, 2009

Table of Contents

BASIC DOCUMENTS

1. Bond Ordinance
2. Supplemental Resolution
3. USDA Letters of Conditions, as amended
4. Public Service Commission Order
5. Receipt for Series 2009 Bond
6. Specimen Series 2009 Bond

OPINIONS OF COUNSEL

7. Approving Opinion on Series 2009 Bond of Goodwin & Goodwin, LLP, Bond Counsel
8. Opinion on Series 2009 Bond of Counsel to Issuer
9. Title Opinion

CERTIFICATES

10. General Certificate on Series 2009 Bond of Issuer and Attorney
11. Certificate of Engineer, with Schedule B Attached
12. Certificate of Certified Public Accountant

13. Certificate of Recorder

DOCUMENTS OF THE ISSUER

14. Charter of City

15. Oaths of Office of Council Members and Officers

16. Ordinance Creating Sanitary Board

17. Petition of Sanitary Board

18. Sewer Rate Ordinance

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

20. Minutes on Adoption and Enactment of Rate Ordinance

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

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

23. Municipal Bond Commission New Issue Report

MISCELLANEOUS DOCUMENTS

24. Consents to Issuance of Parity Bonds

25. Acceptance of Appointment as Depository Bank

26. 1987 Bond Ordinance

27. 1993 Bond Ordinance

28. 1996 Bond Ordinance

29. NPDES Permit

30. United States Department of Agriculture Grant Agreements

31. Small Cities Block Grant Letter

32. Evidence of Insurance

33. Statutory Authority

The Pre-Closing of the sale of $309,000 City of Montgomery Sewer Revenue Bond, Series 2009 (the "Bond"), will take place at the Montgomery City Hall in Montgomery, West Virginia at 10:00 a.m., Eastern Time, on September 8, 2009. The Closing of the sale of the Bond will take place on September 10, 2009. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document that references an Exhibit or Schedule to be attached thereto shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.

Depository Bank
City National Bank of West Virginia
Montgomery Branch, 4th Avenue &
Washington Street
Montgomery, WV 25136
Michelle Fox, Branch Manager
(304) 442-6019 Telephone
michelle.fox@cityholding.com

CITY OF MONTGOMERY

SEWER REVENUE BOND
SERIES 2009

BOND ORDINANCE

Table of Contents

Subject		Page
	ARTICLE I	
	STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS	
Section 1.01	Authority for this Ordinance	1
Section 1.02	Findings	1
Section 1.03	Bond Legislation Constitutes Contract	4
Section 1.04	Definitions	5
	ARTICLE II	
	AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT	
Section 2.01	Authorization of Acquisition and Construction of the Project	11
	ARTICLE III	
	AUTHORIZATION, TERMS, EXECUTION AND SALE OF BOND	
Section 3.01	Authorization of Bond	11
Section 3.02	Terms of Bond	11
Section 3.03	Execution of Bond	12
Section 3.04	Bond Registrar	12
Section 3.05	Negotiability, Transfer and Registration	13
Section 3.06	Bond Mutilated, Destroyed, Stolen or Lost	13
Section 3.07	Bond not to be Indebtedness of the Issuer	13
Section 3.08	Bond Secured by Pledge of Net Revenues	14
Section 3.09	Delivery of Bond	14
Section 3.10	Form of Bond	14
	FORM OF SERIES 2009 BOND	15
Section 3.11	Sale of Bond	21

Section 3.12 "Amended Schedule B" Filing 21

ARTICLE IV
[RESERVED] 21

ARTICLE V
FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01 Establishment of Funds and Accounts with Depository Bank 21
Section 5.02 Establishment of Funds and Accounts with Commission 21
Section 5.03 System Revenues; Flow of Funds 21

ARTICLE VI
BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01 Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds 25
Section 6.02 Disbursements From the Bond Construction Trust Fund 26

ARTICLE VII
ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01 General Covenants of the Issuer 26
Section 7.02 Bond not to be Indebtedness of the Issuer 26
Section 7.03 Bond Secured by Pledge of Net Revenues 26
Section 7.04 Rates and Charges 27
Section 7.05 Sale of the System 27
Section 7.06 Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances 28
Section 7.07 Parity Bonds 28
Section 7.08 Books; Records and Audit 30
Section 7.09 Rates 32
Section 7.10 Operating Budget and Monthly Financial Report 32
Section 7.11 Engineering Services and Operating Personnel 33
Section 7.12 No Competing Franchise 33
Section 7.13 Enforcement of Collections 33
Section 7.14 No Free Services 34
Section 7.15 Insurance and Construction Bonds 34
Section 7.16 Mandatory Connections 36
Section 7.17 Completion of Project; Permits and Orders 36
Section 7.18 Compliance with Letter of Conditions and Law 36
Section 7.19 Tax Covenants 37
Section 7.20 Securities Law Compliance 38
Section 7.21 Statutory Mortgage Lien 38
Section 7.22 Contracts; Public Releases. 38

ARTICLE VIII
INVESTMENT OF FUNDS; USE OF PROCEEDS

Section 8.01 Investments 38
Section 8.02 Certificate as to Use of Proceeds; Covenants as to Use of Proceeds 39

ARTICLE IX
DEFAULT AND REMEDIES

Section 9.01 Events of Default 39
Section 9.02 Remedies 40
Section 9.03 Appointment of Receiver 40

ARTICLE X
PAYMENT OF BOND

Section 10.01 Payment of Bond 41

ARTICLE XI
MISCELLANEOUS

Section 11.01 Amendment or Modification of Bond Legislation 41
Section 11.02 Bond Legislation Constitutes Contract 42
Section 11.03 Severability of Invalid Provisions 42
Section 11.04 Headings, Etc. 42
Section 11.05 Conflicting Provisions Repealed 42
Section 11.06 Covenant of Due Procedure, Etc. 42
Section 11.07 Effective Date 42
Section 11.08 Statutory Notice and Public Hearing 43

SIGNATURES 43
CERTIFICATION 44

CITY OF MONTGOMERY

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF MONTGOMERY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $309,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BOND, SERIES 2009; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNER OF SUCH BOND; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BOND; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BOND AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 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 Montgomery (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Fayette County of said State.

B. The Issuer presently owns or operates a public sewerage system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed improvements to the public sewerage system of the Issuer. The improvements will be made to the Issuer's wastewater treatment plant's operations and will consist of the installation of a belt filter press for sludge dewatering, improvements to the aeration in the sludge holding tank, replacement of the influent screening device and other minor improvements to increase the efficiency of the wastewater treatment plant. In addition, improvements will be made to the collection system in order to reduce the impact of combined sewer overflows on the environment. Finally, certain sewer lines will be replaced and some lift stations will be rehabilitated. The sum of all improvements to be undertaken shall be known as the "Project", which Project constitutes properties for the collection and/or transportation, purification and disposal of liquid or solid wastes, sewage or

industrial wastes (the existing and proposed sewer facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System"), in accordance with the plans and specifications to be prepared by the Consulting Engineers, which plans and specifications will be filed with the Issuer.

C. In accordance with Section 18 of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, the System will be under the supervision and control of the Sanitary Board of the Issuer (the "Board"). The Board has approved and delivered a Petition to the Issuer requesting the enactment of this Ordinance and the issuance of the Series 2009 Bond, as hereinafter defined.

D. The Issuer is the beneficiary of United States Department of Agriculture, Rural Utilities Service ("RUS") grants in the amounts of $1,000,300 and $_____ and a Small Cities Block Grant in the amount of $1,500,000, the proceeds of which, together with the Bond proceeds, will be used to acquire, construct and equip the Project.

E. The Issuer currently has outstanding (i) Sewer Revenue Bond, Series 1987 A, dated October 27, 1987, issued in the original principal amount of $1,164,146 (the "Series 1987 A Bonds"), (ii) Sewer Revenue Bond, Series 1993 A, dated January 19, 1993, issued in the original principal amount of $648,387 (the "Series 1993 A Bonds"), and (iii) Sewer Revenue Bond, Series 1996 A, dated May 2, 1996, issued in the original principal amount of $175,000 (the "Series 1996 A Bonds") (collectively, the "Senior Bonds"). In addition, the Issuer currently has outstanding (i) Sewer Revenue Bond, Series 1987 B, dated October 27, 1987, issued in the original principal amount of $285,539 (the "Series 1987 B Bonds"), and (ii) Sewer Revenue Bond, Series 1993 B, dated January 19, 1993, issued in the original principal amount of $21,613 (the "Series 1993 B Bonds") (collectively, the "Junior Bonds")

F. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2009 Bond (as hereinafter defined), the Senior Bonds, the Junior Bonds and payments into all funds and accounts and other payments provided for herein.

G. It is deemed necessary for the Issuer to issue its Sewer Revenue Bond in the total aggregate principal amount of not more than $309,000, being the Sewer Revenue Bond, Series 2009 (the "Series 2009 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 1.02 D. above. 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 2009 Bond 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 any 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, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 Bond 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 2009 Bond for such purposes shall be deemed Costs of the Project, as hereinafter defined.

H. The period of usefulness of the System after completion of the Project is not less than 40 years.

I. It is in the best interests of the Issuer that its Series 2009 A Bond be sold to the Purchaser (as hereinafter defined) pursuant to the terms and provisions of the Letter of Conditions (as hereinafter defined), in form satisfactory to the Issuer, approved hereby if not previously approved by resolution of the Issuer.

J. Upon the issuance of the Series 2009 Bond, there will be no other outstanding bonds or obligations of the Issuer that are secured by revenues or assets of the System on parity with the Series 2009 Bond except for the Senior Bonds. The Series 2009 Bond shall be issued on parity with the Senior Bonds, with respect to liens, pledge and source of and security for payment, and shall be senior and prior to the Junior Bonds as to liens, pledge and source of and security for payment. Prior to the issuance of the Series 2009 Bond, the Issuer will obtain the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Senior Bonds are met and the written consent of the Holder of the Senior Bonds to the issuance of the Series 2009 Bond on a parity with the Senior Bonds.

K. The Issuer has complied with all requirements of West Virginia law and the Letter of Conditions relating to authorization of the acquisition, construction and operation of the Project and the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2009 Bond, or will have so complied prior to issuance of any thereof, including, the approval of the Project and the financing thereof by the Council and 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 issuance of the Series 2009 Bond or such final order will not be subject to appeal.

L. The Issuer has met the coverage requirements for issuance of parity bonds of the Senior Bonds and Prior Bond Ordinances.

M. Pursuant to the Act, the West Virginia Infrastructure and Jobs Development Council has approved the Project.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 Bond by the Registered Owner 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 Bondholder, 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 Bondholder of such Bond.

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

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

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

"Bondholder," "Holder of the Bond," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond, 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" or "Bonds" means the Series 2009 Bond, and, where appropriate, any bonds on a parity therewith previously or 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.

"Closing Date" means the date upon which there is an exchange of the Series 2009 Bond for all or a portion of the proceeds of the Series 2009 Bond from the Purchaser.

"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 Terradon Corporation, Nitro, 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 1.02 G hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any other agency of the State of West Virginia that succeeds to the functions of the Council.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"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 City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently 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, collectively, all grant moneys received by the Issuer 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 Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

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

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

"Investment Property" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

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

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

"Letter of Conditions" means, collectively, the Letter of Conditions of the Purchaser dated February 9, 2006, Amendment No. 1 to the Letter of Conditions of the Purchaser dated August 6, 2009, and all other amendments thereto, providing for the purchase of the Series 2009 Bond from the Issuer by the Purchaser.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 Bond, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the 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 2009 Bond, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

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

"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 canceled by the Bond Registrar, at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the

date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; 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.

"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.

"Prior Bond Ordinances" means, individually or collectively, the ordinance of the Issuer enacted September 15, 1987, and supplemented on October 26, 1987, authorizing the Series 1987 A and Series 1987 B Bonds, the ordinance of the Issuer enacted May 27, 1992, and supplemented on January 12, 1993, authorizing the Series 1993 A and Series 1993 B Bonds, and the ordinance of the Issuer enacted April 9, 1996, and supplemented on April 9, 1996, authorizing the Series 1996 A Bond.

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

"Purchaser" or "Government" means the United States Department of Agriculture and any successor thereof acting for and on behalf of the United States of America, which is expected to be the original purchaser and Registered Owner of the Series 2009 Bond.

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

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

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

"Recorder" means the Recorder of the Issuer.

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

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01 hereof.

"Reserve Account" means the reserve account established for the Series 2009 Bond.

"Reserve Requirement" means the amount required to be on deposit in the Reserve Account.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"Sanitary Board" means the Sanitary Board of the Issuer.

"Series 2009 Bond" means the Sewer Revenue Bond, Series 2009 of the Issuer, authorized by this Ordinance.

"Series 2009 Bond Construction Trust Fund" means the Series 2009 Bond Construction Trust Fund established by Section 5.01 hereof.

"Series 2009 Bond Reserve Account" means the Series 2009 Bond Reserve Account established by Section 5.02 hereof.

"Series 2009 Bond Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 Bond in the then current or any succeeding year.

"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 2009 Bond; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 Bond, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2009 Bond, including, without limitation, the Reserve Account, the Depreciation Account and the Renewal and Replacement Fund.

"System" means the complete sewerage system of the Issuer, including all sewerage 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 sewerage system; and shall include the Project and any and all extensions, additions, betterments and improvements thereto hereafter

acquired or constructed for the sewerage system from any sources whatsoever, both within and without the Issuer.

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

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

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION

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 $2,809,300, 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 Bond hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Purchaser.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND SALE OF BOND

Section 3.01. Authorization of Bond. For the purposes of capitalizing interest on the Series 2009 Bond, funding a reserve account for the Series 2009 Bond, 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 2009 Bond of the Issuer. The Series 2009 Bond shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2009", in the principal amount of not more than $309,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 Bond remaining after funding of the Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2009 Bond, if any, shall be deposited in or credited to the respective Bond Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bond. A. The Series 2009 Bond shall be issued in such principal amount, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, payable monthly on such dates, shall mature on such dates and in such amount, and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Series 2009 Bond.

B. Unless otherwise provided by the Supplemental Resolution, the Series 2009 Bond shall initially be issued in the form of a single bond, fully registered to the Purchaser, with a record of advances attached representing the aggregate principal amount of the Series 2009 Bond. The Series 2009 Bond 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 Purchaser shall not be obligated to pay any expenses of such exchange.

Subsequent series of bonds, if any, shall be issued in fully registered form, in such denominations, dated such dates and bear interest at such rates as determined by a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 Bond shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2009 Bond shall cease to be such officer of the Issuer before the Series 2009 Bond so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bond shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.04. Bond Registrar. The Issuer shall be the Bond Registrar with respect to the Series 2009 Bond and will keep or cause to be kept at its office by its agent, sufficient books for the registration and transfer of the Series 2009 Bond, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2009 Bond initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2009 Bond as hereinbefore provided.

The Bond Registrar shall accept the Series 2009 Bond for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust, and/or such other identifying number and information as may be required by law. The Series 2009 Bond shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2009 Bond shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 Bond 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 2009 Bond shall be conclusively deemed to have agreed that such Bond 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 Bond shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 Bond remains outstanding, the Bond Registrar for the Series 2009 Bond shall keep and maintain books for the registration and transfer of such Bond.

The registered bond 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 bonds or transferring the registered bond are exercised, all bonds shall be delivered in accordance with the provisions of this Bond Legislation. All bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of 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 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the bonds or, in the case of any proposed redemption of 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 2009 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 Bond 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. Bond not to be Indebtedness of the Issuer. The Series 2009 Bond shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of

any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder of the Series 2009 Bond shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 Bond or the interest thereon.

Section 3.08. Bond Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2009 Bond shall be secured forthwith equally and ratably with the Senior Bonds by a first lien on the Net Revenues derived from the System, and shall be senior and prior to the Junior Bonds as to liens, pledge and source of and security for payment. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2009 Bond and the Senior Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due and shall be senior and prior to the Junior Bonds as to liens, pledge and source of and security for payment.

Section 3.09. Delivery of Bond. With respect to the Series 2009 Bond, the Mayor is hereby authorized and directed to cause such Bond, hereby awarded to the Purchaser pursuant to the Letter of Conditions, to be delivered to the Purchaser on the date of delivery of the Series 2009 Bond.

Section 3.10. Form of Bond. The text of the Series 2009 Bond 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 2009 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

No. R-1 Date: September 10, 2009

FOR VALUE RECEIVED, the CITY OF MONTGOMERY (the "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of THREE HUNDRED NINE THOUSAND DOLLARS ($309,000.00), plus interest on the unpaid principal balance at the rate of 4.375% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and $1,394.00, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on

either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of acquisition and construction of a new public sewerage system (the "System") of the Borrower, is payable solely from the net revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute a corporate indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

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 only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13 of the West Virginia Code, as amended (the "Act"), and an Ordinance of the Borrower duly enacted on June 9, 2009, authorizing issuance of this Bond (the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

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 (I) ISSUER'S SEWER REVENUE BOND, SERIES 1987 A, DATED OCTOBER 27, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,164,146, (II) ISSUER'S SEWER REVENUE BOND, SERIES 1993 A, DATED JANUARY 19, 1993, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $648,387, AND (III) ISSUER'S SEWER REVENUE BOND, SERIES 1996 A, DATED MAY 2, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $175,000, AND SENIOR AND PRIOR TO THE (I) ISSUER'S SEWER REVENUE BOND, SERIES 1987 B, DATED OCTOBER 27, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $285,539, AND (II) ISSUER'S SEWER REVENUE BOND, SERIES 1993 B, DATED JANUARY 19, 1993, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $21,613.

IN WITNESS WHEREOF, the CITY OF MONTGOMERY has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, all as of the date hereinabove written.

CITY OF MONTGOMERY

[SEAL]

By: _____
Mayor

ATTEST:

_____
Recorder

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) $, .	9/10/09	(19) $	
(2) $		(20) $	
(3) $		(21) $	
(4) $		(22) $	
(5) $		(23) $	
(6) $		(24) $	
(7) $		(25) $	
(8) $		(26) $	
(9) $		(27) $	
(10) $		(28) $	
(11) $		(29) $	
(12) $		(30) $	
(13) $		(31) $	
(14) $		(32) $	
(15) $		(33) $	
(16) $		(34) $	
(17) $		(35) $	
(18) $		(36) $	

TOTAL $

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to _____ 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 Borrower with full power of substitution in the premises.

Dated: _____, 20__.

_____

In presence of:

_____

Section 3.11. Sale of Bond. The Series 2009 Bond shall be sold to the Purchaser pursuant to the terms and conditions of the Letter of Conditions. The Letter of Conditions, including all attachments, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule B" Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Purchaser, a schedule, the form of which will be provided by the Purchaser, 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 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;

(2) Renewal and Replacement Fund; and

(3) Series 2009 Bond Construction Trust Fund.

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

(1) Series 2009 Bond Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. 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 first, each month, pay from the Revenue Fund the Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, (i) transfer from the Revenue Fund and remit to the National Finance Office the amount required to pay interest on the Series 2009 Bond; and (ii) remit to the Commission for deposit in the Senior Bonds Sinking Fund, the amount required to pay interest on the Senior Bonds on the next ensuing quarterly interest payment date.

(3) The Issuer shall next, on the first day of each month, (i) transfer from the Revenue Fund and simultaneously remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2009 Bond, the amount required to amortize the principal of the Series 2009 Bond over the life of the bond issue; and (ii) remit to the Commission for deposit in the Senior Bonds Sinking Fund, an amount equal to the amount of principal that will mature and become due on the Senior Bonds on the next ensuing quarterly principal payment date.

(4) The Issuer shall next, on the first day of each month, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineer, if not fully funded upon the issuance of the Series 2009 Bond, (i) transfer from the Revenue Fund and simultaneously remit to the Commission for deposit in the Series 2009 Bond Reserve Account, an amount equal to $1/120^{th}$ of the Series 2009 Bond Reserve Requirement, until the amount in the Series 2009 Bond Reserve Account equals the Series 2009 Bond Reserve Requirement; provided that no further payments shall be made into the Series 2009 Bond 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 2009 Bond Reserve Requirement; and (ii) for deposit in the Senior Bonds Reserve Account, an amount equal to 1/120th of the Senior Bonds Reserve Requirement, until the amount in the Senior Bonds Reserve Account equals the Senior Bonds Reserve Requirement; provided that, no further payments shall be made into the Senior 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 Senior Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month transfer from the Revenue Fund and remit to the Commission for deposit in the Junior Bonds Sinking Fund, the amount required to pay interest on the Junior Bonds on the next ensuing quarterly interest payment date.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Junior Bonds Sinking Fund, an amount equal to the amount of principal that will mature and become due on the Junior Bonds on the next ensuing quarterly principal payment date.

(7) The Issuer shall next, on the first day of each month, for deposit in the Junior Bonds Reserve Account, an amount equal to 1/120th of the Junior Bonds Reserve Requirement, until the amount in the Junior Bonds Reserve Account equals

the Junior Bonds Reserve Requirement; provided that, no further payments shall be made into the Junior 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 Junior Bonds Reserve Requirement.

(8) The Issuer shall next, on the first day of each month, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount 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 Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, 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 Renewal and Replacement Fund.

(9) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

Moneys in the Series 2009 Bond Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2009 Bond as the same shall come due, when other moneys are insufficient therefor, and for no other purpose. Whenever the moneys in the Series 2009 Bond Reserve Account shall be sufficient to prepay the Series 2009 Bond in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay, at the earliest practical date and in accordance with applicable provisions hereof, the Series 2009 Bond accrued interest thereon to such prepayment date.

All investment earnings on moneys in the Series 2009 Bond Reserve Account (if fully funded) and the Senior Bonds Reserve Account (if fully funded) shall be returned, not less than once each year, by the Commission to the Issuer, and all investment earnings on moneys in the Series 2009 Bond Reserve Account shall, during construction of the Project, be deposited in the Series 2009 Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Series 2009 Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2009 Bond, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2009 Bond Reserve Account which result in a reduction in the balance of such accounts to below the Series 2009 Bond Reserve Requirement shall be subsequently restored from the first Net 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 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 2009 Bond Reserve Account when the amount of funds therein is at least equal to the principal amount of the Series 2009 Bond issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 Bond Reserve Account created hereunder, and all amounts required for such fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Purchaser at any time, the Issuer shall make the necessary arrangements whereby required payments into the said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2009 Bond Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 Bond Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 Bond under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) remit to the Purchaser and the Commission, as applicable, the required principal, interest and reserve account payments with respect to the Series 2009 Bond and all such payments shall be remitted to the Purchaser and the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. 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.

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.

E. The moneys in excess of the maximum amounts insured by FDIC in any fund or account shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

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

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

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

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

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 2009 Bond, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 Bond, there shall be deposited with the Commission in the Series 2009 Bond Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2009 Bond Reserve Account.

B. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2009 Bond, such moneys shall be deposited with the Depository Bank in the Series 2009 Bond Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2009 Bond.

C. 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 2009 Bond shall be expended as directed by the Purchaser.

Section 6.02. Disbursements From the Bond Construction Trust Fund. Moneys in the Series 2009 Bond Construction Trust Fund shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Series 2009 Bond Construction Trust Fund and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Series 2009 Bond if there are not sufficient Net Revenues to make such monthly payment.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Series 2009 Bond Construction Trust Fund shall be disposed of in accordance with the regulations of the Purchaser.

Pending such application, moneys in the respective Series 2009 Bond 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 of the Series 2009 Bond. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holder of the Series 2009 Bond as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any principal of the Series 2009 Bond or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 Bond shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder of any Bond shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 Bond or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Series 2009 Bond shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on parity with the Senior Bonds and senior and prior to the Junior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Series 2009 Bond and the Senior Bonds, and senior and prior to the Junior 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. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on August 12, 2008, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2009 Bond is 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. In the event the schedule of rates and charges initially established for the System in connection with the Series 2009 Bond shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, 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.

Section 7.05. Sale of the System. So long as the Series 2009 Bond is outstanding and except as otherwise required by law or with the written consent of the Purchaser, 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 the Series 2009 Bond and the Senior Bonds, and then the Junior Bonds, 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 2009 Bond, immediately be remitted to the National Finance Office, and, with the written consent of the Purchaser, the Issuer shall direct the National Finance Office and the Commission to apply such proceeds to the payment of principal of and interest on the Series 2009 Bond. Any balance remaining after the payment of all the Series 2009 Bond and interest thereon shall be remitted to the Issuer unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement 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 a professional engineer that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. Payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into such fund by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and 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 2009 Bond and the Senior Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 Bond 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 2009 Bond and the Senior 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 2009 Bond and the Senior Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 Bond and the Senior Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Purchaser 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. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bond pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 Bond and the Senior Bonds, and must have the prior written consent of the Purchaser.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the design, acquisition or construction of additions, betterments or improvements to the System or refunding the Series 2009 Bond and the Senior Bonds, or both such purposes.

So long as the Series 2009 Bond is Outstanding, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

(1) The Series 2009 Bond and the Senior Bonds then Outstanding;

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

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

The following limitation may be waived or modified by the written consent of the Registered Owners of the Series 2009 Bond, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the Series 2009 Bond is no longer Outstanding, the following parity requirement shall be met:

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any twelve (12) consecutive months, within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than one hundred fifteen percent (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 Series 2009 Bond and the Senior Bonds then Outstanding;

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

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

The "estimated average increased annual Net Revenues to be received in each of the 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 improvements to be

financed by such additional 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 Recorder prior to the issuance of such Parity Bonds.

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

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds 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 accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for the Series 2009 Bond heretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2009 Bond and the Senior Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 Bond and the Senior Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Purchaser or its 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 Purchaser 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 Purchaser or its agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

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

The Issuer shall file with the Purchaser, and shall mail in each year to any Holder of the Series 2009 Bond requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder of the Series 2009 Bond and shall submit said report to the Purchaser. Such audit report submitted to the Purchaser shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and

this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the 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 Purchaser, or its 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 Purchaser, or its 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 Purchaser with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2009 Bond, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (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 2009 Bond and the Senior Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 Bond and the Senior Bonds; provided that, in the event that an amount equal to or in excess of the reserve requirement is on deposit respectively in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2009 Bond and the Senior Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2009 Bond, the Senior Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 Bond and the Senior Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinances described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and

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

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers 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 Purchaser, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Purchaser 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 Purchaser 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 Purchaser 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.

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

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

and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee 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 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 Renewal and Replacement Fund and used only for the repairs and restoration of the

damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the prime contractor and all subcontractors as their respective interests may appear, 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 Purchaser, the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the 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 Issuer shall verify such insurance prior to commencement of construction.

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

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

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

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance with Letter of Conditions and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Letter of Conditions, the Act and this Bond Legislation. The Issuer shall also comply with all applicable laws, rules and regulations issued by the Purchaser or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

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

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2009 Bond 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 2009 Bond during the term thereof is, under the terms of the Series 2009 Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2009 Bond 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 2009 Bond during the term thereof is, under the terms of the Series 2009 Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2009 Bond used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2009 Bond are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of the portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2009 Bond 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 2009 Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. To the extent legally required, the Issuer will timely file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2009 Bond and the interest thereon including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it so that the interest on the Series 2009 Bond will be and remain excluded from gross income for federal income tax purposes, and will not take any actions or fail to take any actions, the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Purchaser, 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 Purchaser may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 Bond and the Senior 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 delivery of the Series 2009 Bond. The statutory mortgage lien of the Series 2009 Bond shall on a parity with that of the Senior Bonds and senior and prior to the statutory mortgage lien of the Junior Bonds.

Section 7.22. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 Bond 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 Purchaser for written approval. The Issuer shall obtain the written approval of the Purchaser before expending any proceeds of the Series 2009 Bond 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 Purchaser before expending any proceeds of the Series 2009 Bond made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Purchaser 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; USE OF PROCEEDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the

value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission 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; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 Bond as a condition to issuance of the Series 2009 Bond. 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 2009 Bond as may be necessary in order to maintain the status of the Series 2009 Bond 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 2009 Bond which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, 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 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 Resolution.

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 2009 Bond:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2009 Bond; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 Bond set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 Bond, 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.

Notwithstanding anything herein to the contrary, if default occurs in the due and punctual payment of the principal of or interest on any series of the Series 2009 Bond, it shall constitute an "Event of Default" with respect to the other series of the Series 2009 Bond.

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

Section 10.01. Payment of Bond. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 2009 Bond, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2009 Bond, shall thereupon cease, terminate and become void and be discharged and satisfied; except as may otherwise be necessary to assure the exclusion of interest on the Series 2009 Bond from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bond, this Ordinance may be amended or supplemented in any way by the

Supplemental Resolution. Following issuance of the Series 2009 Bond, 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 Owner of the Series 2009 Bond, shall be made without the consent in writing of the Registered Owner of the Series 2009 Bond so affected and then Outstanding; provided, that no change shall be made in the maturity of the Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein 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 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 on the Series 2009 Bond from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2009 Bond, 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 2009 Bond.

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

Section 11.05. Conflicting Provisions Repealed. 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, this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47) and all Prior Bond Ordinances.

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

Section 11.07. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereof.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *The Montgomery Herald* and *The Fayette Tribute*, newspapers of general circulation in the City of Montgomery, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 Bond, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading:	-	May 12, 2009
Passed on Second Reading:	-	June 9, 2009
Passed on Final Reading Following Public Hearing:	-	June 9, 2009

Mayor

Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF MONTGOMERY on the 9th day of June, 2009.

Dated: 9 - 8, 2009.

[SEAL]

Recorder

CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF MONTGOMERY SEWER REVENUE BOND, SERIES 2009; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF THE SERIES 2009 BOND TO THE UNITED STATES DEPARTMENT OF AGRICULTURE; DESIGNATING A DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the City Council (the "Governing Body") of the City of Montgomery (the "Issuer") has duly and officially enacted a Bond Ordinance on June 9, 2009 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF MONTGOMERY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $309,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BOND, SERIES 2009 ; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BOND; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BOND; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BOND AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Sewer Revenue Bond, Series 2009, of the Issuer, in an aggregate principal amount not to exceed $309,000 (the "Bond"), all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bond should be established by a supplemental resolution, and that other matters relating to the Bond be therein provided for;

WHEREAS, the Bond is proposed to be purchased by the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government") pursuant to the Letter of Conditions;

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

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Ordinance.

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

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bond of the Issuer:

Sewer Revenue Bond, Series 2009, of the Issuer, originally represented by a single bond, numbered R-1, in the original principal amount of $309,000. The Series 2009 Bond shall be dated the date of delivery, shall finally mature September 10, 2049, and shall bear interest at the rate of 4.375% per annum. Monthly installments of interest only on the amounts advanced under the Series 2009 Bond are payable 30 days following the date of delivery of the Series 2009 Bond and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Series 2009 Bond, and thereafter, monthly installments of principal of and interest on the Series 2009 Bond, in the aggregate amount of $1,394.00, are payable on the corresponding day of each month, except that the final installment on the Series 2009 Bond shall be paid at the end of 40 years from the date of the Series 2009 Bond in the sum of the unpaid principal and interest due on the date thereof. The Series 2009 Bond is subject to prepayment as set forth in the Ordinance and the Series 2009 Bond. All principal and interest payments on the Series 2009 Bond will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

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

Section 3. The Issuer hereby ratifies, approves and accepts the Letter of Conditions, and all amendments thereto, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed. The price of the Bond shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bond shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer hereby appoints and designates The City National Bank, Montgomery, West Virginia, to serve as the Depository Bank.

Section 5. Series 2009 Bond proceeds in the amount of $-0- shall be deposited in the

Series 2009 Bond Sinking Fund as capitalized interest.

Section 6. Series 2009 Bond proceeds in the amount of $-0- shall be deposited in the Series 2009 Bond Reserve Account.

Section 7. The remaining proceeds of the Bond, as advanced from time to time, shall be deposited in or credited to the Series 2009 Bond Construction Trust Fund, as received by the Issuer for payment of costs of the Project, including costs of issuance of the Bonds.

Section 8. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Ordinance approved and provided for, to the end that the Series 2009 Bond may be delivered to the Government pursuant to the Letter of Conditions dated February 9, 2006, as amended by Amendment No. 1 to Letter of Conditions dated August 6, 2009.

Section 9. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bond 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.

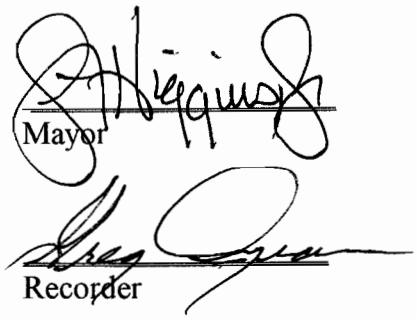
Section 10. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Sinking Funds and the Reserve Accounts for the Series 2009 Bond shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 11. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 12. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 13. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 8th day of September, 2009.



Mayor

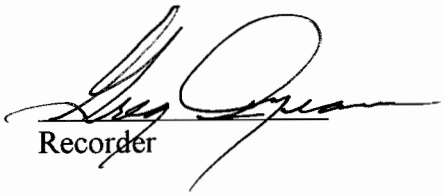
Recorder

CERTIFICATION

Certified as a true copy of a Supplemental Resolution duly adopted by the City Council of the City of Montgomery on the 8th day of September, 2009.

Dated this 8th day of September, 2009.

[SEAL]



Recorder

Bond Counsel

United States Department of Agriculture
Rural Development
West Virginia State Office

February 9, 2006

The Honorable Melba Lou White
Mayor, City of Montgomery
706 Third Avenue
Montgomery, WV 25136

Dear Mayor White:

This letter, with Attachments 1 through 13 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of $309,000, an RUS grant in the amount of $1,000,300, and other funding in the amount of $1,500,000, for a total project cost of $2,809,300. The other funding is planned in the form of a grant from the HUD Small Cities Block Grant Program.

The loan and grant will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted. Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)
Attachment No. 2 - Water and Waste Processing Checklist for the City of Montgomery (All Copies)
Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)
Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)
Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
Attachment No. 8 - Government Auditing Standards (Revision 1994) (Accountant Copy)
Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement "
Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
Attachment No. 11 - Sample Credit Agreement (Applicant Copy)
Attachment No. 12 – RUS Policy regarding Use of Remaining Funds
Attachment No. 13 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.50% interest rate and a monthly amortization factor of .00459, which provides for a monthly payment of $1,419. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

   You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of equal priority, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-12 and RUS Bulletin 1780-27 which are mentioned later.

3. Users - This conditional commitment is based upon you providing evidence that there will be at least 793 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of a certification from you that identifies and attests to the number of users that are actually connected to the City's existing sewer system which is to be partially

replaced by the new system, at the time you request authorization to advertise the project for construction bids.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and currently using the system.

4. Bond Counsel Services - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.

5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. 1910-1-FA, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.

6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, "Legal Services Agreement" is enclosed for your use.

7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:

   a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).

   b. Prior to loan/grant closing, your accountant must certify that the accounts and records as required by your bond ordinance have been established and are operational.

   The Accountant's Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

   RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your City. The attached booklets, "Government Auditing Standards (Revised 2003)" (Attachment No. 8), and RUS Bulletins 1780-30 1780-31 (Attachment Nos. 9 and 10) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends $500,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:

   a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

   b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the City already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.

   c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.

   d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions. The attorney's legal opinion should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and West Virginia State Code Chapter 54 have been met in the acquisition of both real property and rights-of-way. Such requirements may include, but are not limited to, distributing informational material to all affected property owners, and completing appraisals of the affected properties.

e. On the day of loan closing, the City's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the City has already acquired real property(s) (land or facilities), the City's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.

9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:

- West Virginia Department of Highways
- Railroads
- State Department of Health
- Department of Environmental Protection
- Corps of Engineers
- Public Land Corporation

10. Public Service Commission Approvals - You must obtain the following from the West Virginia Public Service Commission:

a. A Certificate of Convenience and Necessity.

b. Approval of user charges that are acceptable to you and the Rural Utilities Service.

c. Approval of financing for the project's proposed financing arrangements.

The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for review.

11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:

a. Liability Insurance - Personal Liability - $500,000; Property Damage - $200,000 - $200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.

b. Workers' Compensation - In accordance with appropriate State laws.

c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. (Next three sentences are only for projects that do not have property insurance through the West Virginia State Board of Risk) During the construction phase of your project, this maximum amount will be much greater than normal; therefore, it is our recommendation that you temporarily increase your coverage to the estimated highest monthly construction drawdown. Once construction is complete, you may decrease the amount of your coverage. Please note that the cost of the temporary increase in coverage is an eligible cost.

The minimum coverage acceptable to RUS once your project is in operation will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).

d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:

(1) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.

(2) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications -

a. The contract documents should consist of the following:

(1) EJCDC Document No. 1910-8-A-1-FA, ~~1997~~ 2002 Edition, "Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price" and EJCDC Document No. 1910-8-FA, "Standard General Conditions of the Construction Contract – Funding Agency Edition" and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.

(2) "RUS Supplemental General Conditions."

RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance," is enclosed for use by your engineer in the preparation of the contract documents (Attachment No. 7).

b. The contract documents must provide, as a minimum, the following insurance:

(1) Liability Insurance - Personal Liability - $500,000; Property Damage - $200,000 - $200,000. This coverage must include indemnification of the City and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.

(2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.

(3) Workers' Compensation - In accordance with applicable State laws.

c. The contract documents and final plans and specifications must be submitted to RUS for approval.

d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No. 11).

14. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your City, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

Public Bodies – Interest earned on grant funds in excess of $100 per year will be submitted to RUS at least quarterly as required in 7 CFR 3016.

The City will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of $100,000 will be secured by a collateral pledge in accordance with Treasury Circular Number 176.

The City must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

15. Other Project Funds - Prior to advertisement for construction bids, you must provide evidence showing the approval of any other project funds. This evidence should include a copy of the funding award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the other project funds are available for expenditure. This evidence should consist of at least a letter from the funding agency stating the funds are available for expenditure.

16. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

    Form RD 1940-1 - "Request for Obligation of Funds"
    RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
    RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
    Form RD 400-1 - "Equal Opportunity Agreement"
    Form RD 400-4 - "Assurance Agreement"
    Form AD 1047 - "Certification Regarding Debarment - Primary"
    Form AD 1049 - "Certification Regarding Drug-Free Workplace"
    Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
    FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
    Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)
    Certification of Compliance
    Form RD 1942-46, "Letter of Intent to Meet Conditions"

17. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.

18. Upon receipt of the loan and grant docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

    The "RUS Policy Regarding Use of Remaining Funds" is attached for your information and use (Attachment No. 12). This policy should be adhered to when addressing the use of bid underrun funds, as well as any funds remaining after project construction is complete.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RUS project funds will be considered to be (for projects with grant funds) RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the RUS grant, that part would be RUS loan funds. (for loan only projects) RUS loan funds and would be applied as an extra payment toward the loan balance.

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely yours,

ROBERT M. STEPTOE, III
State Director

Enclosures

cc: Rural Development Specialist (Accountant)
Beckley, WV

Carl L. Harris (Bond Counsel)
Attorney at Law
237 North Court Street
Fayetteville, WV 25840

Ms. Jennifer J. Miller
Terradon Corporation
P. O. Box 519
Nitro, WV 25143

West Virginia Development Office
ATTN: Tracy Rowan
Capitol Complex, Bldg. G, Room 553
1900 Kanawha Blvd. E.
Charleston, WV 25305-0311

Attachment No. 1 to Letter of Conditions
For: City of Montgomery
Date: February 9, 2006

Project Construction Budget

PROJECT COST	SCBG	RUS GRANT	RUS LOAN	TOTAL
CONSTRUCTION	$ 1,450,000	$ 464,390	$ 130,510	$ 2,044,900
CONST. CONTINGENCY		$ 148,900	$ 41,900	$ 190,800
LAND & RIGHTS		$ 50,700	$ 14,300	$ 65,000
LEGAL FEES		$ 9,800	$ 2,700	$ 12,500
BOND COUNSEL		$ 19,500	$ 5,500	$ 25,000
ACCOUNTING		$ 3,900	$ 1,100	$ 5,000
ENGINEERING FEES		$ 239,300	$ 67,200	$ 306,500
Basic - $160,000				
Insp. - $145,000				
Special - $1,500				
INTEREST			$ 27,800	$ 27,800
ADMINISTRATION	$ 50,000			$ 50,000
PROJECT CONTG.		$ 63,810	$ 17,990	$ 81,800
TOTAL	**$ 1,500,000**	**$ 1,000,300**	**$ 309,000**	**$ 2,809,300**

Rates

Available for general domestic, commercial, and industrial service.

First	2,000	gallons @	$ 7.68	per M gallons
Over	2,000	gallons @	$ 7.68	per M gallons

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed.

5/8" x 3/4"	meter	$ 15.36	per month
3/4"	meter	$ 23.04	per month
1"	meter	$ 38.40	per month
1 1/2"	meter	$ 76.80	per month
2"	meter	$ 122.88	per month
3"	meter	$ 230.40	per month
4"	meter	$ 384.00	per month
6"	meter	$ 768.00	per month
8"	meter	$ 1,228.80	per month

Minimum Monthly Bill $ 15.36 for 2,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, water service to the customer will be discontinued. Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

Attachment No. 1 to Letter of Conditions
For: City of Montgomery
Date: February 9, 2006

CITY OF MONTGOMERY
USE AND INCOME ANALYSIS
EXISTING SYSTEM

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 2,000	Over 2,000	TOTAL REVENUE
0 - 2,000	297	247.20	297			
Over 2,000	496	5,108.60		992.00	4,116.60	
Monthly Total	793.00	5,355.80	297.00	992.00	4,116.60	
Proposed Rates			$ 15.36	$ 7.68	$ 7.68	
Monthly Revenues			$ 4,561.92	$ 7,618.56	$ 31,615.49	**$ 43,795.97**
Annual Revenues			$ 54,743.04	$ 91,422.72	$ 379,385.86	**$ 525,551.62**

Monthly Revenue	**$43,795.97**
Adjustment Factor	**0.999542190**
Adjusted Monthly Revenue	**$43,775.92**
Annual Adjustment Factor	**11.9971290**
Adjusted Annual Revenue	**$525,185.36**

Average Monthly Bill - $34.56 for 4,500 gal.

CITY OF MONTGOMERY
OPERATING BUDGET

OPERATING INCOME		
Metered Sales	$525,185	
Penalties	$ 1,289	
Service to Other Systems	$ 8,805	
Misc. Revenues	$ 3,469	
TOTAL OPERATING INCOME		$ 538,748
NON OPERATING INCOME		
Interest income		
TOTAL NON OPERATING INCOME		$ -
TOTAL INCOME		$ 538,748
EXPENSES		
O & M	$317,236	
Taxes		
TOTAL EXPENSES		$ 317,236
INCOME AVAILABLE FOR D/S (A)		$ 221,512
DEBT SERVICE		
Existing Bond P & I (B)	$175,082	
Proposed Bond P & I (B)*	$ 17,028	
TOTAL DEBT SERVICE		$ 192,110
DEBT SERVICE RESERVE		
Debt Service Reserve (Existing Bond)	$ 1,149	
Debt Service Reserve (Proposed Bond)	$ 1,703	
TOTAL DEBT SERVICE RESERVE		$ 2,852
SURPLUS (DEFICIT)		$ 26,550
DEBT COVERAGE (A/B)		$ 1.15

*RUS Loan of $309,000 @ 4.50% for 38 years and RUS grant of $1,000,300.

Attachment No. 2 to Letter of Conditions
For: City of Montgomery
Date: February 9, 2006

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
Water and Waste Processing Checklist

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
SF 424.2	Application for Federal Assistance	3	1780.31(b)	Applicant		HAVE	3
	DUNS Number	1		Applicant		HAVE	3
	CAIVRS Number	1		RUS		HAVE	CPAP Form
	Public Notice of Intent to File App./ Env. Notice	3	1780.19(a) 1794	Applicant		HAVE	3
Bulletin 1780-22	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	Applicant		HAVE	3
	Bond Ordn. or Resol. On Outstanding Debts	1	1780.33(e)	Applicant/ Attorney			5
	Bonds or Notes Outstanding Debt	1	1780.33(e)	Applicant/ Attorney			2
	Audit for last year of operation	1	1780.33(e)	Applicant/ Accountant		HAVE	1
	Staff Review Financial Statements	1	S.I. 1780.2	RUS		HAVE	1
EJCDC No. 1910-1-FA	Agreement between Owner & Engineer	3	1780.39(b)	Applicant/ Engineer		HAVE	6

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney			5
	Site Visit		S.I. 1780-2	RUS			3
	Processing Conference	1	1780.39(a)	RUS		HAVE	3
	Environmental Report	2	1794	Applicant		HAVE	3
	Environmental Assessment	2	1794	RUS/ Engineer		HAVE	3
	FONSI/ Evidence of Publication	1	Exhibit 1 RUS 1794 News Ad	RUS/ Applicant		HAVE	3
Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Engineer		HAVE	6
	Staff Engineer PER Review	1	1780.33(c)	RUS		HAVE	3
	Bill Analysis for existing system(s)	2	1780.33(c)	Applicant/ Engineer		HAVE	8
	Statement reporting the total number of potential users		1780.33(c)	Applicant/ Engineer			8
	Rate Tariff	2	1780.33	Applicant		HAVE	8
	Applicant's IRS Tax Number(TIN)	1	1780.33(g)	Applicant		HAVE	3
	Agency Determination on the Availability of "Other Credit" with Documentation	1	1780.7(d)	RUS			3

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Documentation on Service Area	1	1780.11	RUS			3
Bulletin 1780-1	Project Selection Criteria	2	1780.17	RUS		HAVE	1
	Letter of Conditions	7	1780.41 (a)(5)	RUS		HAVE	3
AD 1049	Certification Regarding Drug-Free Workplace	1	1780.33(h)	Applicant		HAVE	5
	Minutes Adopting Drug-Free Workplace Program	1	LOC	Applicant			5
Exhibit A / A-1	Certifications Regarding Lobbying	2	1780.33(h)	Applicant		HAVE	2
CPAP Form	Project Summary	3	1780.41(a)	RUS		HAVE	1
RD 1940-1	Request for Obligation of Funds	4	1780.41(a)	RUS/ Applicant		HAVE	2
Bulletin 1780-12	Association Water or Sewer System Grant Agreement	2	1780.45(c)	RUS/ Applicant		HAVE	2
RD 1942-46	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	Applicant		HAVE	3
AD 1047	Certification Regarding Debarment (Primary)	1	1780.33(h)	Applicant		HAVE	5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Relationships/ Associations with Agency Employees	1	1780.1(f)	RUS		HAVE	3
RD 1910-11	Applicant Certification, Federal Collect-ion Policies	1	1780.33(h)	Applicant		HAVE	3
	Loan Agreement	2	1780.14	RUS		HAVE	5
RD 400-1	Equal Opportunity Agreement	1	1901-E	Applicant		HAVE	6
RD 400-4	Assurance Agreement	1	1901-E	Applicant		HAVE	3
	Legal Services Agreement with Bond Counsel	1	1780.39 (b)(3)	Applicant/ Bond Counsel			5
	Agreement for Accounting Services	1	1780.39 (b)(2)	Applicant/ Accountant			5
	Certification Relative to Existing Users	1	LOC	Applicant			5
	Verification of Users	1	1780.44(b)	RUS			3
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant		HAVE	3
Lender Agreement/ Bulletin 1780-10/ 1780-10a	Interim Financing Documentation	1	1780.39(d)	Applicant/ RUS			1
	DOH Permit	1	1780.15(d)	Applicant			6
	Railroad Permit	1	1780.15(d)	Applicant			6
	Public Land Corp. Permit	1	1780.15(d)	Applicant			6
	Corps of Engineers Permit	1	1780.15(d)	Applicant			6
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6
	Contract Documents, Plans & Specifications	2	1780.61(a)	Engineer			Separate File
	Agency Determination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5
	Waiver of Title Defects Letter	1	1780.44(g)	RUS			5
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
	Evidence of "Other Funds"	1	1780.44(f)	Applicant			2
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2
	Documenta-tion Relative to Health or Sanitary Hazards	1	1780.1 (c)(1) 1780.13 (b)(1)	RUS/State Health Department			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			6
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	S/O Closing Instructions	1	1780.44(h)	RUS			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
RD 400-8	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
	Flood Insurance Policy	1	1780.39(g)	Applicant			7
440-24	Fidelity Bond	1	1780.39(g)	Applicant			7
1924-16	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6
AD 1048	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5
	OGC Final Opinion	1	1780.45(g)	RUS			5

United States Department of Agriculture
Rural Development
West Virginia State Office

August 6, 2009

The Honorable James F. Higgins, Jr.
Mayor, City of Montgomery
706 Third Avenue
Montgomery, WV 25136

RE: Amendment No. 1 to
Letter of Conditions

Dear Mayor Higgins:

This letter, with Attachment No. 1 amends the letter of conditions dated February 9, 2006 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of $309,000, an initial RUS grant in the amount of $1,000,300, a subsequent RUS grant in the amount of $141,000, and other funding in the amount of $1,500,000, for a total project cost of $2,950,300. The other funding is planned in the form of a grant from the HUD Small Cities Block Grant Program.

Subject to the requirements noted herein, all of the conditions of the February 9, 2006 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

The conditions referred to above are as follows:

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

The conditions referred to above are as follows:

1. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
Form 1940-1 - "Request for Obligation of Funds"
Form RD 1942-46 - "Letter of Intent to Meet Conditions"

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RD reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the City still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, RD reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,

Dianne Goff Crysler
DIANNE GOFF CRYSLER
Acting State Director

Enclosures

cc: RUS Rural Development Specialist
Beckley, WV

Smith, Cochran & Hicks, CPA's
405 Capital Street, Suite 908
Charleston, WV 25301

James C. Blankenship, III
Attorney at Law
P. O. Box 326
Fayetteville, WV 25840

Region IV Planning & Development Council
425 Main St., Suite A
Summersville, WV 26651

Jim Downey, Project Manager
Terradon Corporation
P. O. Bo 519
Nitro, WV 25143

William K. Bragg, Jr.,
Goodwin & Goodwin, LLP
P. O. Box 2107
300 Summers St., Suite 1500
Charleston, WV 25328-2107

Attachment No. 1 to Letter of Conditions
For: City of Montgomery
Date August 6, 2009

Project Construction Budget

PROJECT COST	RUS SUB GRANT	SCBG	RUS GRANT	RUS LOAN	TOTAL
CONSTRUCTION	$ 141,000	$ 1,245,800	$ 711,319	$ 131,900	$ 2,230,019
CONTINGENCY			$ 161,006		$ 161,006
LEGAL FEES		$ 11,400		$ 2,100	$ 13,500
BOND COUNSEL				$ 15,000	$ 15,000
ACCOUNTING		$ 2,800		$ 4,200	$ 7,000
ENGINEERING FEES		$ 180,000	$ 61,075	$ 128,000	$ 369,075
Basic - $ 160,000					
Insp. - $ 145,000					
Special - $ 64,075					
INTEREST				$ 27,800	$ 27,800
ADMINISTRATION		$ 60,000			$ 60,000
PROJECT CONTG.			$ 66,900		$ 66,900
TOTAL	**$ 141,000**	**$ 1,500,000**	**$ 1,000,300**	**$ 309,000**	**$ 2,950,300**

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
10/12/2008
Per Commission
Order Waiving the
Exception Period

Entered: October 6, 2008

CASE NO. 08-0324-S-CN

CITY OF MONTGOMERY
Application for a certificate of convenience and necessity to construct certain additions and improvements to its existing sewage system and for approval of financing.

RECOMMENDED DECISION

On March 7, 2008, the City of Montgomery (Utility) filed an application for a certificate of convenience and necessity to make certain improvements to its sewer system.

On March 7, 2008, the Commission ordered the Utility to publish notice of its filing in both Kanawha and Fayette Counties. On March 19, 2008, the Utility filed publication affidavits indicating that it properly published notice of the filing. There have been no protests filed pursuant to notice.

On March 19, 2008, the Commission referred the matter. The current decision due date is November 18, 2008.

On September 29, 2008, Staff recommended that the Utility be granted its certificate of convenience and necessity.

FINDINGS OF FACT

1. On March 7, 2008, the Utility filed an application for a certificate of convenience and necessity to make certain improvements to its sewer system. (See application).

2. The Utility serves 867 individual customers in Kanawha and Fayette Counties, treats wastewater for the Town of Handley and treats leachate from the Montgomery Landfill. (See Staff filing of September 29, 2008).

3. The total project costs are estimated at $2,809,300 or $3,240 per customer which is a reasonable per customer cost for a sewer project. (Id.).

4. The Utility sewer collection system is a Combined Sewer Overflow system collecting both storm water and sanitary wastewater with permitted overflows. (Id.).

5. The Utility's National Pollution Discharge Elimination System permit (NPDES) mandated that the Utility take certain actions to reduce the impact of its sewer overflows on the waters of the State of West Virginia. The project will correct deficiencies and enhance treatment efficiency. Improvements to the existing collection system will reduce the impact of the overflows on the environment. Improvements will also allow the Utility to comply with the Federal Clean Water Act. (See Staff filing of September 29, 2008).

6. The work aimed at reducing the impact of the overflows is concentrated in the downtown area along Madison and Monroe Streets, which has been particularly problematic in the past. (Id.).

7. The project involves the installation of a belt press, which is more cost-effective in this case than the alternative of constructing additional sludge drying beds. (Id.).

8. The Division of Environmental Protection has issued a modification to the Utility's NPDES permit approving construction of this project. (Id.).

9. The Office of Environmental Health Services has issued Permit No. 17,491 approving this project. (Id.).

10. The plans and specifications of the project do not conflict with any of the rules and regulations of the Commission. (Id.).

11. The project will result in a decrease of $8,300 in chemical and sludge disposal costs and an increase of $19,784 in power and plant water use, resulting in a net increase of approximately $11,693 for overall operation and maintenance expenses. (Id.).

12. The project has been approved by the West Virginia Infrastructure and Jobs Development Council. (Id.).

13. The project's funding consists of a $1,500,000 Small Cities Block grant, a $1,000,300 Rural Utilities Service grant and a Rural Utilities Service loan in the amount of $309,000 payable over 40 years at 4.5% interest. (Id.).

14. The Utility increased its rates by 12.77% to support the project. The rates have been adopted by ordinance and will become effective for services rendered on and after September 26, 2008. The ordinance was properly passed by the Utility. (Id.).

15. Staff recommends certain tariff language that the Utility should adopt in its next ordinance in order to bring its tariff into compliance with the Commission's Tariff Rules. (Id.).

16. The Utility's annual operating revenues are projected to increase to $61,107 as a result of the project. (Id.).

17. The Utility should have a cash flow surplus of $32,301 and a debt service coverage of 124.69%. (Id.).

18. The project is financially feasible. (See Staff filing of September 29, 2008).

CONCLUSIONS OF LAW

1. Public convenience and necessity require the proposed project.

2. The proposed financing is reasonable and should be approved.

3. The application for a certificate of convenience and necessity should be granted to the Utility without a hearing.

4. The Utility should be required to bring its tariff language in compliance with the Commission's current Tariff Rules when it next adopts a rate ordinance.

ORDER

IT IS, THEREFORE, ORDERED that the City of Montgomery be, and hereby is, granted a certificate of convenience and necessity to make improvements to its sewer treatment and collection system as described in its application filed with the Commission on March 7, 2008. The cost of the approved project shall not exceed $2,809,300. Approval is contingent upon the Utility obtaining all necessary State and Federal permits before construction.

IT IS FURTHER ORDERED that the proposed financing, consisting of a Small Cities Block grant in the amount of $1,500,000, a Rural Utilities Service grant in the amount of $1,300,000, and a Rural Utilities Service loan at 4.5% interest for 40 years in the amount of $309,000, be, and hereby is, approved.

IT IS FURTHER ORDERED that, if there are any changes in the plans, financing or scope of the project, the Utility must seek Commission approval of those changes. If any changes in the project cost result in modification of rates, the Utility must seek Commission approval of such cost changes. If project-related rates remain unchanged, but the project cost changes, the Utility must file an affidavit executed by a certified public accountant verifying that the modifications to the project cost will not impact the necessary rates and charges.

IT IS FURTHER ORDERED that the Utility file with the Commission a copy of the Engineer's certified bid tabulations for all contracts awarded on this project, as soon as they are available.

IT IS FURTHER ORDERED that the Utility file with the Commission a copy of the certificate of substantial completion issued for each construction contract associated with the project as soon as each is available.

IT IS FURTHER ORDERED that the Utility comply with all rules and regulations of the Division of Highways regarding the use of the Division of Highways' rights-of-way.

IT IS FURTHER ORDERED that the City of Montgomery bring its tariff into compliance with the Commission's Tariff Rules the next time it adopts a rate ordinance impacting its sewer rates.

IT IS FURTHER ORDERED that the Executive Secretary remove this matter from the open docket.

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

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served the exceptions.

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

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

K. A. George

Keith A. George
Administrative Law Judge

KAG:bam
080324ab.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 7th day of October 2008.

CASE NO. 08-0324-S-CN

CITY OF MONTGOMERY
Application for a certificate of convenience and necessity to construct certain additions and improvements to its existing sewage system and for approval of financing.

COMMISSION ORDER
WAIVING EXCEPTION PERIOD

On October 6, 2008, the Administrative Law Judge entered a Recommended Decision that granted the application filed by the City of Montgomery ("Utility") to make improvements to its sewer treatment and collection system to become effective on and after the date that the Recommended Decision becomes a final order of the Commission.

On October 6, 2008, the Utility filed a petition to waive the fifteen-day period of time in which a party may file exceptions to the Recommended Decision in this proceeding.

Commission Staff has indicated it does not intend to file exceptions in this case.

W. Va. Code §24-1-9 provides a time period of at least twenty days from the date of a recommended order until it becomes effective. According to W. Va. Code §24-1-9(c), at least fifteen days must be afforded the parties within which to file exceptions. In addition, §24-1-9(e) provides that when no exceptions are filed within the specified time period, the Commission shall have an additional five days within which to stay or postpone the order.

IT IS THEREFORE ORDERED that the requested waiver be, and hereby is, granted.

IT IS FURTHER ORDERED that the Administrative Law Judge Recommended Decision in this matter becomes final five days after the date of this order, absent further action by the Commission.

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

A True Copy, Teste:

Sandra Squire
Executive Secretary

SS/kc
080324sa.wpd

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND
SERIES 2009

RECEIPT FOR BOND NO. R-1 AND TRANSCRIPT

The undersigned, for the United States Department of Agriculture, Rural Utilities Service (the "Purchaser"), hereby certifies as follows:

1. On the 8th day of September, 2009, at Montgomery, West Virginia, the undersigned received for the Purchaser, the City of Montgomery, Sewer Revenue Bond, Series 2009, numbered R-1, in the amount of $309,000, dated as of September 10, 2009, bearing interest at the rate of 4.375% per annum, payable in monthly installments as stated in the Bond. The Bond represents the entire above-captioned Bond issue.

2. At the time of such receipt, the Series 2009 Bond had been executed and sealed by the designated officials of the City.

3. At the time of such receipt, there was paid to the City a payment representing a portion of the aggregate principal amount of the Series 2009 Bond.

4. At the time of such receipt, there was also received by the undersigned a set of Bond Transcript documents.

WITNESS my signature as of the 10th day of September, 2009.

UNITED STATES DEPARTMENT OF AGRICULTURE,
Rural Utilities Service

By: Teresa A. Miller
Rural Development ~~Technician~~ Specialist

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

No. R-1 Date: September 10, 2009

FOR VALUE RECEIVED, the CITY OF MONTGOMERY (the "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of THREE HUNDRED NINE THOUSAND DOLLARS ($309,000.00), plus interest on the unpaid principal balance at the rate of 4.375% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and $1,394.00, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

SPECIMEN

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

SPECIMEN

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States

Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of acquisition and construction of a new public sewerage system (the "System") of the Borrower, is payable solely from the net revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute a corporate indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

SPECIMEN

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 only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13 of the West Virginia Code, as amended (the "Act"), and an Ordinance of the Borrower duly enacted on June 9, 2009, as supplemented by a Supplemental Resolution duly adopted on June 9, 2009, authorizing issuance of this Bond (collectively, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for

loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

SPECIMEN

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 SEWER REVENUE BONDS, SERIES 1987 A, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF $1,164,146, SERIES 1987 B, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF $285,539, SERIES 1993 A, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF $648,387, SERIES 1993 B, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF $21,613, AND SERIES 1996 A, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF $175,000.

IN WITNESS WHEREOF, the CITY OF MONTGOMERY has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, all as of the date hereinabove written.

CITY OF MONTGOMERY

[SEAL]

By: _____
Mayor

ATTEST:

_____
Recorder

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$28,800.00	9/10/09	(19)	$	
(2)	$		(20)	$	
(3)	$		(21)	$	
(4)	$		(22)	$	
(5)	$		(23)	$	
(6)	$		(24)	$	
(7)	$		(25)	$	
(8)	$		(26)	$	
(9)	$		(27)	$	
(10)	$		(28)	$	
(11)	$		(29)	$	
(12)	$		(30)	$	
(13)	$		(31)	$	
(14)	$		(32)	$	
(15)	$		(33)	$	
(16)	$		(34)	$	
(17)	$		(35)	$	
(18)	$		(36)	$	

TOTAL $

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to___ _____ 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 Borrower with full power of substitution in the premises.

Dated: _____, _____.

_____

In presence of:

_____

LAW OFFICES
GOODWIN & GOODWIN, LLP
300 SUMMERS STREET, SUITE 1500
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. BOX 2107
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000
TELECOPIER (304) 344-9692

www.goodwingoodwin.com

201 THIRD STREET
PARKERSBURG, WEST VIRGINIA 26101
(304) 485-2345

P.O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
(304) 372-2651

September 10, 2009

City of Montgomery
706 Third Avenue
Montgomery, WV 25136

United States Department of Agriculture
Rural Utilities Service
481 Ragland Road
Beckley, WV 25801

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

Re: $309,000 City of Montgomery
Sewer Revenue Bond, Series 2009

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by the City of Montgomery (the "Issuer") of its Sewer Revenue Bond, Series 2009, in the principal amount of $309,000, bearing interest on the unpaid principal balance from date of delivery at the rate of four and three-eighths percent (4.375%) per annum, and dated on the date hereof (the "Series 2009 Bond").

The Series 2009 Bond has been authorized by an ordinance (the "Bond Ordinance") duly enacted by the City Council of the Issuer ("Council"), the governing body of the Issuer, as supplemented by a Supplemental Resolution duly adopted by Council.

Interest only on the Series 2009 Bond is payable in monthly installments for the twenty-four (24) months after delivery of the Series 2009 Bond and thereafter the principal of and interest on the Series 2009 Bond is payable in monthly installments of $1,394.00, to and including the 480th month after the date of the Series 2009 Bond, the final installment to be in the sum of the unpaid principal and interest due on the date thereof.

Principal installments upon the Series 2009 Bond are subject to payment in advance as provided therein and in the Bond Ordinance.

The Bond Ordinance and the Series 2009 Bond provide that the issue is for the purpose of financing a portion of the costs of construction and acquisition of the improvements and additions to an existing sewer system (the "System") of the Issuer and payment of the costs of issuance of the Series 2009 Bond.

In rendering this opinion, we have relied, in part, upon the opinion letter of James C. Blankenship, III, attorney to the Issuer, and the combined General Certificate of Issuer and attorney for Issuer.

It is our opinion that:

1. The Issuer is a duly organized and presently existing municipality and is a political subdivision of the State of West Virginia with full power and authority to construct, acquire, operate and maintain the System and issue and sell the Bond, all under the provisions of Chapter 16, Article 13 (the "Act"), of the Code of West Virginia, 1931, as amended, and other applicable provisions of law.

2. The Issuer, through Council, has legally and effectively enacted the Bond Ordinance in connection with the bond issue and issued, sold and delivered the Series 2009 Bond to the United States Department of Agriculture.

3. As of this date, the Series 2009 Bond is in due and proper form and has been duly executed and delivered and constitutes a valid and legally enforceable special obligation of the Issuer secured by and payable solely from a statutory lien, as described in the Bond Ordinance, and a pledge of the net revenues of the System, all in accordance with the terms of the Series 2009 Bond and the Bond Ordinance and on parity with respect to lien and source of payment with the Issuer's Sewer Revenue Bonds, Series 1987 A, issued in the original principal amount of $1,164,146 (the "Series 1987 A Bonds"), Sewer Revenue Bonds, Series 1993 A, issued in the original principal amount of $648,387 (the "Series 1993 A Bonds"), and Sewer Revenue Bonds, Series 1996 A, issued in the original principal amount of $175,000 (the "Series 1996 A Bonds" and, together with the Series 1987 A Bonds, the Series 1993 A Bonds and the Series 2009 Bond, collectively, the "Senior Bonds"). In addition, the Issuer has issued its Sewer Revenue Bonds, Series 1987 B, in the original principal amount of $285,539 (the "Series 1987 B Bonds"), and Sewer Revenue Bonds, Series 1993 B, in the original principal amount of $21,613 (the "Series 1993 B Bonds" and, together with the Series 1987 B Bonds, collectively, the "Junior Bonds"), that will be junior and subordinate to the Senior Bonds.

4. The Series 2009 Bond has not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Series 2009 Bond.

5. The Series 2009 Bond and the interest thereon are, under the Act, exempt from taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

6. It is to be understood that the rights of the holder of the Series 2009 Bond and the enforceability of the Series 2009 Bond and the Bond Ordinance, and the liens and pledges set forth therein, may be subject to and this opinion is limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Respectfully submitted,

Goodwin + Goodwin, LLP

GOODWIN & GOODWIN, LLP

JAMES C. BLANKENSHIP III
ATTORNEY AT LAW
105 EAST WISEMAN AVENUE
P. O. BOX 326
FAYETTEVILLE, WEST VIRGINIA 25840

304-574-3556
FAX 574-2365

September 10, 2009

Rural Utilities Service
298 Ragland Road
Beckley, WV 25801

City of Montgomery
706 Third Avenue
Montgomery, WV 25136

Re: $309,000 City of Montgomery
Sewer Revenue Bond, Series 2009

Gentlemen:

As attorney for the City of Montgomery, Fayette County, West Virginia (the "City"), I have examined the record of proceedings relating to the issue of the City of Montgomery, Sewer Revenue Bond, Series 2009 (the "Bond") and have considered the validity of the bond issue. In this connection, I have examined and are familiar with the constitution and statutes of the State of West Virginia, including Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended, the City's Charter, related minutes and a certified copy of the Ordinance enacted by the City (the "Ordinance"), a copy of the certificate of convenience and public necessity issued by the West Virginia Public Service Commission, the sewer rates necessary to pay for the Bond as described in the Ordinance, copies of contracts and other documents relating to the funding and approval for the project by the City, including, but not limited, to the construction contract, plans and specifications, and other documents relating to the project, the letter of conditions, as amended, delivered by the United States Department of Agriculture, Rural Utilities Service, to the City, and other documents incidental and material to the issuance by the City of the Bond. From such familiarity and examination, I am of the opinion as follows:

1. The City is a duly created and presently existing municipality and political subdivision of the State of West Virginia with full power and authority to construct and acquire and to operate and maintain the Sewer System and to issue and sell the Bond, all under the provisions of Chapter 16, Article 13 (the "Act"), of the Code of West Virginia of 1931, as amended, and other applicable provisions of law.

2. The City, through City Council (the "Council"), has legally and effectively enacted the Ordinance and has duly authorized the issuance and delivery of the Bond to the Rural Utilities Service, and the Mayor of the City is duly and lawfully entitled to and authorized to execute the Bond.

3. The Mayor, Recorder and members of the Council have been duly elected or appointed and have fulfilled all requirements necessary to carry on their duties as provided under the Act.

4. The Bond constitutes a valid and legally enforceable special obligation of the City secured by and payable solely from a parity lien on and pledge of the net revenue of the System as described in the Ordinance, all in accordance with the terms of the Bond and the Ordinance.

5. The City, through its Council, has legally and effectively enacted the sewer rates necessary to make the payments on the Bond from the rates described in the Ordinance, and it has lawfully enacted and has filed a tariff which has been approved by the West Virginia Public Service Commission for the sewer rates that are described within the Ordinance, which rates are not subject to appeal or protest.

6. The City has obtained from the West Virginia Public Service Commission a valid, final and non-appealable certificate of convenience and necessity in Case No. 08-0324-S-CN, which lawfully authorizes the City to proceed with the expansion, construction and maintenance of the City's Sewer System and approves the issuance of the Bond.

7. The City, through its Council, has legally and effectively enacted all other ordinances, contracts and agreements that are necessary to comply with the letter of conditions previously forwarded and conditions required therein and has complied with all necessary provisions of the Ordinance necessary before the Bond may be issued and delivered and so that the Bond can, in fact, be lawfully issued and delivered.

8. The execution and delivery of the Bond and the enactment of the Ordinance and compliance with the provisions of them will not conflict with nor constitute a breach of or default under any agreement or other instrument known to us to which the City is a party, or any court order or consent decree known to me to which the City is subject, or any law or administrative regulation to which the City is subject.

9. All authorization, consents, approvals and reviews by governmental bodies or regulatory authorities then required for the City's adoption, execution or performance of the Bond and the Ordinance have been obtained or affected, and I have no reason to believe that the City will be unable to obtain or affect any additional such authorizations, consents or approvals that may be required in the future for performances of any of them by the City.

10. To my knowledge, there is no action, suit, proceeding or investigation at law or in equity by any court, public board or body, pending or threatened against of affecting the City or any member of the Council, and no facts exist relating to the composition of the Council or the exercise of their duties, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the validity of the Bond or the Ordinance.

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

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bond and in the Bond Ordinance may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,

James C. Blankenship, III

JAMES C. BLANKENSHIP III
ATTORNEY AT LAW
105 EAST WISEMAN AVENUE
P. O. BOX 326
FAYETTEVILLE, WEST VIRGINIA 25840
304-574-3556
FAX 574-2365

September 10, 2009

City of Montgomery
Montgomery, West Virginia

United States Department of Agriculture
Rural Utilities Service
Morgantown, West Virginia

Goodwin & Goodwin, LLP
Charleston, West Virginia

Re: Final Title Opinion for City of Montgomery

Ladies and Gentlemen:

I am counsel to City of Montgomery (the "Issuer") in connection with a proposed project to construct certain improvements and extensions to the existing public sewer facilities of the Issuer (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the United States Department of Agriculture for the Project. Please be advised of the following:

1. I am of the opinion that the Issuer is a duly created and validly existing municipal corporation possessed with all the powers and authority granted to municipal corporations under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the West Virginia Department of Environmental Protection.

2. The Issuer has obtained all necessary permits and approvals for the construction and operation of the Project.

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Terradon Corporation.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Fayette County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way,

sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. All deeds, easements and rights of way that have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Fayette County to protect the legal title to and interest of the Issuer.

Very truly yours,

James C. Blankenship,III

JCBIII/

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. SPECIMEN BOND
13. BOND PROCEEDS
14. CONFLICTS OF INTEREST
15. VERIFICATION OF SCHEDULE
16. GRANTS
17. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of the City Council of City of Montgomery (the "Issuer") and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the City of Montgomery Sewer Revenue Bond, Series 2009 (the "Series 2009 Bond"), dated the date hereof, as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly enacted by the Issuer on June 9, 2009, and the Supplemental Resolution duly adopted by the Issuer on June 9, 2009 (collectively, the "Ordinance").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Series 2009 Bond, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Series 2009 Bond; nor affecting the validity of the Series 2009 Bond or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members of its governing body or the elected officials or officers of the Issuer or the City Council thereof to

their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Series 2009 Bond, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Series 2009 Bond.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System and the issuance of the Series 2009 Bond 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 by the Issuer in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 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 enactment of the Ordinance. The Issuer has met all conditions set forth in the Ordinance and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Series 2009 Bond shall be issued on parity with the Issuer's Sewer Revenue Bonds, Series 1987 A, issued in the original principal amount of $1,164,146, Series 1987 B, issued in the original principal amount of $285,539, Series 1993 A, issued in the original principal amount of $648,387, Series 1993 B, issued in the original principal amount of $21,613, and Series 1996 A, issued in the original principal amount of $175,000, with respect to liens, pledge and source of and security for payment and in all other respects. There are no other bonds or obligations of the Issuer that are secured by revenues or assets of the System.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and Recorder are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Series 2009 Bond for the Issuer. The seal impressed upon the Series 2009 Bond and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign the Series 2009 Bond, dated the date hereof, by his or her manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Series 2009 Bond and to be attested by his manual signature; the Registrar did officially authenticate and deliver the Series 2009 Bond to the United States of America ("RUS"), as the original purchaser of the Series 2009 Bond.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia (the "PSC") entered on October 6, 2008, in Case No. 08-0324-S-CN, which became Final on October 12, 2008, based upon the Commission Order Waiving Exception Period entered on October 7, 2008, which approved the scope of the Project, granted to the Issuer a certificate of public convenience and necessity for the Project, and approved the financing for the Project. Such orders remain in full

force and effect.

The Issuer has duly published the required notice with respect to, among other things, the amount of the Series 2009 Bond to be issued, the interest rate and term of the Series 2009 Bond, the Project to be acquired or constructed and the cost of the Project, in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended.

7. RATES: The rates for the System, as approved by the PSC Order, are currently in effect.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Montgomery", and it is a municipal corporation organized and existing under the laws of, and a political subdivision of, the State of West Virginia in Fayette County of said State. The governing body of the Issuer is its Mayor and City Council, consisting of five members, whose names and dates of commencement and termination of their current terms are as follows:

Name	Term	Office
James F. Higgins, Jr.	July 1, 2008 to June 30, 2012	Mayor
Greg Ingram	July 1, 2008 to June 30, 2012	Recorder
Leslie Thomas	July 1, 2008 to June 30, 2012	Council Member
Fred Lockard	July 1, 2008 to June 30, 2012	Council Member
Pamela Lopez	July 1, 2008 to June 30, 2012	Council Member
Terrance Hamm	July 1, 2008 to June 30, 2012	Council Member
David White	July 1, 2008 to June 30, 2012	Council Member

The duly appointed and acting attorney for the Issuer is James C. Blankenship, III, Esq., of Fayetteville, West Virginia.

9. 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 that would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that 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 Series 2009 Bond.

10. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, enacted, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Series 2009 Bond and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Council duly and regularly or specifically called and held pursuant to all applicable statutes, and a quorum of duly elected, qualified and acting members of the Council 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.

11. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain Workers' Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance.

12. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Series 2009 Bond which, except as to execution and authentication, is identical in all respects with the Series 2009 Bond this day delivered to RUS and being substantially in the form prescribed in the Ordinance.

13. BOND PROCEEDS: On the date hereof, the Issuer received $28,800.00 from RUS, being a portion of the principal amount of the Series 2009 Bond. The balance of the principal amount of Series 2009 Bond will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

14. CONFLICTS OF INTEREST: No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Series 2009 Bond, the Ordinance 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.

15. VERIFICATION OF SCHEDULE: The final amended Schedule B attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Series 2009 Bond.

16. GRANTS: As of the date hereof, the Small Cities Block Grant in the amount of $1,500,000 and the RUS grants in the amounts of $1,000,300 and $141,000 are committed for the Project and are in full force and effect.

17. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of City of Montgomery as of the 10th day of September, 2009.

[SEAL]

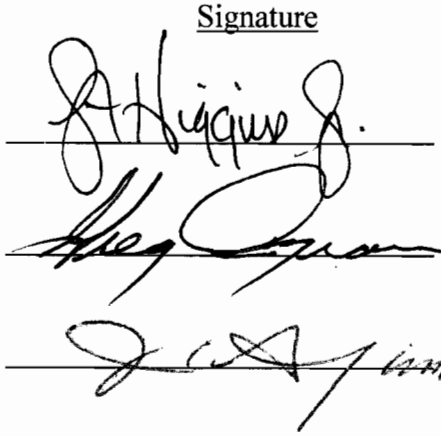
Signature	Official Title
	Mayor
	Recorder
	Attorney

EXHIBIT A

See Specimen Bond (Tab No. 6)

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

ENGINEER'S CERTIFICATE

I, Harvey A. McCallister, Jr., Registered Professional Engineer, West Virginia License No. 7201, of Terradon Corporation, Nitro, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain improvements and extensions (the "Project") to the existing sewer system (the "System") of the City of Montgomery (the "City") to be constructed in Fayette County, West Virginia, which construction and acquisition are being financed, in part, by the above-captioned revenue bond of the City (the "Bond"). Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Ordinance enacted by the City Council of the City on June 9, 2009, as supplemented by a Supplemental Resolution adopted by the City Council of the City on June 9, 2009 (collectively, the "Ordinance").

2. The Bond is being issued for the purposes of (i) paying a portion of the costs of the Project and (ii) paying 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 Council, and any change orders approved by the City, the Council and all necessary governmental bodies, (ii) the Project, as designed, is adequate for its intended purpose and will have a useful life of at least 40 years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear, (iii) the City has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto and my firm 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 reflect the Project as approved by the West Virginia Department of Environmental Protection 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 City has obtained all permits required by the laws of the State of West Virginia and the federal government necessary for the construction of the Project and the operation of the System (ix) in reliance upon the certificate of the City's certified public accountant, Smith, Cochran & Hicks, P.L.L.C. as of the effective date thereof, the rates and charges for the System as enacted by the City Council of the City are or will be sufficient to comply with the provisions of the Ordinance, (x) the net proceeds of the Bond, 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 therefore, are or will be sufficient to pay the costs of acquisition,

construction and equipping of the Project as set forth in Schedule B, and (xi) attached hereto as Exhibit A is the final amended "Schedule B – Total Costs of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature as of this 10th day of September, 2009.

[SEAL]

TERRADON CORPORATION

By: _____

Harvey A. McCallister, Jr., P.E.
West Virginia License No. 7201

EXHIBIT A

SCHEDULE B—TOTAL COST OF PROJECT AND SOURCES OF FUNDS

TOTAL COSTS OF PROJECT

ACQUISITION, CONSTRUCTION AND EQUIPPING	$2,230,019
ENGINEERING—BASIC	$160,000
ENGINEERING—SPECIAL SERVICES	$64,075
ENGINEERING—INSPECTION	$145,000
INTEREST	$27,800
ACCOUNTING	$7,000
LEGAL	$13,500
BOND COUNSEL	$15,000
ADMINISTRATION	$60,000
CONTINGENCIES	$227,906
	$2,950,300

SOURCES OF FUNDING

RUS GRANTS	$1,141,300
RUS LOAN	$309,000
SCBG	$1,500,000
	$2,950,300

Project Construction Budget

PROJECT COST	RUS SUB GRANT	SCBG	RUS GRANT	RUS LOAN	TOTAL
CONSTRUCTION	$ 141,000	$ 1,245,800	$ 711,319	$ 131,900	$ 2,230,019
CONTINGENCY			$ 161,006		$ 161,006
LEGAL FEES		$ 11,400		$ 2,100	$ 13,500
BOND COUNSEL				$ 15,000	$ 15,000
ACCOUNTING		$ 2,800		$ 4,200	$ 7,000
ENGINEERING FEES		$ 180,000	$ 61,075	$ 128,000	$ 369,075
Basic - $ 160,000					
Insp. - $ 145,000					
Special - $ 64,075					
INTEREST				$ 27,800	$ 27,800
ADMINISTRATION		$ 60,000			$ 60,000
PROJECT CONTG.			$ 66,900		$ 66,900
TOTAL	**$ 141,000**	**$ 1,500,000**	**$ 1,000,300**	**$ 309,000**	**$ 2,950,300**

SCH **Smith, Cochran & Hicks, P.L.L.C.**
Certified Public Accountants Oak Hill Bridgeport Charleston Montgomery
405 Capitol Street • Suite 908 • Charleston, West Virginia 25301 • 304-345-1151 • Fax 304-346-6731

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

I, Todd F. Dingess of Smith, Cochran & Hicks, P.L.L.C., a Certified Public Accountant, License No. 2295, Charleston, West Virginia, have reviewed the sewer service rates set forth in the rate ordinance enacted by the City of Montgomery (the "City") on October 7, 2008. It is our opinion that the schedule of rates set forth therein are adequate (i) to pay all operating expenses of the System, as defined in the Bond Ordinance, hereinafter described and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of the principal of and interest on the Series 2009 Bond and the Prior Bonds, as set forth in the Bond Ordinance enacted by the City Council of the City and effective on June 9, 2009, as supplemented by a Supplemental Resolution duly adopted by the City Council of the City and effective on June 9, 2009 (collectively, the "Bond Ordinance").

It is further our opinion that the Net Revenues for the fiscal year following the year in which the Series 2009 Bond is to be issued will be at least 120% of the average annual debt service requirements on the Prior Bonds and the Series 2009 Bond.

It is further our opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2009 Bond, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2009 Bond, will not be less than 115% of the maximum annual amount which will mature and become due in any succeeding year for principal of and interest on the Prior Bonds and the Series 2009 Bond.

WITNESS my signature as of the 10th day of September, 2009.

Certified Public Accountant

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, Greg Ingram, the duly appointed Recorder of the City of Montgomery (the "City"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the $309,000 City of Montgomery, Sewer Revenue Bond, Series 2009 (the "Bond"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the City and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Order Creating the City

2. Sanity Board Petition

3. Oaths of Office of the Mayor, Recorder, Members of the City Council (the "Council") and Members of the Sanitary Board

4. Bond Ordinance and Supplemental Resolution (collectively, the "Ordinance")

5. Minutes of May 12, 2009, June 9, 2009 and September 8, 2009, meetings of the Council wherein the Ordinance and Supplemental Resolution were considered and approved.

6. Affidavit of Publication of the abstract and notice of public hearing on the Bond Ordinance published in *The Montgomery Herald.*

7. Recommended Decision of the Public Service Commission of West Virginia entered on October 6, 2008, in Case No. 08-0324-S-CN, which became Final on October 12, 2008, based upon the Commission Order Waiving Exception Period entered on October 7, 2008.

8. Tariff Issued October 7, 2008 Approving Rates.

9. Letter of Conditions from United States Department of Agriculture, Rural Utilities Service, dated February 9, 2006, and Amendment No. 1 to Letter of Conditions dated August 6, 2009.

10. NPDES Permit.

11. Evidence of Insurance.

12. Grant Letters.

WITNESS my signature and the official seal of the City of Montgomery as of the 10th day of September, 2009.

Recorder

(SEAL)

PART I

THE CHARTER*

* Editor's note.—The Charter herein set out is as enacted by the legislature, Acts 1919, Municipal Charters, Chapter 3, January 30, 1919, as amended by the legislature and by Charter amendatory ordinance adopted pursuant to law. Those sections which have been amended bear historical citations which indicate the source of the amendment, and editor's notes thereunder provide information as to the nature of the amendment. Section catchlines have been supplied, and a number of article headings have been changed by the editors so as to fully disclose the entire subject matter of the sections and articles, and are not to be regarded as official. Similarly, the frontal section analysis has been added, which serves as a table of contents. Days and years of dates have been changed from words to arabic numerals. Capitalization has been made uniform, and obvious typographical errors and misspelled words have been corrected; but no other changes have been made. The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter, [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions." Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this city Code refer to W. Va. Code, § 8-1-6, in determining the present construction and applicability of any portion of the Montgomery Charter to any given situation.

Article I
The City of Montgomery

Sections:

1 Corporate name.

Article II
Corporate Limits

Sections:

2 Described.

Article III
Municipal Authorities

Sections:

3 Mayor, recorder and five councilmen constitute the council.

Article IV
Appointive Officers

Sections:

4 Certain officers required, others permissive.

Article V
Corporate Powers

Sections:

5 To be exercised by council.
6 General powers of mayor and councilmen.
7 Enumeration of specific powers.
8 Implementation and enforcement of powers; authority to prescribe penalties.

Article VI
Qualifications of Voters

Sections:

9 Defined; status of students.

Article VII
Elections

Sections:

10 Registration of voters.
11 Applicability of state election laws; how special elections called; duties of council as board of canvassers.

Article VIII
Election of Officers

Sections:

11a Dates for holding municipal elections for city officers; repeal of conflicting provisions.
12 Election and term of mayor.
13 Qualifications of mayor.

14 Election and term of five councilmen and recorder.
15 Qualifications of councilmen and recorder.

Article IX
Oath of Mayor and Other Officers

Sections:
16 Oath of mayor.
17 Oath of recorder, councilmen and other officers.

Article X
Filling Vacancies and Removal of Officers

Sections:
18 Vacancies to be filled by council; qualifications of appointees.
19 Term of office of persons appointed to fill vacancies.
20 Removal of elective and appointive officers from office.

Article XI
Officers May Perform Other Duties

Sections:
21 Authority of council; limitation on time appointees may serve in additional capacity.

Article XII
Journal of Council Proceedings

Sections:
22 Required; public record; recording of ayes and noes.

Article XIII
Meetings of Council

Sections:
23 Time and place of regular meetings; provisions governing call and conduct of special meetings.

Article XIV
Quorum of Council

Sections:
24 Majority of all members constitutes quorum; authority of members present to compel attendance of absentees.

Article XV
Salaries of Officers and Employees

Sections:
25 When and how established; limitations governing.

Article XVI
Appointive Officers

Sections:
26 Authority of council to appoint.

Article XVII
Powers and Duties of Mayor

Sections:
27 Generally; recorder acts when mayor absent, except to preside over council; mayor pro tempore.

Article XVIII
Powers and Duties of Recorder and Auditor

Sections:
28 Recorder.
29 Auditor—As city accountant.
30 Same—With respect to taxation and tax bills.

Article XX
Powers and Duties of City Attorney

Sections:
31 Generally.

Article XXI
Powers and Duties
of Police Judge

Sections:

32 Enumeration of powers.

Article XXII
Ordinances Generally

Sections:

33 Enacting clause; ordinances as of January 30, 1919 saved from repeal.

34 How presented; reference to committee; vote required for passage; record of vote; procedure for enactment.

35 Recording in minutes and correction thereof; signature of mayor; preservation; certified copies as evidence; authority to codify.

Article XXIII
Franchises

Sections:

36 Requirements, conditions and limitations; procedure for granting.

37 Finance committee of council; annual estimate of expenses and tax levy.

38 Licensing authority, and extraterritorial jurisdiction for enforcement.

39 Additional authority to enact ordinances for certain purposes.

Article XXV
Taxation

Sections:

40 Procedure for collection of taxes; prompt payment discount authorized; responsibilities of collector; enforcement and penalties; deposit of taxes collected.

41 Collection of delinquent taxes and assessments for improvements by distraint.

42 Tax lien imposed on realty.

43 Sale of realty for nonpayment of taxes.

Article XXVI
Appropriation of Money

Sections:

44 Ordinance required; when referendum required.

Article XXVII
Streets, Sidewalks and Curbs

Sections:

45 Assessments for paving and maintenance of sidewalks and curbs; lien created; collection.

46 Procedure for letting contracts for street and alley improvements and assessment of costs against abutting properties; payment and collection of assessments; lien created.

46.1 Authority and procedure for closing unused roads, streets and travel ways; notice and hearing; circuit court review.

Article XXVIII
Sewers

Sections:

47 Procedure for construction, and assessment of costs against benefited properties; payment and collection of assessments; required connections to sewers; lien created; enforcement provisions.

48 Effect of liens for street paving and sewerage assessments in articles XXVII and XXVIII.

49 Recording of certain liens created by articles XXVII and XXVIII, and duty of fiscal officers of political entities and institutions, etc., affected thereby.

50 Authority to city to borrow money on security of street paving and sewer liens; limitation on expenditure of borrowed money.

Article XXIX
Bonded Indebtedness

Sections:

51 Limited authority of city to issue bonds and incur debt secured by bonds.

Article XXX
Public Buildings and Hospitals

Sections:

52 Authority of council to procure and regulate, and to sell and lease.

Article XXXI
Public Health

Sections:

53 General authority of council, including abatement of nuisances, etc.

54 Power of council to regulate sale of certain drugs and to revoke license of violators.

55 Health commissioner; board of health; nuisances.

Article XXXII
Police Department

Sections:

56 Qualifications, appointment, suspension and removal of chief of police and policemen.

Article XXXIII
Fire Department

Sections:

57 Regulation by council.

Article XXXIV
Savings Provisions

Sections:

58 As to incumbent officers, and ordinances passed on or before Jan. 15, 1919.

59 Repealer.

Article I
The City of Montgomery

1 Corporate name.*

That the inhabitants of so much of Fayette County as are within the boundaries prescribed by article 2 of this act, and their successors, shall constitute, be and remain a municipal corporation by the name of "the city of Montgomery." (1919 Munl. Char., ch. 3, § 1.)

* Editor's note.—Section 2 of the Charter was amended in 1925 so as to include territory within Kanawha County. City of Montgomery" in the original, "city" not capitalized.

Article II
Corporate Limits

2 Described.*

The description of the corporate limits, including the newly annexed territory is as follows:

(1) Beginning at a point on the Kanawha River, Thence with and down the river with the approximate following calls: N 7-21 E, 551 feet, N 8-21 W, 1101 feet, N 38-17SW, 968 feet, N 42-57SW, 792 feet, N 53-52 SW, 1560 feet, N 67-08 W, 1389 feet, S 85-26 W, 1254 feet, S 72-44 W, 2628 feet, S 85-03 W, 1967 feet, N 73-37 W, 1860 feet;

(2) Thence, leaving the river S 19-11 W, 259 feet to a monument (steel rod in concrete) beside State Route 61;

(3) Thence, S 19-11 W, 730.5 feet to a point;

(4) Thence, S 76-27 E, 4462.4 feet to a monument (steel rod in concrete) along Morris Drive;

(5) Thence, N 69-30 E, 215.5 feet;

(6) Thence, S 12-32 E, 461 feet;

(7) Thence, due East 290 feet;

(8) Thence, S 20-08 E, 2353.8 feet;

(9) Thence, S 11-53 W, 3351.8 feet;

(10) Thence, N 77-10 E, 4276.8 feet;

(11) Thence, N 11-16 E, 3120.2 feet;

(12) Thence, S 87-31 E, 1689.2 feet to a monument (steel rod in concrete) along State Route 61;

(13) Thence, S 87-31 E, 82 feet to the point of beginning, containing 1008.20 acres more or less, as shown on the map attached hereto and made a part

hereof entitled "Revised Map Additional Territory To The City of Montgomery, W. Va. 1976, prepared by S. E. Thornton, P. E. (1919 Munl. Char., ch. 3, § 2; 1925 Munl. Char., ch. 20; 5-26-76.)

* Editor's note.—1925 Munl. Char., ch. 20, amendatory of this section, provided that such amendatory act "shall not become effective as to that portion of the above described area which lies within the County of Kanawha" unless ratified by the voters resident therein at an election to be held May 26, 1925. This election was duly held and the amendment was so ratified.

* Editor's note.—The map herein referred to is not set out in this volume. It remains, however, as an integral part of the ordinance by which the foregoing description was established.

Article III
Municipal Authorities

3 Mayor, recorder and five councilmen constitute the council.

The municipal authorities of the city of Montgomery shall be the mayor, recorder and five councilmen, who shall constitute the council. (1919 Munl. Char., ch. 3, § 3.)

Article IV
Appointive Officers

4 Certain officers required, others permissive.

In addition to the municipal authorities mentioned in article 3 of this act, the said city of Montgomery shall have a treasurer who may be sergeant, and auditor who may be recorder, chief of police, building inspector, who may be one of the council, a police judge, who shall be the mayor, and council may appoint a health commissioner, city attorney and such officers and agents as the council may from time to time create or employ. (1919 Munl. Char., ch. 3, § 4.)

Article V
Corporate Powers

5 To be exercised by council.

All of the corporate powers of said city shall be exercised by the said council or under its authority, except as otherwise provided herein. (1919 Munl. Char., ch. 3, § 5.)

6 General powers of mayor and councilmen.

The mayor and councilmen, when elected and qualified as hereinafter provided shall have possession and exercise corporate powers as a body politic by the name of "the city of Montgomery," and shall have perpetual succession and a common seal, and by the name may sue and be sued, plead and be impleaded, and may purchase and hold or sell real estate, and personal property necessary to enable them to discharge its corporate duties needful or convenient for the good order, government and welfare of said corporation. (1919 Munl. Char., ch. 3, § 6.)

7 Enumeration of specific powers.

The municipal authorities of said city, acting under the powers and in the manner herein specified, shall have and are hereby granted the power to have said city re-surveyed, to open, vacate, broaden, widen and repair streets and alleys, to curb and pave streets, sidewalks and gutters for public use, and to alter, improve, repair and light the same; to construct and maintain public sewers and laterals, and shall in all cases have power to assess upon and collect from the property benefited thereby such part of the expense thereof as shall be fixed by ordinance, except as hereinafter provided; to have control of all streets and avenues, roads and alleys for public use in said city, and to have the same kept in good order, free from obstruction on or over them; to have the right to control all bridges within said city and traffic passing over them; to regulate and determine the width of streets, sidewalks, roads and alleys; to order and direct the curbing and paving of sidewalks and footways for public use in said city, to be done and kept in good order by the owners of adjacent property; to control the construction and repairing of all houses, bridges, culverts and sewer, and to prescribe and enforce all regulations affecting the erecting, repairing or removal of all buildings and structures, and to require permits to be obtained for such buildings, plans and specifications thereof to be first submitted to the

building inspector, and to prescribe and enforce regulations controlling the erection of such buildings, and to secure the safety and health of the public; to control the opening and construction of ditches, drains, sewers, cesspools and gutters, to deepen, widen and clear the same of stagnant water and filth, and to determine at whose expense the same shall be done, to build and maintain station houses, police stations and police courts and to regulate the management thereof; to purchase, lay off, appropriate and control public roads, square and parks, either within or without the city limits as hereinafter defined, and when the council determines that any real estate is necessary to be acquired by the said city for any such purpose, the power of eminent domain is hereby conferred upon said city, and it shall have the right to institute condemnation proceedings against the owner thereof in the same manner and to the same extent and under the same conditions as such power is conferred upon public service corporations by chapter 48 of the Code of West Virginia of the edition of 1906; to provide, contract for and take care of all public buildings and structures being proper for the use of said city; to provide for and regulate the building of all houses or other structures, and to determine the distance they shall be built from the street or alley; to cause the removal of unsafe walls or buildings; to compel owners of property to fence in or wall their property for the protection of the public safety; to prevent the injury and annoyance to the business of individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances; to regulate the keeping of gun powder and all other combustibles; to provide and maintain proper places for the burial of the dead; to regulate interment therein upon such terms and conditions as to price and otherwise as may be determined; to provide for shade and ornamental trees and the protection or removal of same; to provide for the draining of lots by proper drains and ditches; to make proper regulation regarding danger and damage from fire; to provide for the poor of the city; to organize and maintain fire companies and provide the necessary apparatus; to levy taxes on persons, property and licenses; to provide revenue for the city and appropriate the same to its expenses; to provide for the valuation of property as often as it may be deemed proper and for the assessment of taxable persons and property; to adopt rules for the transaction of business and for the government and welfare of this corporate body; to promote the general welfare of the city and protect the persons and property of citizens therein; to adopt rules for the transaction of business and for the government and regulation of its corporate body; to appoint such officers as they may deem proper and require and take from them bond with security and in such penalty as may be determined, conditions for the faithful discharge of their duty; to regulate and provide for the weighing of produce and other articles sold in said city; to regulate the transportation thereof through the streets; to establish and regulate markets, to prescribe the time for holding the same and what shall be sold only in such market, and to acquire and hold property for market purposes if deemed proper; to regulate the placing of signs, billboards, posters and advertising and other obstructions in, or over the streets, alleys and sidewalks of said city, to preserve and protect the peace, order and health of the city and its inhabitants; to appoint and fix places for holding city elections; to erect, own, lease, regulate, authorize or prohibit the erection of gas works, electric light works in or near the city, and to operate the same and sell the products thereof and do all things necessary and incidental to the conduct of such business; to provide for and preserve the purity of the water and health of the city; to prescribe and enforce ordinances for the purpose of protecting the health, decency, morality and order of the city and its inhabitants, and to punish violations of such ordinances, even if the offenses under and against such ordinances shall also constitute offenses under the laws of the State of West Virginia or the common laws; to have and exercise all the rights, privileges and powers provided by chapter 47 of the Code of West Virginia of the edition of 1906, and amendments thereof not inconsistent with this act, and shall retain, keep and succeed to all rights, privileges, property, interest, claims and demands heretofore acquired by, vested in or transferred to the city of Montgomery, or heretofore to the corporation of Montgomery. (1919 Munl. Char., ch. 3, § 7.)

8 Implementation and enforcement of powers; authority to prescribe penalties.

To carry into effect these enumerated powers and all other powers conferred upon said city, expressly or by implication in this and other acts of the legislature, the municipal authorities of said city shall have power in the manner heretofore prescribed to adopt and enforce all needful orders, bylaws and ordinances not contrary to the laws and Constitution of this state, and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment. (1919 Munl. Char., ch. 3, § 8.)

Article VI
Qualifications of Voters

9 Defined; status of students.

Every person who may have resided within the territory of said city for six months next preceding an election held therein, and who is a qualified voter under the laws and Constitution of this state, and none others, shall be entitled to vote at any election held in said city. But no person shall be deemed a resident of said city by reason of being a student of any school or college therein for any temporary purpose. (1919 Munl. Char., ch. 3, § 9.)

Article VII
Elections

10 Registration of voters.

The council shall by ordinance provide such regulations for the registration of voters as the state laws may require.

11 Applicability of state election laws; how special elections called; duties of council as board of canvassers.*

All elections shall be held in such manner as is, or shall be, prescribed by law for the holding of state elections. Special elections for any purpose must be authorized by the council and called by the mayor. Notices of all special elections must be given by publication in at least one newspaper of general circulation published in the city of Montgomery, at least thirty days before the date fixed for all such special elections, and by posting notices in such manner as the council may deem necessary. The council shall sit on the seventh day, Sundays excepted, after every election as a board of canvassers, each member of the council having one vote; and as such board of canvassers they shall canvass, ascertain, publish and declare the result of any election held; and the circuit court of Fayette County shall have power to control proceedings of said board of canvassers by mandamus and prohibition. The said board shall keep in a separate book, marked for that purpose, a record of the proceedings, and shall take down and record any evidence, motion, or paper filed, or offered by any candidate, which book and record shall be open to the public and shall be kept in the custody of the recorder. (1919 Munl. Char., ch. 3, § 11; Ord., 12-9-69.)

* Editor's note.—This section, as enacted by the legislature in 1919, included provisions governing the election of city officers in the year 1920, which are omitted here as having been executed. This section, as enacted in 1919, also included provisions for biennial election of officers, and these provisions have also been omitted by § 11a of the Charter which follows next.

* Editor's note.—This provision of the 1919 act antedates the amendment of § 2 of the Charter in 1925, which added an area in Kanawha County to the city, whether the circuit court of Fayette County would have jurisdiction to determine a question arising in Kanawha County has not been judicially determined.

Article VIII
Election of Officers

11a Dates for holding municipal elections for city officers; repeal of conflicting provisions.*

(a) The election of officers of the city of Montgomery shall be held on the second Tuesday of June, beginning June 2000, and shall fall on successive four year intervals thereafter. The term of office of such persons so elected shall commence on the first day of July next succeeding their election on the second Tuesday of June, as aforesaid. Officers of the city of Montgomery shall be elected for four year terms.

(b) To the extent this amendment is in conflict with the city charter and any city ordinances providing for its municipal election, the same are hereby amended. (12-9-69; 7-13-99 (part).)

* Editor's note.—This section, the number of which has been assigned by the editors, is a charter amendment enacted by ordinance of the city council on December 9, 1969, pursuant to authority of W. Va. Code, 1966 as amended § 8-4-8. Such amending ordinance was enacted following a public hearing held pursuant to prior duly published notice, and no objections to the ordinance were filed, or, if any were filed, they were withdrawn at the time of the hearing or within ten days thereafter, thus meeting the requirements of W. Va. Code, § 8-4-8. This section became operative on and after December 31, 1969. Regular city elections are now held quadrennially on leap years.

12 Election and term of mayor.*

The qualified voters of the city shall elect a mayor every four years as provided in section 11a of this Charter, and the mayor so elected shall take office and serve for the term as provided in section 11a of this Charter. (1919 Munl. Char., ch. 3, § 12; Ord. 12-9-69.)

* Editor's Note.—This section, as enacted by the legislature in 1919, provided for the election of the mayor each two years beginning on the first Thursday in January, 1920. Such provision was repealed by § 11a of this Charter, enacted in 1969, effective on and after December 31, 1969 and the text of this section has been rewritten by the editors accordingly.

13 Qualifications of mayor.

No person shall be eligible to the office of mayor except he be assessed with and own at least five hundred dollars worth of real or personal property, and is a citizen entitled to vote at the election at which he is elected, and no person shall be elected to such office or retain or hold the same, who shall or become an officer or employee of any person, firm or corporation holding any franchise or contract under or with said city. (1919 Munl. Char., ch. 3, § 13.)

14 Election and term of five councilmen and recorder.*

The qualified voters of the city shall elect five councilmen and a recorder every four years as provided in section 11a of this Charter, and the councilmen and recorder so elected shall take office and serve for the term as provided in section 11a of this Charter. (1919 Munl. Char., ch. 3, § 14; Ord. 12-9-69.)

* Editor's Note.—This section, as enacted by the legislature in 1919, provided for the election of five councilmen and the recorder each two years, beginning on the first Thursday in January, 1920. These provisions were repealed by § 11a of this Charter, enacted in 1969, effective on and after December 31, 1969,, as enacted in 1919. This section also contained a provision, long since executed, relating to officers incumbent in January, 1919. The text of this section has been rewritten by the editors accordingly.

15 Qualifications of councilmen and recorder.

No person shall be eligible to the office of councilman or recorder except he be assessed with and own at least five hundred dollars worth of real or personal property, and be a citizen entitled to vote at the election at which he is elected. (1919 Munl. Char., ch. 3, § 15.)

Article IX
Oath of Mayor and Other Officers

16 Oath of mayor.

The mayor, before taking his seat or performing any of the duties of said office, shall take and subscribe an oath or affirmation that he possesses the qualifications prescribed by this act to hold such office, and is not subject to any of the disqualifications prescribed therein, and that he will support the Constitution of the United States and the Constitution of this state, and honestly discharge the duties of his office to the best of his skill and judgment, which oath shall be written out and signed and filed and preserved among the records and books of the city. (1919 Munl. Char., ch. 3, § 16.)

17 Oath of recorder, councilmen and other officers.

The recorder, councilmen and all other officers elected or appointed under this act shall take and subscribe to an oath or affirmation in the time, manner, form and effect, prescribed for the mayor. (1919 Munl. Char., ch. 3, § 17.)

Article X
Filling Vacancies and Removal of Officers

18 Vacancies to be filled by council; qualifications of appointees.

If the vacancy should occur in the office of the mayor the council shall, as soon as practicable, fill the vacancy by the appointment of some qualified person. If any vacancy occurs in any other office, whether elective or appointive, the council shall fill the same by the appointment of some qualified person subject to any regulations as required for the original appointment or election. (1919 Munl. Char., ch. 3, § 18.)

19 Term of office of persons appointed to fill vacancies.

All persons appointed to fill vacancies in the elective offices shall hold office until the next city election, and all vacancies in appointive offices shall be filled for the unexpired term. (1919 Munl. Char., ch. 3, § 19.)

20 Removal of elective and appointive officers from office.

The council shall have and is hereby granted the power and authority to remove from office any officer, whether elective or appointive, for cause or upon written charges preferred by any responsible citizen to the council; but to remove from office under this provision, four-fifths of the members of the council must be present and four-fifths must concur in such removal, and the officer against whom the charges are preferred shall be served with a reasonable notice of the same, together with the time of hearing upon such charges, together with a copy of such charges, and shall have the right to be represented before the council in person and by attorney, and the right to require all witnesses to be sworn and testify under oath before the council and to have the testimony taken down. (1919 Munl. Char., ch. 3, § 20.)

Article XI
Officers May Perform Other Duties

21 Authority of council; limitation on time appointees may serve in additional capacity.

Any member of the council, the mayor, recorder, treasurer, or any other elective or appointive officer shall, during the time for which he was elected or appointed, be eligible for appointment to any office under the city; provided, such employment is authorized by the council, by resolution for such appointment; but in no case shall the time of service be for a longer period than said council is selected to serve under this act. (1919 Munl. Char., ch. 3, § 21.)

Article XII
Journal of Council Proceedings

22 Required; public record; recording of ayes and nays.

The council shall keep a journal of all its proceedings, which shall, at all times, be open to the inspection of the taxpayers of the city, and be a public record, and the ayes and noes of the members shall be taken on any question, at the request of any member, and shall be taken down and entered on the journal. (1919 Munl. Char., ch. 3, § 22.)

Article XIII
Meetings of Council

23 Time and place of regular meetings; provisions governing call and conduct of special meetings.*

The council shall hold regular meetings not less frequently than once each month, at such times and places as may be provided by ordinance or resolution of the council. The council may hold such special meetings as the business to be transacted may require, and the council shall have the power by ordinance or resolution entered of record to vest in any officer of the city or any member or number of members of their body, authority to call such special meetings and in like manner to prescribe the mode in

and by which such meetings shall be called. All questions put, except as to such matters as herein otherwise provided, shall be decided by a majority vote of the members elected. No business shall be transacted at any special meeting of the council unless specifically mentioned in the call for such meeting. (1919 Munl. Char., ch. 3, § 23; Ord. 6-13-72.)

* Editor's Note.—This section is amended by ordinance enacted by the city council on June 13, 1972, pursuant to authority of W. Va. Code, 1966, as amended, § 8-4-8. Such amending ordinance was enacted following a public hearing held pursuant to prior duly published notice and no objections to the ordinance were filed, or, if filed, were withdrawn at the time of the hearing or within ten days thereafter, thus meeting the requirements of W. Va. Code, § 8-4-8.

Article XIV
Quorum of Council

24 Majority of all members constitutes quorum; authority of members present to compel attendance of absentees.

A majority of the whole number of members elected or appointed to the council shall constitute a quorum to transact business, but a smaller number may adjourn from time to time and may compel attendance of absent members in such manner and under such penalties as either body may by rules provide. (1919 Munl. Char., ch. 3, § 24.)

Article XV
Salaries of Officers and Employees

25 When and how established; limitations governing.

The mayor, recorder, regular and other officers, employes and apointees, shall receive for their official service such salaries as the council shall, from time to time, by ordinance fix and establish; but the salaries of such officers shall not be increased or diminished during the term for which such officers were elected or appointed; provided, that the salaries of all officers elected or appointed for any term shall be fixed not later than thirty days preceding any election. (1919 Munl. Char., ch. 3, § 25.)

Article XVI
Appointive Officers

26 Authority of council to appoint.

The council shall by a majority vote of its members fill all appointive offices under the city administration. (1919 Munl. Char., ch. 3, § 26.)

Article XVII
Powers and Duties of Mayor

27 Generally; recorder acts when mayor absent, except to preside over council; mayor pro tempore.

The mayor shall be chief executive officer of the city and shall preside at all meetings of the council and shall have a vote in case of tie; he shall have charge and control of the police except as herein otherwise provided; he shall see that the orders and ordinances of the city are enforced; that the peace and good order of the city are preserved and that persons and property therein are protected, and to this end he may cause the arrest and detention of riotous and disorderly persons, and shall perform such other duties and services as the council may ordain in addition to the duties prescribed in this act and not inconsistent herewith. The recorder, except as herein otherwise provided, shall perform the duties of the mayor whenever and so long as the mayor is from any cause not able to perform his official duties, and he shall, in the absence of the mayor, perform any and all the duties of the mayor except he shall not preside over the council. In the absence of the mayor at a meeting of the council, the council shall select one of its own members to preside over its meetings, who shall have a vote as a councilman. If the mayor and recorder are both absent from the city, or otherwise disabled from performing the duties of the mayor, the council may elect a mayor pro tempore. The mayor shall have the power at any time to appoint special policemen, who shall be sworn in without confirmation of the council. (1919 Munl. Char., ch. 3, § 27.)

Article XVIII
Powers and Duties of Recorder and Auditor

28 Recorder.

It shall be the duty of the recorder to keep [an] a properly indexed journal of the proceedings of the council and board of health, and have charge of and preserve the records of the city; he shall, whenever required by the mayor, attend the police court and attend to all the duties as clerk of the police court of the city. In the absence of the mayor or police judge, he shall exercise the functions of police judge; he shall perform all other duties required of him by order or by ordinance of the council; as recorder he shall receive compensation for his service to be fixed by the council, which shall not be increased or diminished during his term of office. (1919 Munl. Char., ch. 3, § 28.)

29 Auditor—As city accountant.

The auditor shall be the city accountant and auditing officer of the city and it shall be his duty to see that the accounts of said city are kept in a detailed and systematic manner, under the proper classification so as to show the bonded and other indebtedness of said city, and the amounts and claims due the same, as well from taxes, levies and assessments as from other sources. (1919 Munl. Char., ch. 3, § 29.)

30 Same—With respect to taxation and tax bills.*

In addition to the other duties of the auditor, it shall be his duty, on or before, the first day of August in each year to make a copy from the real and personal property books of property shown to be liable to taxation within the limits of the city of Montgomery, and to certify such copies under his hand as a true and correct copy thereof, and to deliver the same to the council and to assist the council in preparing the annual estimate of expenses to be certified to the council as a basis for the annual levy. After such levy is made in each year, it shall be the duty of the auditor to extend said levy upon said real estate and personal property books for said city and to prepare proper tax tickets therefrom against all owners of real estate and personal property subject to taxation in said city. He shall turn the said tax bills over to the treasurer or sergeant, who shall collect said taxes when due and payable, and the treasurer shall certify to the payment of same as made. In addition to the above duties of the auditor, he shall perform such other duties as the council shall prescribe. (1919 Munl. Char., ch. 3, § 30.)

* Editor's Note.—The annual meeting of municipal governing bodies to determine expenditures and assessments is now held between the 7th and 28th of March, pursuant to W. Va. Code, §§ 11-8-9, 11-8-14, so that the first day of August, as enacted in this section in 1919, is no longer pertinent.

Article XX
Power and Duties of City Attorney

31 Generally.

The council may appoint a city attorney, by a majority vote of its members, who shall be the legal adviser of the city and all its officers in all matters arising and in which legal proceedings may be taken; he shall prosecute all the suits, actions and proceedings instituted on behalf of said city and shall defend all suits and actions against said city, and where requested to do so in writing, shall give his written opinion to the mayor, council or any committee thereof upon such questions as may be referred to him affecting the city's interest; he shall perform such other duties as may be required. It shall be his duty to attend all sessions of the police court whenever requested by the mayor or police judge, prosecute all trials therein and all appeals that are taken from such courts and for his services shall receive such compensation as may be agreed on between him and the city council. (1919 Munl. Char., ch. 3, § 31.)

Article XXI
Powers and Duties of Police Judge

32 Enumeration of powers.*

The mayor or police judge shall be ex-officio a justice and conservator of the peace within the city and he shall, within the same have, possess and exer-

cise all the powers and perform all the duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil causes of action arising out of the corporate limits of the city. He shall have the same power to issue attachments in civil actions as a justice of his county has, though the cause of action arose out of the city limits, but in such case he shall have no power to try the same but must have such attachment returnable and heard before some justice of the county. Any warrant or other process issued by him may be executed within the same territorial limits as that of a justice of the county. He shall have power to issue executions for all fines, costs and penalties imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in default to the jail of the city, until the fine, penalty or costs shall be paid, but the term of imprisonment in such cases shall not exceed sixty days. But such mayor or police judge shall not receive any money belonging to the state, or any individual, unless he shall give bond and security as required of a justice of the peace under the laws of the State of West Virginia; and all provisions under the laws of the State of West Virginia relating to moneys received by justices shall apply as to like moneys received by the mayor or police judge.

* Editor's Note.—Effective January 1, 1977, the mayor no longer has the power to issue attachments. W. Va. Code § 8-10-1.

Article XXII
Ordinances Generally

33 Enacting clause; ordinances as of Jan. 30, 1919 saved from repeal.*

The style of ordinances of the city shall be "Be it enacted and ordained by the council of the city of Montgomery," but the ordinances now in force shall remain in effect until amended or repealed, except where they are in conflict or inconsistent with this act. (1919 Munl. Char., ch. 3, § 33.)

* Editor's Note.—The act here codified was enacted Jan. 30, 1919. All ordinances of the city were codified in the city code of 1947 and those excluded were repealed.

34 How presented; reference to committee; vote required for passage; record of vote; procedure for enactment.

All ordinances shall be presented in writing and no ordinance shall be so amended in its passage as to change the general purpose. No ordinance shall be considered for final passage at the meeting at which it is introduced unless the same shall have been reported on by a committee, but reference to a committee may be dispensed with by an affirmative vote of three fifths of the council as elected. No ordinance shall contain more than one subject, which shall be clearly expressed in its title; nor shall any ordinance be passed by the council unless a majority of all the members elected to the council shall concur therein by ayes and nays when the question is put upon its passage. (1919 Munl. Char., ch. 3, § 34.)

35 Recording in minutes and correction thereof; signature of mayor; preservation; certified copies as evidence; authority to codify.

All ordinances passed by the council shall be spread upon the minutes; at the next regular meeting such ordinances shall be read in open council and the mayor shall sign said minutes when found correct or corrected, in the presence of the council. The council shall provide a well-bound book, in which shall be copied all the ordinances in the order in which they are passed, which ordinances so copied shall be compared with the originals by the mayor and shall be signed by him when found correct. Such book shall be indexed so as to show in brief form the substance of the ordinances. All copies thereof certified as hereinafter provided, shall be received by all the courts and justices in the state as evidence; but the council may adopt by ordinance, properly designing and describing it, a code of laws and ordinances, which when adopted, shall be published in a newspaper of general circulation in said city, or posted, and printed in book form, or it may be adopted as a whole after it is printed, and the said code shall be and become the laws and ordinances of the said city, and shall be received as such by all the courts in the state, and the printed volumes published under order of the council

be so received as evidence of what is printed therein till errors or omissions be affirmatively shown therein. (1919 Munl. Char., ch. 3, § 35.)

Article XXIII
Franchises

36 Requirements, conditions and limitations; procedure for granting.

All franchises granting the right of occupancy of any portion of the streets of the city for work of public utility and service shall be granted by the council, but no such franchise shall hereafter be granted except under the following restrictions and conditions:

No franchise shall be granted, except at the time of granting it bond be made to the city providing that the grantee shall indemnify the city against all damages caused by construction, maintenance or operation of such works. All reasonable additional provisions and conditions may be made for the protection of the public, necessary damage or inconvenience by reason of the construction, maintenance or operation thereof.

No grant of a franchise for the extension of, or in addition to, any line of work or public service through, over or under any additional street or territory of the city shall be made for a period extending beyond the time limit for the expiration of the franchise, if the principal work is one granted before this act goes into effect and not limited as to time. Any franchise granted for an extension or addition thereto shall nevertheless be made, subject to the provisions hereof, including the time limit of not exceeding fifty years.

The council shall, in all franchises hereafter granted, embody therein a plainly expressed condition, when the franchise is to be for work useful chiefly to the citizens of the city, that at expiration of the franchise the grantee shall, if required by the council, sell to the city the plant at what it is then worth.

If the city or the owner of the plant cannot agree upon its value, then its value shall be ascertained by an impartial arbitration, one arbitrator to be selected by the city, one by such owner of the plant, these two to select a third, and the decision of any two to be binding upon both parties. (1919 Munl. Char., ch. 3, § 36.)

37 Finance committee of council; annual estimate of expenses and tax levy.*

A finance committee shall be appointed from the council members, by the mayor, and said finance committee shall, on or before the first day of August in each year, prepare and submit to the council an estimate of the amount of money necessary and advisable to be expended by the city for the current year next ensuing and to be provided for by the tax levy as herein provided for such current year, in which estimate the finance committee shall ascertain and present a detailed and itemized account or estimate of the money necessary to pay interest on the bonded indebtedness of the city, the amount required for the several sinking funds, for the reduction of the principals thereof, the amount to be expended severally for the streets, alleys, curbing, water works, police department, fire department, street paving, sewers, salaries, parks, real and personal property, contingent expenses and other expenses, together with an itemized statement of the estimated receipts, other than that to be derived from the annual levy, and after receiving such estimates, and before making the levy the council shall apportion the rate thereof, (including estimated receipts for licenses and all other sources), among the several funds to ascertain and provide for, which said apportionment when adopted shall be spread upon the records of the council.

Upon the estimate of such expense, the council shall thereupon, by ordinance, lay a levy for the ensuing tax year of a sum not to exceed eighty cents, exclusive of any levy or levies for bond purposes, on each one hundred dollars assessed valuation of all taxable property, real and personal, subject to taxation in said city, as well as a capitation tax not to exceed two dollars upon every male inhabitant of said city over the age of twenty-one years who is subject to a capitation tax under the laws of the State of West Virginia, and said council is authorized to levy to such maximum of eighty cents on each one hundred dollars of valuation notwithstanding any general laws

now in force, or which may be enacted, restricting the powers of municipal corporations to levy taxes. (1919 Munl. Char., ch. 3, § 37; 1927 Munl. Char., ch. 2.)

* Editor's Note.—The annual meeting of municipal governing bodies to determine expenditures and assessments is now held between the 7th and 28th of March, pursuant to W. Va. Code, §§ 11-8-9, 11-8-14, so that the 1st day of August, as enacted by amendment of this section in 1927, is no longer pertinent.

* Editor's Note.—This section, as amended in 1927, antedates the tax limitation amendment to the state constitution, art. X, §§ 1 to 1c.

* Editor's Note.—Art. 10, § 2 of the state Constitution, authorizing the capitation tax, was repealed in 1970.

38 Licensing authority, and extraterritorial jurisdiction for enforcement.

Whenever anything, for which a state license is required, is to be done within said city, the municipal authorities, as herein provided, may require a city license to be had for doing the same, and may, in any case, require from any person licensed a bond, with sureties, and in such penalty and with such conditions as it may deem proper, and the council may on notice revoke such license at any time, if the conditions of said bond be broken, or for good cause.

The municipal authorities may impose a license tax for the use of said city upon any business, trade, occupation or profession for which the state now requires or hereafter may require a license, but the tax upon such city license in no case exceeds the license tax imposed by the state upon such business, trade, occupation or profession. The municipal authorities may prescribe, impose and enforce reasonable fines and imprisonment, under the order of the police judge of said city, or the person lawfully exercising his function, upon any person carrying or attempting to carry on any business for which the said license is required, without first obtaining a city license therefor, and paying the city license tax assessed thereon. All licenses provided for in this section shall be paid to the sergeant or treasurer. For the purposes of enforcing the provisions of this section the city shall have police jurisdiction for two miles beyond the corporate limits thereof. (1919 Munl. Char., ch. 3, § 38.)

39 Additional authority to enact ordinances for certain purposes.

The council shall have the power to pass and make all regulations and pass all ordinances necessary and proper concerning the granting and revoking of all licenses. The city shall have the power to prohibit by ordinance and to punish persons abusing animals; to restrain and punish vagrants, mendicants, beggars, tramps, prostitutes and drunken and disorderly persons within the corporate limits; to provide for their arrest and manner of punishment; to prohibit and punish railroads bringing in paupers or persons or animals afflicted with dangerous diseases; to control and suppress bawdy houses, houses of assignation and gambling houses and to punish gaming; to prohibit slaughter houses within the prescribed limits and soap or glue factories of any kind; to restrain and prohibit the use of firecrackers, fireworks or other explosives, and all dangers or unseemly noises which tend to annoy persons or frighten horses or other animals; to make regulations guarding against fire; to regulate the use of streets and alleys for street cars, railroad engines, traction engines, automobiles, and cars of all sorts, and regulate the running and operation of the same within the city limits; to regulate and prevent injury, inconvenience or annoyance to the public; to prohibit cock fighting and dog prize fighting; to regulate and control the kind and manner of plumbing and electric wiring, etc., for the safety and health of the public; to regulate, restrain and prohibit all animals and fowl running at large; to establish and regulate markets; to regulate signs and billboards, posters and advertisement on or over streets; to regulate the sale and use of cocaine, morphine, opium and poisonous drugs; to provide for the purity of water, milk, meat, etc., sold in the city limits; to provide for inspection of dairies, slaughter houses and other places of like nature; to protect places of divine worship; to have abated and removed all nuisances; to regulate the construction of all water closets, privies, cess pools, pens, sinks, yards, stables and other places where offensive substances may accumulate; to regulate and prescribe punishment for all violations against the public peace and welfare. (1919 Munl. Char., ch. 3, § 39.)

Article XXV
Taxation

40 Procedure for collection of taxes; prompt payment discount authorized; responsibilities of collector; enforcement and penalties; deposit of taxes collected.*

The city taxes annually levied by said council shall be collected as follows: Immediately after the annual levy for city taxes is laid, the auditor shall extend the same on the property books made out by him, including thereon, the proper capitation taxes. He shall make out proper tax tickets in the following manner, that is to say: there shall be a single ticket for the whole amount charged to any person, firm or corporation, and after the tickets have been examined and compared and found to be correct by the council, they shall be turned over to the sergeant or treasurer by the first day of October following the levy. The sergeant or treasurer shall receipt for the gross amount, said receipt to be returned and entered upon the records and the sergeant charged therewith. The sergeant shall then give notice by publication in a newspaper of general circulation in the city, and posting for at least ten days, stating that the tax tickets are in his hands for collection, the penalty for the nonpayment thereof, and the time and place where the same may be paid; provided, however, that a taxpayer shall have the right to anticipate the payment of the whole or any part of the taxes as assessed. Immediately upon the payment of said taxes or any part thereof, the said amount shall be deposited by the sergeant or treasurer in one of the city depositories to the credit of the "City of Montgomery," and the sum so deposited shall be reported to the council at its first meeting after deposit is made. All taxes shall be due and payable within thirty days after the expiration of the notices posted and published by the sergeant as hereinbefore set forth, and in case the same are not paid within said time, he may distrain and sell therefor, in like manner as the officer collecting the state taxes may distrain therefor, and he shall have in all other respects the same power to enforce the payment and collection thereof. On all tickets remaining uncollected in the hands of the sergeant fifty days after the date of the expiration of the notice posted and published by him, a penalty of five per cent shall be added and collectable, together with six per cent interest until paid.

The council may by ordinance allow a discount for prompt payment of taxes. The sergeant shall have the power to collect said taxes so placed in his hands together with the penalty and interest thereon, heretofore provided to be added thereto. The sergeant shall be charged with the gross amount of said tax tickets so delivered to him for collection, and no deduction therefrom shall be allowed unless on or before the first day of July of each year he makes out and returns to the council a delinquent list of taxes uncollected for year previous with his oath attached thereto, stating that such delinquent list is correct and just, that he has received no part of the taxes mentioned thereon and that he has used due diligence to find property to distress for said taxes and has found none, and that the same are uncollectable. Penalties and interest provided for in this section, to be added to such taxes, shall not be deemed or considered any part of the limitation in this act hereinbefore prescribed restricting the annual city levy to sixty cents on each one hundred dollars valuation. The sergeant shall not take or collect anything but money and the legally issued and authorized drafts or vouchers of the city, for the payment of taxes. The sergeant shall perform such other duties as the council may require, and receive such compensation as shall be fixed by the council. (1919 Munl. Char., ch. 3, § 40.)

* Editor's Note.—This section, enacted by the legislature in 1919, appears to be obsolete in many respects, as having been superseded by W. Va. Code, ch. 11A, (§§ 11A-1-1 to 11A-1-18); and W. Va. Const., art. 10, § 2, which authorized levy of a capitation tax, has been repealed. Note, also, that Char., § 4 provides that the treasurer may be sergeant; Montgomery has no city sergeant.

41 Collection of delinquent taxes and assessments for improvements by distraint.*

All goods and chattels belonging to a person, firm, or corporation or estate, assessed with any city taxes, whether the same be a capitation tax, tax upon real or

personal property or an assessment for paving or other improvements, shall be liable for said taxes and may be distrained therefor in whosesoever possession they may be found, and the sergeant shall have the same power to collect said taxes or assessments from any persons owing debts to or having in his possession any estate belonging to a person assessed with any tax or assessment of any kind, that the sheriff has to collect state taxes or enforce the collection thereof. (1919 Munl. Char., ch. 3, § 41.)

* Editor's Note.—W. Va. Const., art. 10, § 2, which authorized levy of a capitation tax, has been repealed.

* Editor's Note.—Char., § 4, provides that the treasurer may be sergeant; Montgomery has no city sergeant.

42 Tax lien imposed on realty.*

There shall be a lien upon all real estate within said city for the city taxes assessed thereon including such penalties and interest added thereto for nonpayment thereof as are prescribed by this act, from the first day of January in which said taxes are assessed. Said liens may be enforced in any court of record in Fayette County by appropriate suit; provided, such suit be entered within five years from the time said liens attached as herein provided, and such suit may either be by and in the name of the city of Montgomery as plaintiff, or said city may intervene by petition in any suit pending to sell or enforce liens against real estate which is subject to such liens for said taxes. The liens herein created shall have priority over all other liens except those for taxes due the state and county. (1919 Munl. Char., ch. 3, § 42.)

* Editor's Note.—This section was enacted by the legislature in 1919; see W. Va. Code, § 11A-1-2, first enacted in 1941, which provides tax lien on realty as of first day of July for the taxes payable for the ensuing fiscal year.

* Editor's Note.—Since enactment of this section in 1919, § 2 of this Charter was amended in 1925 by the addition to the city of an area in Kanawha County.

43 Sale of realty for nonpayment of taxes.*

Said liens for city taxes and attendant penalties as well as for improvements assessments, may also be enforced by the certifying of the same to the clerk of the county court of Fayette County for certification to the state auditor, and the same may be certified down by the state auditor and sold for taxes, interest and penalties and commissions thereon, in the same manner, at the same time, and by the same officer as real estate sold for taxes, interest, damages, cost and commissions due the state thereon, which officer shall account therefor on settlement with the council and pay the same over to the treasurer. (1919 Munl. Char., ch. 3, § 43.)

* Editor's Note.—Since enactment of this section in 1919, Char., § 2 was amended in 1925 so as to include within the city an area lying within Kanawha County.

Article XXVI
Appropriation of Money

44 Ordinance required; when referendum required.

No money shall be appropriated and no debts shall be contracted and no contracts authorized by the city, except by an ordinance passed by the council as specified herein, and no such ordinances shall be passed except where the funds to meet the same shall have first been provided by levy duly made in accordance with this act and its provisions. No contract shall be entered into involving or anticipating further levies, unless all the questions connected with the same shall have been first submitted to the people and shall have received three-fifths of all the votes cast at such election. (1919 Munl. Char., ch. 3, § 44.)

Article XXVII
Streets, Sidewalks and Curbs

45 Assessments for paving and maintenance of sidewalks and curbs; lien created; collection.*

The council shall have the power to establish the width of any sidewalk along any street, alley or public square or portion thereof, and any owner of ground fronting on such street, alley or public square shall, in such manner as the council shall reasonably prescribe, pave and curb the sidewalk adjacent to such property. In case of a failure or refusal of the owner to pave or curb the same, the council may

cause the same to be properly curbed and paved by the city, and levy and collect from such owner the whole cost of such curbing and paving adjacent to such property, with a penalty of five per centum added thereto, together with six per centum interest until paid; and in like manner to require the owner of any property adjacent to any paved sidewalk heretofore or hereafter constructed, to keep the same in repair, and in default of doing so to cause the same to be repaired, and levy and collect the cost from said owner or owners with a penalty of five per centum added thereto together with six per centum interest per annum until paid. In all cases of such assessment, whether for the original or for the repairing of sidewalk, payment thereof, including penalties and interest, shall be made to the sergeant within sixty days after the completion of the work, who shall have the power to collect the same from the owner or owners of any such property by distress and sale, in the same manner in which taxes levied for the benefit of the city are authorized to be collected and, in addition, there shall be a lien upon such real estate, which lien shall be enforced by appropriate suit in any court of record of Fayette County. (1919 Munl. Char., ch. 3, § 45.)

* Editor's Note.—Char., § 4. provides that the treasurer may be sergeant; Montgomery has no city sergeant.

* Editor's Note.—Since enactment of this section in 1919, Char., § 2, was amended in 1925 by the addition to the city of an area within Kanawha County.

46 Procedure for letting contracts for street and alley improvements and assessment of costs against abutting properties; payment and collection of assessments; lien created.*

Whenever the council may deem it expedient to cause any street or alley in said city, or portion thereof, to be paved in a permanent manner, it shall order the work done in the following manner and upon the following terms: The contract for such paving shall, after due advertising, in which the council shall reserve the right to reject any and all bids, be let, if let, to the lowest responsible bidder. The contractor shall look only to the city for the payment for the work and in no sense to the abutting land owner. The total cost of grading and paving such street or alley (except when the streets are occupied by street car tracks, for the distance between the rails and for two additional feet outside of each rail, which portion shall be borne and paid by the company owning and operating such railway and track) shall be borne by the owners of the land abutting upon said street, alley or portion thereof, subject to the following plans, that is to says payment is to be made by all the land owners on either side of such portion of a street or block so paved, in such portion of the total cost less the portion, if any, chargeable to such street railway company, as the frontage in feet of his land bears to the total frontage of all lands so abutting on such street, alley or portion thereof so paved as aforesaid. The cost of such paving chargeable to the abutting property is not to include any portion of the amount paid for paving of any squares at intersections of streets, which shall in all cases be borne and paid by the city. When the paving of any street or alley or portion thereof shall have been let to contract and the work done as hereinbefore provided, it shall be the duty of the city engineer to cause the several frontages abutting thereon to be measured, to calculate the assessment upon each and every land owner so abutting, and to certify the same to the council showing the proper amount to be determined as provided in the foregoing plan. It shall be the duty of the council to examine and compare such assessments, amounts and names so certified to it. Thereupon the council shall give notice by publication for two successive weeks in some newspaper published in said city that an assessment, under this act, is about to be laid against abutting property for paving done on streets or alleys, describing the location of such paving. Any owner or owners of abutting property shall have the right to appear before the said council within three weeks from the first publication thereof, and move such council to correct any apportionment or assessment improperly made; which corrections the said council shall have the power to make. If found to be correct, or when rectified, the council shall cause the same to be entered, together with the description as to the location, frontage, depth and ownership of the

land so far as the same may be ascertained, upon its records, and to enter in its record that such owners and lots be assessed and chargeable with the amount so ascertained to be borne by them respectively. When so approved, certified and entered of record, the same shall be and constitute an assessment against said owners and lots for such respective amounts. It shall be the duty of the council immediately to certify such assessment to the sergeant for collection as hereinbefore provided. A copy of such order shall be certified by order to the clerk of the county court of Fayette County, who shall be required to record and index the same in the proper deed book in the name of each person against whose property assessment appear therein. The amount so assessed against any land owner, as aforesaid, shall be paid in seven payments, as follows, that is to say: one-fourth of said amount shall be paid to the sergeant when said work is completed, certified and entered of record as aforesaid, and the other three-fourths shall be paid in equal semi-annual payments with six per cent interest thereon until paid, the first of which shall be due and payable six months from date first payment is due, and so on, every six months until the full amount of assessment, with penalties and interest is paid the purpose to require the payment regularly until the entire amount is paid; provided, however, that the abutting land owner so liable for any costs of such paving shall have the right at any time after the same is certified as aforesaid to the sergeant for correction, to anticipate the payment of either installment, to each of said installments of assessments remaining unpaid in the sergeants hands at the time specified for such payment, a penalty of four percent shall be added and the payment thereof enforced in all respects as hereinbefore provided for the collection of any other taxes due the city, and such shall be a lien upon the property liable therefor, the same as for other taxes, and the lien may be enforced in the same manner as provided for other taxes. The liens hereinbefore provided for shall have priority over all other liens except those due the state and county for taxes, and shall be on parity with other taxes and assessments due the city. Upon the payment of any assessment to the sergeant he shall deliver to the party paying the same a release of the lien therefor, which may be recorded in the office of the clerk of the county court as other releases for liens. Should such assessment not be in the hands of the sergeant, if the same shall have been shown to the satisfaction of the council to have been paid in full to any officer entitled to receive the same as designated by it, the council may direct the sergeant to execute a release of such liens, which release may in like manner be recorded. (1919 Munl. Char., ch. 3, § 46.)

* Editor's Note.—Since enactment of this section in 1919, Char., § 2, has been amended in 1925 so as to include within the city an area in Kanawha County.

* Editor's Note.—Char., § 4, provides that the treasurer may be sergeant; Montgomery has no city sergeant.

* Editor's Note.—Char., § 4, provides that the treasurer may be sergeant; Montgomery has no city sergeant.

46.1 Authority and procedure for closing unused roads, streets and travel ways; notice and hearing; circuit court review.

The city council, upon the verified application of any landowner whose land abuts on any unused road, street, or other travel way designated on any map or plat of a subdivision of land or otherwise within such city is authorized to close and vacate any part or all of any such unused road, street or other designated travel way by order entered of record after hearing as hereinafter provided. Before acting to close and vacate any such road, street or travel way, the city council shall consider the application and fix a time and place for hearing on such application. Such hearing shall be held not less than fifteen days after the hearing date and place have been so fixed. The applicant shall cause notice of the time and place of such hearing and the purpose thereof to be published as a Class I legal advertisement in compliance with the provisions of section 59-3-1 of the West Virginia Code, and the publication area for such publication shall be the city. The notice shall be published at least fifteen days before such hearing, in the manner provided by law for the service of notices and process, a notice showing the time, place and purpose of such hearing, upon every owner of property, and every person holding a lien thereon, abutting on such unused road, street or other travel way. The affidavit

of publication of such notice shall be filed with the city council at or before the hearing as a part of the record in the proceedings.

At the time and place fixed for the hearing, the city council shall hear any evidence relating to the use and rights or claims in or to any such road, street, or other designated travel way sought to be closed and vacated. If the city council concludes and finds upon the record and evidence of the proceedings that the use and rights of no person or persons in such road, street, or other travel way will be impaired or lost by the closing and vacation thereof, and the council further concludes and finds that the closing is for a public use and not a private use, the city council shall proceed to enter an order closing and vacating such road, street or other travel way and shall cause a copy of the order to be recorded and certified for entry of record in the appropriate office of the clerk of the county commission. The applicant shall pay the recording costs thereon.

Any person aggrieved by the action of the city council in any such case may seek review thereof in the circuit court of the county. (1-16-96; 5-13-96.)

Article XXVIII
Sewers*

* Editor's Note.—Since enactment of this section in 1919, the legislature has made provisions for sanitary boards and sanitary districts, and this section should be read and construed with the provisions of W. Va. Code, § 16-13-1 et seq., and the sections cited in the case annotation under W. Va. Code, § 16-13-2.

47 Procedure for construction, and assessment of costs against benefitted properties; payment and collection of assessments; required connection to sewers; lien created; enforcement provisions.*

Whenever the council shall order the construction of any public sewer in said city the owners of the property abutting upon any street, in which said sewer shall be constructed, shall be charged with and liable for sewerage assessments as follows: when said sewer is completed the city engineer shall report to the council in writing the total cost of such sewerage, with a description of the lot and land, as to the location, frontage, depth and ownership, liable for such sewerage assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, estimated on the basis of cost, frontage measures on said sewer being considered, and thereupon said council shall give notice by publication in a newspaper of general circulation, published in said city, as is required in the case of street paving assessment, and the same right shall exist as to the persons and property affected, and the same duty as to correction by the council as are prescribed with reference to paving, which report shall, in like manner, be examined by the council, and if found to be correct, or corrected as aforesaid, and such estimated assessments to be a fair and equitable apportionment of the costs of said sewer, it shall enter an order upon its records setting forth such location, depth, ownership, and said amount of said sewer assessment against each property respectively, calculated as aforesaid, and the entry of such order shall constitute and be an assessment for such proportion and amount so fixed therein, against such respective owners and lots. If after such advertisement, notice and hearing said council shall find that such apportionment at such rate is unjust or inequitable, it shall ascertain, fix and assess the cost thereof among and upon the abutting owners respectively, fairly and equitably and in the like manner assess and enter the amount so fixed, respectively, upon its records, and the council shall in either event thereupon certify the same to the sergeant for correction, and certify a copy of such order to the clerk of the county court of Fayette County, who shall record the same in the proper deed book, and index the same in the name of the owner of any such lot so charged with such assessment. Such assessment so made shall constitute and be a lien upon said lots respectively, which shall have priority over all other liens except those for taxes due the state and county, and shall be on a parity with other taxes and assessments due the city. Said amounts so assessed against said several land owners shall be paid by the parties liable therefor to the said sergeant at the time, in the manner and with the attendant penalties and interest, for failure to pay

promptly at the time prescribed in all respects as hereinbefore provided in the case of assessment for paving of streets and alleys in a permanent manner; and the parties liable therefor in the same manner and to the same extent shall have the right and be entitled to anticipate any or all such installments. The owner or owners of any lot abutting upon any street or alley in said city on which a public sewer is or may hereafter be laid and constructed upon which any business or residence building is or may hereafter be erected, not otherwise connected to the public sewer, may be required and compelled by council to connect any such property with such sewer. Notice to so connect may be given by the council to the owner, lessee or occupant of such property. Each day's failure to comply with such notice and to connect with such sewer by such owner or owners, after ten days have elapsed after such notice has been given, shall be a misdemeanor and a separate offense and new offense under this section, and each offense shall be punishable by a fine of not less than five nor more than twenty-five dollars. Jurisdiction to hear, try and determine and sentence for violation of this section is vested in the police court of said city. If said owner or owners fail to comply with the notice to make such sewer connection, then the council may by ordinance order the work to be done at the expense of the city and the cost thereof to be certified to the clerk of the county court, and the same shall constitute a lien upon said property with the same force and effect as taxes. (1919 Munl. Char., ch. 3, § 47.)

* Editor's Note.—Since enactment of this section in 1919, Char., § 2, has been amended in 1925 so as to include within the city an area lying within Kanawha County.

* Editor's Note.—Char., § 4, provides that the treasurer may be sergeant; Montgomery has no city sergeant.

48 Effect of liens for street paving and sewerage assessments in articles XXVII and XXVIII.

The liens herein and hereinbefore provided for street paving and sewerage assessments shall constitute liens upon real estate upon which they are assessed, as against creditors of the owners thereof or purchasers for value from, and without actual notice of such lien, only from and after the time that the statement thereof, certified as aforesaid, shall be filed for record in the office of the clerk of the county of Fayette County. (1919 Munl. Char., ch. 3, § 48.)

49 Recording of certain liens created by articles XXVII and XXVIII, and duty of fiscal officers of political entities and institutions, etc., affected thereby.*

When the whole or any portion of the improvement authorized by this act pass through or by a market space, park, cemetery, structure for the fire department, waterworks, school building, infirmary, market house, work house, hospital, house of refuge, bridge, gas works, public prison, court house, church, or any other public structure, or public ground within said city, and belonging to said city, or to the county, state or any church, association or eleemosynary institution, the council may authorize the assessment to be certified to the clerk of the county court of Fayette County and the same shall thereupon be recorded by said clerk in the proper deed book and shall thereupon become a lien against said property and collectable as other assessments are collected against individuals under this act. It shall be the duty of those persons having charge of the fiscal affairs of any such property or institution to make the proper arrangements for meeting such assessments, when due and payable. (1919 Munl. Char., ch. 3, § 49.)

* Editor's Note.—Since enactment of this section in 1919, Char., § 2, has been amended in 1925 so as to add to city a certain area lying within Kanawha County.

50 Authority of city to borrow money on security of street paving and sewer liens; limitation on expenditure of borrowed money.

The city of Montgomery, by ordinance of the council, may borrow money in an amount equal to the amount of said liens herein acquired, for the purpose of paying any contract for paving or sewerage under this act, and may assign said liens as security for such loan or loans; but in no event shall the money so borrowed be expended for any other pur-

pose than in the payment of the indebtedness owing by the city for such work, that is, liens for the street paving can only be used by the city in borrowing money to pay for street paving, and liens for sewerage can only be used by the city in borrowing money to pay for sewerage. (1919 Munl., Char., ch. 3, § 50.)

Article XXIX
Bonded Indebtedness

51 Limited authority of city to issue bonds and incur debt secured by bonds.

The council of said city shall have the right to bond the said city for the purpose of paving the streets and alleys of said city and for constructing water works or repairing the same, and for constructing a sewerage system, or repairing the same, and for the purpose of providing hose and other appliances for extinguishing fires, and for any and all public improvements whenever the council thereof shall deem such improvement necessary, and to refund outstanding bonds at a lower rate of interest, and to issue new bonds for the purpose of increasing the length of time on any such indebtedness; but the aggregate indebtedness of said city shall for all purposes not exceed five per centum on the assessed valuation of the taxable property therein, based on the valuation of the last assessment next preceding the date of the incurring of such indebtedness; and the said council shall lay a levy sufficiently high on the taxable property of said city to provide a fund for the payment of the interest on and a sinking fund for the discharge of the principal of any and all indebtedness incurred in the manner aforesaid within the period of thirty-four years. Such bonds shall not be sold for less than par nor issued to refund outstanding bonds of said city except dollar for dollar. A record of all the proceedings had hereunder shall be kept by the council. (1919 Munl. Char., ch. 3, § 51.)

Article XXX
Public Buildings and Hospitals

52 Authority of council to procure and regulate, and to sell and lease.

The council shall have the authority to erect, buy, sell and lease all buildings necessary to the use of the city government, or any of its departments, and to provide for and regulate the same; to establish and maintain public hospitals and receive donations, gifts or bequest for the same, in trust or otherwise. (1919 Munl. Char., ch. 3, § 52.)

Article XXXI
Public Health

53 General authority of council, including abatement of nuisances, etc.

The council shall have the authority to ordain and enforce such regulations within said city as shall be necessary or proper to preserve the health of the inhabitants of said city and to secure them from disease; to require and compel the abatement of and removal of all nuisances within said city at the expense of the person or persons causing the same, or of the owner or owners of the ground whereon the same shall be; to prevent or regulate slaughter houses within the said city; or the exercise of any unhealthy or offensive business, trade or employment therein; to prevent the keeping of any stale meats, fish, vegetables, or other matter, or depositing the same, or dirt, rubbish or offal, upon any lot, street, alley or square within said city or upon the banks of any streams within the limits thereof. (1919 Munl. Char., ch. 3, § 53.)

54 Power of council to regulate sale of certain drugs and to revoke license of violators.

The council shall have the power by ordinance to regulate the sale of cocaine, morphine, opium and poisonous drugs within said city, and to prescribe punishment including fine and imprisonment, for the violation of any such ordinance, and to provide that one or more convictions for violations of same shall

operate as a revocation of the license of any druggist or pharmacist holding a license under said city. (1919 Munl. Char., ch. 3, § 54.)

55 Health commissioner; board of health; nuisances.*

The council shall, in the month of February, 1920, and in said month of every year thereafter, appoint a suitable person, who shall be a practicing physician, as health commissioner, whose term of office shall be for one year and until his successor is appointed and qualified. The members of the council, mayor and health commissioner shall comprise the board of health of said city. The board of health shall have the power to abate all nuisances within said city, and it shall do and perform all such other duties and exercise such other powers as may be required of or conferred upon them by legal ordinances of said city. The council of said city shall provide by ordinances the way and method of trying and abating such nuisances, and shall prescribe all penalties that may be proper and necessary for such purpose. The board of health shall have the power to summon witnesses, hear testimony and to do any other things necessary and proper in the performance of such duties under this act and under the general laws of the state, in such cases made and provided. (1919 Munl. Char., ch. 3, § 55.)

* Editor's Note.—Since enactment of this section in 1919, this Charter has been amended in 1969 by the addition of § 11a, which now provides for election of mayor and council in the month of June of each leap year, and officers take office on the 1st day of July following.

Article XXXII
Police Department

56 Qualifications, appointment, suspension and removal of chief of police and policemen.

The mayor shall nominate a chief of police and such number of policemen as may be authorized by ordinance, from time to time, said nominations to be subject to confirmation by the council. Council shall prescribe by ordinance such mental and physical examinations for applicants for appointment to the police force as it shall deem proper. Policemen, when nominated and confirmed by the council shall hold office during the will of the council. The term of chief of police shall be for one year. No person shall serve or exercise any of the duties of a police officer until he shall have been confirmed as such by the affirmative vote of a majority of all the members elected to the council, unless he has been appointed a special officer as hereinbefore provided for. Policemen may be removed and discharged at any time by the mayor for good cause, in which event he shall report such suspension, together with the reason therefor, to the council at its next meeting. The council shall consider such suspension and may veto such suspension and may reinstate such policemen or confirm the suspension for such period as they may fix, that the council shall have the power to suspend without pay the chief of police or any policeman against whom charges are preferred. (1919 Munl. Char., ch. 3, § 56.)

Article XXXIII
Fire Department

57 Regulation by council.

The fire department shall be under the supervision and subject to the rules and regulations prescribed by the council. (1919 Munl. Char., ch. 3, § 57.)

Article XXXIV
Savings Provisions

58 As to incumbent officers, and ordinances passed on or before Jan 15, 1919.*

All officers of the city of Montgomery heretofore elected by vote of the people shall remain in and hold their offices and discharge the duties thereof until the first day of February, 1920, and thereafter until their successors have been elected and qualified.

All valid ordinances and regulations passed and adopted by the council on or before January 15, 1919, and not consistent with this act, shall be and remain in full force, unless and until repealed,* and the council now in office shall continue to exercise its powers as such until their successors are

elected and qualified. (1919 Munl. Char., ch. 3, § 58.)

* Editor's Note.—In 1947 a city code of ordinances was adopted, and all ordinances of a general and permanent nature not contained therein were repealed as of Apr. 1, 1947.

59 Repealer.

All acts in conflict or inconsistent with this act are to the extent of any such conflict hereby repealed. (1919 Munl. Char., ch. 3, § 59.)

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, ss:

I, **JAMES F. HIGGINS, JR.**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Mayor of the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

JAMES F. HIGGINS, JR.

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, ss:

I, **GREG INGRAM**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Recorder for the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

GREG INGRAM

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, ss:

I, **LES THOMAS**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman for the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

Les Thomas

LES THOMAS

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

John W. Hatcher, Jr.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, SS:

I, **FRED LOCKARD**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman for the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

Fred Lockard

FRED LOCKARD

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

John W. Hatcher, Jr.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, ss:

I, **PAMELA KINCAID LOPEZ**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilwoman for the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

PAMELA KINCAID LOPEZ

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, ss:

I, **TERRANCE HAMM**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman for the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

TERRANCE HAMM

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

OFFICIAL OATH OF OFFICE

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, ss:

I, **DAVID WHITE**, do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Councilman for the City of Montgomery, in and for the County of Fayette, West Virginia, to the best of my skill and judgment: **SO HELP ME GOD.**

DAVID WHITE

Subscribed and sworn to before me in Fayette County, West Virginia, on Monday, the 30th day of June, 2008.

JOHN W. HATCHER, JR.
JUDGE
FAYETTE COUNTY CIRCUIT COURT

Sec. 23-18. Delayed payment penalty.

The rates established by this article are net. On all accounts not paid in full within ten days of date of bill, ten percent will be added to the net amount shown. (9-8-70, § 1; 10-9-73, § 1.)

Article III. Sanitary Board.[5]

Sec. 23-19. Created; powers and duties; composition; appointment and term of members.[6]

There is hereby created in and for the city a sanitary board, which shall be charged with the custody, supervision, control, administration, operation and maintenance of the municipal sewage system, all as permitted and provided by article 13 of chapter 16 of the Code of West Virginia. The sanitary board shall be composed of the mayor and two persons appointed by the city council, one of whom shall be a registered professional engineer; provided, that when no city sewer is under construction a registered professional engineer need not be a member of the board. The two appointed members of the board shall each serve for a term of three years and until his successor is duly appointed and has qualified,[7] and vacancies shall be filled for the unexpired term only. (12-11-62, § 1.)

---

5. For state law as to municipal sanitary boards, see W. Va. Code, § 16-13-2 et seq.
6. For state law basis of this section, see W. Va. Code, § 16-13-18.
7. Editor's note.--Upon passage of the ordinance section here codified, December 11, 1962, a registered professional engineer was appointed for two years and another person was appointed for three years. Thus, one vacancy will occur in December of 1973 and every three years thereafter, and one vacancy will occur in December of 1974 and every three years thereafter.

Sec. 23-20. Officers and their bonds; organizational meetings; compensation.

The mayor shall be chairman of the sanitary board, and upon organization of the board immediately following the appointment of each new member the board shall elect a vice chairman and also designate a secretary and treasurer (who may be separate persons or one and the same); and the city council hereby reserves the right and privilege from time to time by ordinance to fix the compensation of the members of the sanitary board and the secretary and treasurer thereof, and also to require and fix the amount of bonds which any or all of such officers may be required to furnish. (12-11-62, § 2.)

City Council met in regular session Tuesday, Dec. 11-1962. Present--Mayor Carson, Recorder, Councilmen Crane, Carter, Ware, Riccardi and Craffey.

Minutes of previous meeting were adopted as read.
Treasurer submitted financial report for month of November.

Mike Jacobs appeared before Council, protesting the condition of the side-walk in front of the Clyde Gray property on Early Street. Matter was turned over to the Street Committee for report.

Motion by Ware, seconded by Crane that application for permit by Lewis Worlledge to build building for West Virginia Inst. of Technology be approved. Motion carried.

Patrolman Herbert Grant appeared before Council in behalf of the members of the city police department, in an effort to have the members of the city police department put under Civil Service. This matter was referred to the Finance Committee.

Motion by Crane, seconded by Riccardi that reference to committee be dispensed with in the matter of setting up a Sanitary Board in the City of Montgomery. Motion carried.

Motion by Ware, seconded by Carter that the Council adopt the ordinance covering Sanitary Board for the City of Montgomery. Motion carried.

Motion by Ware, seconded by Craffey that Montgomery Volunteer Department be permitted to solicit door to door donations and also car-stop at the bridge in order to secure funds to furnish Christmas baskets for the needy. Motion carried.

Motion by Craffey, seconded by Carter that Robert A. Blake be appointed a member of the City Planning Commission. Motion carried.
James Dempsey was hired as an employee of the Fire Department on a temporary basis.
No other business appeared before Council and meeting adjourned.

J. M. Carson
Mayor

Mike Knabel
Recorder

PETITION OF THE SANITARY BOARD
OF THE CITY OF MONTGOMERY,
WEST VIRGINIA

TO THE COUNCIL OF THE CITY OF MONTGOMERY, WEST VIRGINIA

Pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), the Sanitary Board (the "Sanitary Board") of the City of Montgomery, West Virginia (the "City"), hereby petitions the Council to enact an ordinance which shall:

(a) set forth a brief and general description of the plan for additions, improvements and betterments to the sewer system of the City to be prepared and filed by Terradon Corporation;

(b) set forth the loan amount needed to pay the costs of said additions, improvements and betterments, which is estimated to be $309,000;

(c) order completion of the additions, improvements and betterments to the sewer system of the City;

(d) direct that the City's sewer revenue bond be issued pursuant to the Act, in the aggregate amount of $309,000 to pay the costs of said additions, improvements and betterments and direct that said revenue bond be issued at the earliest possible date pursuant to the Act;

(e) contain such other provisions as may be necessary in the premises to implement the project.

This Petition was duly authorized at a meeting of the Sanitary Board duly called and held on the 12TH day of May, 2009.

WITNESS our signatures on this 12th day of May, 2009.

THE SANITARY BOARD OF THE CITY
OF MONTGOMERY, WEST VIRGINIA

By: _____

By: _____

By: _____

AMENDMENT TO MONGOMERY CITY CODE
ARTICLE II, SECTION 23-15A

Sec.23-15a – Rate

Rate. Nine Dollars and twenty-seven cents per one thousand gallons used per month with an effective date of May 1, 2009.

Adopted by the City Council of the City of Montgomery, West Virginia after the first reading on July 8, 2008 and the second reading on August 12, 2008 by a vote of 6 in the affirming, and 0 in the negative and 0 abstentions.

James F. Higgins, Jr., Mayor

Attest:

Greg Ingram, Recorder

AMENDMENT TO MONTGOMERY CITY CODE
ARTICLE II, SECTION 23-15B

Sec 23-15b – minimum charge – The above schedule is subject to a minimum monthly charge based on the meter in use as follow:

Rate Increase with an effective date of May 1, 2009.

5/8 inch meter.....$9.27
¾ inch meter.....$13.91
1 inch meter.....$23.18
1 ½ inch meter.....$46.35
2 inch meter.....$74.16
3 inch meter.....$139.05
4 inch meter.....$231.75

Adopted by the City Council of the City of Montgomery, West Virginia, after the first reading on July 8, 2008 and the second reading on August 12, 2008 by a vote of 6 in the affirming and 0 in the negative with 0 abstentions.

James F. Higgins, Jr.

Attest:

Greg Ingram, Recorder

P.S.C. W. Va. No. 11
Canceling P.S.C. W. Va. No. 10

CITY OF MONTGOMERY, a municipal utility

OF

MONTGOMERY, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING

SEWERAGE AND SEWAGE DISPOSAL SERVICE

at Montgomery. Fayette and Kanawha Counties, West Virginia

Filed with THE PUBLIC SERVICE COMMISSION
of
WEST VIRGINIA

RECEIVED
2008 OCT 10 AM 11 18
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

Issued October 7, 2008

Effective for service rendered on or after May 1, 2009
or as otherwise provided herein

Adopted by City Council

Issued by THE CITY OF MONTGOMERY, a municipal corporation

By J. Higgins Jr
Mayor
Title

RULES AND REGULATIONS

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

APPLICABILITY

Applicable inside the City of Montgomery

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

RATES

(O) **FOR ALL SERVICE RENDERED FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007**

FOR ALL SERVICE ON AND AFTER OCTOBER 1, 2007

$8.22

For all customers with metered water supply a rate of $8.22 per 1,000 gallons used, shall be charged.

(N) **FOR ALL SERVICE ON AND AFTER MAY 1, 2009**

$9.27

For all customers with metered water supply a rate of $9.27 per 1,000 gallons used, shall be charged.

(O) Indicates omission
(N) Indicates new

MINIMUM CHARGE

(O) **FOR ALL SERVICE RENDERED FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007**

FOR ALL SERVICE ON AND AFTER OCTOBER 1, 2007

No monthly bill will be rendered for less that $8.22.

The above schedule is subject to a minimum monthly charge based on the meter in use as follows:

5/8 inch meter	$ 8.22 per month
3/4 inch meter	$ 12.33 per month
1 inch meter	$ 20.55 per month
1 - 1/2 inch meter	$ 41.10 per month
2 inch meter	$ 65.76 per month
3 inch meter	$123.20 per month
4 inch meter	$205..50 per month

(N) **FOR ALL SERVICE ON AND AFTER MAY 1, 2009**

(I) No monthly bill will be rendered for less that $9.27.

The above schedule is subject to a minimum monthly charge based on the meter in use as follows:

5/8 inch meter	$ 9.27 per month
3/4 inch meter	$ 13.91 per month
1 inch meter	$ 23.18 per month
1 - 1/2 inch meter	$ 46.35 per month
2 inch meter	$ 74.16 per month
3 inch meter	$139.05 per month
4 inch meter	$231.75 per month

(O) Indicates omission
(N) Indicates new
(I) Indicates increase

SEWER CONNECTION FEE (Tap Fee)

The fee for a sewer tap permit and inspection for residential or commercial service shall be two hundred fifty dollars and for an inspection only the fee shall be fifty dollars; and the fee for a sewer tap permit and inspection for industrial service shall be three hundred dollars and for an inspection only the fee shall be fifty dollars; provided, that where any owner, or his predecessors in title, of property consisting of two or more lots has extended the required sanitary sewer lines into a subdivision in accordance with the prior written approval of, and inspection by, the superintendent, acting for and in behalf of the city, and without cost or expense to the city, the tap or connection fee shall be two hundred fifty dollars for the connection of the subdivision sewer main to the public sewer main, and, in addition, a sewer permit shall be obtained for each lot in such subdivision as and when sewer taps or connections to serve such lots are made. The fee for each such additional tap or connection shall be two hundred fifty dollars for the tap and inspection or fifty dollars for an inspection only.

MONTHLY RATES FOR PROPERTIES SUPPLIED WITH WATER OTHERWISE THAN THROUGH METERS OF WATER COMPANY

In the event a building or premises discharging sewage, wastes or other liquid wastes into the municipal sanitary sewage system uses water supplied on other than a metered basis from the West Virginia Water Company or from any other source of water supply the owner or occupant may be required to cause a water meter or other measuring device to be installed, but pending such installation the sewer service rates and charges to such building or premises shall be at least equivalent to the average sewer bill based on the above rates and charges of similar buildings or premises with similar occupancy which are served by the West Virginia Water Company.

WHEN SPECIAL RATES MAY BE FIXED BY CITY

In the event the sewage, water or other liquid being discharged into the sanitary sewers from any building or premises is determined by the city to contain unduly high concentrations of any substances which add to the operating costs of the sewage system of the city, then the city may establish special rates or charges as to such class of buildings or premises, or the city may require the owner or other interested party to specially treat such sewage, water or other liquid wastes before it is discharged into the municipal sanitary sewage system.

DELAYED PAYMENT PENALTY.

The above schedule is net. On all accounts not paid in full ,within ten (10) days of the date of bill, ten percent (10%) of the net current charges (less prior credit) will be added to the net amount shown. This delayed penalty is not interest and is only to be collected for each bill where it is appropriate.

WATER DISCONNECT - RECONNECT FEES

Whenever water service has been disconnected for non-payment of sewer bills, a disconnection fee of $20.00 shall be charged.

Whenever water service which has been previously disconnected or otherwise withheld for non-payment of sewer bills is reconnected, a fee of $20.00 shall be charged.

DEPOSIT FEE

There will be a deposit fee of $50.00 for each new customer of the city of Montgomery Sewer System. The City shall not be bound to supply sewer service until the above condition is fulfilled. After the customer has paid for sewer service for twelve consecutive months, the Utility board shall promptly and automatically refund the deposit plus accrued interest. Calculation of the twelve months period shall commence from the first regular payment or following the payment of a past due bill or bill. Interest shall be paid from the date of the deposit until refund date.

Charleston Newspapers

P.O. BOX 2993
Charleston, WV 25330
Billing 348-4918
Classified 348-4848
1-800-WVA-NEWS

[redacted]

[redacted]	08/08/08
[redacted]	003195102
[redacted]	0022
[redacted]	525645001

BILL TO:

MONTGOMERY SANITARY BOARD
706 THIRD AVENUE
MONTGOMERY WV 25136 USA

Please return this portion with your payment.
Make checks payable to. Charleston Newspapers

AMOUNT PAID: _____

[redacted]	08/08/08
[redacted]	003195102
[redacted]	0022
[redacted]	525645001

Legal pricing is based upon 63 words per column inch.
Each successive insertion is discounted by 25% of the first insertion date.
The Daily Mail rate is $.13 per word, the Charleston Gazette rate is $.14 per word, and the Metro Putnam rate is $.13 per word.

END DATE	AD TYPE	PUB	DESCRIPTION / REFERENCE NBR / PURCHASE ORDER #	AD NUMBER	AD SIZE / TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
07/31	LEGF	GZ	Pre-Adoption Notice- 525645001	0349572	1X0325 3.25	8.82	28.67	28.67
08/07	LEGR	GZ	Pre-Adoption Notice- 525645002		1X0325 3.25	8.82	28.67	
			LEGAL DISCOUNT 25%				7.17-	21.50
			TOTAL INVOICE AMOUNT					50.17

State of West Virginia,

I, _____ of

THE CHARLESTON GAZETTE,

do solemnly swear that the legal notice of:

Pre-Adoption Notice- Sew

was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below.

07/31/08-08/07/08

Subscribed and sworn to before me this _____ day of _____.

_____

Notary Public of Kanawha County, West Virginia

(352340)

PRE-ADOPTION NOTICE CITY OF MONTGOMERY

Notice is hereby given that the City of Montgomery, a municipal corporation, will hold a hearing before the final vote on a proposed ordinance, the principal object of which is the increase of sewer rates for customers of the sewer system operated by the City of Montgomery. The hearing will begin at 7:00 p.m. on Tuesday, August 12, 2008. The title of such ordinance is 'An ordinance to Increase Sewer Rates.' The final vote on adoption of said proposed ordinance shall be held in the Council Chambers of the City of Montgomery, City Hall, 706 Third Avenue, Montgomery, West Virginia on Tuesday, August 12, 2008 at 7:30 p.m. Interested parties may appear and be heard at such time with respect to the passage of the proposed ordinance are available at the office of the Clerk, City Hall, in Montgomery.

(349572)

MINUTES
MONTGOMERY CITY COUNCIL
August 12, 2008

The Montgomery City Council was called to order at 7:30 p.m. by Mayor James F. Higgins, Jr. and Recorder Greg Ingram kept the minutes.

ROLL CALL

Present:	Mayor James F. Higgins, Jr. Recorder Greg Ingram Council – Terrance Hamm, Fred Lockard, Pamela Lopez, Les Thomas, David White
Also Present:	City Attorney Brian Parsons
Absent:	None

MINUTES OF PREVIOUS MEEETING

Motion by Lockard and seconded by Thomas to accept the minutes of the previous meeting. Motion carried.

TREASURER'S REPORT

Checking - $58,641.24
Money market – $61,006.87
Investment Pool - $151,622.58
Total - $271,270.69
Motion by Lopez and seconded by White to accept the treasurer's report. Motion carried.

FINANCE COMMITTEE REPORT

Motion by Lockard and seconded by Thomas to pay the bills. Motion carried.

CALL ON COUNCIL

Recorder Ingram informed the Council of "Power of Ten" Summit to be held in Fayetteville on September 8 – 10.

CALL ON PUBLIC

Debbie Thomas appeared before the Council to ask for the resignation of Nancy Thomas as Park Board President due to confrontation at the Montgomery Swimming Pool. Debbie has filed complaint with the Montgomery Police Department. City Attorney Parsons advised that there will be no action until hearing of due process, which he explained to everyone. Court date set for third Thursday in August.

Libby Evans brought the following concerns before Council:
-have drains been cleaned (investigation ongoing)
-loose catch basin lid (Lockard will look at it)
-apartment building and Brockman property – can we condemn (Mayor looking into this)
-Becky Grey at Morris Drive says she floods when it rains (Lockard advised that DNR Engineers are investigating)
-can business owners get right to vote in City Election (Mayor advised NO)

-People entering homes – can we get foot patrol (Mayor advised we use them when we can)
-Who does Park Board answer to? (Mayor advised that they are their own entity)
-High grass on property by pool
-Can we have City cleanup (Mayor advised if we can work with landfill)
-Committee Appointments

Councilman White advised that to get rid of latex paint – let it dry.

OLD BUSINESS AND ACTION THEREON

A. Speed Bumps

Motion by Lockard and seconded by Hamm to install two speed bumps on Fourth Avenue and by the pool and to erect signs advising public of speed bumps. Motion carried.

B. Sealed Bids – Lumina, Chevy S-10, Baler

Mayor Higgins opened two bids on the 1987 Chev S-10 Pickup:

1. Carlos Roles - $316.00
2. Josh Davis - $210.00

Motion by Lockard and seconded by Thomas to accept the bids of $316.00 from Carlos Roles. Motion carried.

Mayor Higgins opened one bid for the 1999 Chev Lumina:

1. Michael Roles - $123.00

Motion by Hamm and seconded by Lopez to reject the only bid received. Motion carried.

C. Second Reading – Sewer Rates

Motion by Hamm and seconded by White to adopt the new sewer rate ordinance. Motion carried. Motion by Hamm and seconded by Lopez to amend the minutes of the July 2008 meeting to reflect the effective date of the increase as May 1, 2009 instead of January 2009. Motion carried.

D. Chimney

This item was tabled.

NEW BUSINESS AND ACTION THEREON

A. Incinerator Fees

Motion by Lockard and seconded by Hamm to reduce the incinerator fee for the six businesses which only have one pickup per week with just a bag or two of trash from $43.75 to $25.00 per month. Motion carried. Mayor advised that other may make request for reduced fee, but it will be base on volume of trash.

B. Board of Risk Insurance (liability) – One Time Claims Made Premium

After some discussion regarding the premiums and deductibles of the St. Paul police and the Board of Risk police – it was decided that although the Board of Risk policy is $10,000.00 more annually, it would be beneficial to switch to the Board of Risk due to the fact that the Law Enforcement deductible on the St. Paul policy is $25,000.00 and the deductible on the Board of Risk policy is $2,500.00. Various deductibles were lower on the Board of Risk policy. Motion by Thomas and seconded by White to change our liability insurance carrier to the State Board of Risk.

C. **Council Salaries 2012 – First Reading**
Motion by White and seconded by Lockard to accept the first reading of this ordinance to change the salaries of the Council effective July 1, 2012 to $175.00 per month and the salary for recorder to $425.00 per month. Motion carried.

D. **Community Participation Grant – Paving Resolution**
Motion by Lockard and seconded by Lopez to adopt this resolution in which the City will apply for $25,000.00 in grant funds and will provide a 10% match if awarded the grant. Motion carried.

E. **Confirm Patrolman Dallas Duncan and Patrolman David Adams**
Motion by Lockard and seconded by White to confirm Patrolman Dallas Duncan as a patrolman effective July 15, 2008 at $10.95 per hour. Motion carried.

Motion by Lockard and seconded by White to confirm Patrolman David Adams as a patrolman effective August 11, 2008. Lockard asked about his use of the K-9. Hamm requested that the Council be able to meet the officers. Motion carried.

F. **Janitor Salary**
Motion by Thomas and seconded by Lockard to approve Jodi Miller as janitor with a salary of $200.00 per month – approximately 8 hours per week. Motion carried.

G. **Welcome Back Tech Party**
Motion by Lockard and seconded by White authorizing expenses up to $1,200.00 for the Welcome Back Tech Party on August 27, 2008. Lu Shepherd will DJ and City will provide soda a pizza. Motion carried.

BEAUTIFICATION REPORT
Jane Ann Kennedy – would like to plan some activities – open to suggestions

PARK BOARD REPORT
-Debbie Thomas asked if pool could be repaired and painted. There was some discussion regarding replacing the pool or repairing pool.
-Hamm asked if the concessions could be bid out for the full summer.
-Recorder Ingram reported getting ready for delivery of Phase II of the playground project – having snow cones every other Friday at the pool – having Energy Express light meals at the pool for kids – will be looking into pool recreation option such as refurbish? Replace? Or Hybrid of above – Bass Tournament set for September 27, 2008 and will be requesting to block of section of front street.

CALL ON COUNCIL
Lockard - need arrows on new pavement in front of Brown Chevrolet – is insurance removed from bid vehicles– problem under bridge, dirt washing out, will be cleaned
Hamm – incident with Tech students last year, can we have meet and greet with Tech Students and Police Officers during the Welcome Back Tech party
Lopez – Beautification Committee did a great job on the park
Thomas – told Tom and Debbie Thomas he will cut grass for the remainder of this summers and if they have any more problems just give him a call – sorry for the trouble

White – absenteeism of Council Policy (Mayor advised that by Charter we cannot dock council pay for absenteeism – Council could pass just cause rules.

ADJOURNMENT

Motion by Lopez and seconded by Thomas to adjourn at 9:15 p.m. Motion carried.

James F. Higgins, Jr. – Mayor

Greg Ingram - Recorder

MINUTES
MONTGOMERY CITY COUNCIL
PUBLIC HEARING
August 12, 2008

Mayor Higgins called to order the Public Hearing at 7:03 p.m. in the City Hall Complex and Recorder Greg Ingram kept the minutes.

Present:	Mayor James F. Higgins, Jr. – Recorder Greg Ingram Council – Pamela Lopez, David White
Others Present:	Jim Downey, W. D. Smith, Annjeanette Vealey, David Thomas Larry Tucker, Teri Lewis, Terri Kiser

Mayor Higgins opened the floor for public comments on the proposed sewer rate increase.

There were no comments.

Hearing adjourned at 7:25 pm.

James F. Higgins, Jr. – Mayor

Greg Ingram - Recorder

AFFIDAVIT OF PUBLICATION

BECKLEY NEWSPAPERS

BECKLEY, WEST VIRGINIA 25801

)09

COPY OF PUBLICATION

you hereby notified that at meetings of the City Council (the "Council") of the City of Montgomery, West Virginia (the "City"), held on the 12th day of May, and to be held on the 9th day of June, 2009, the Council passed and enacted on first reading, and plans to consider on second reading, an Ordinance entitled "Ordinance Authorizing the Acquisition and Construction of Additions, Betterments and Improvements to the Sewer System of the City of Montgomery and the Financing of the Cost, Not Otherwise Provided, Thereof Through the Issuance by the City of Not More Than $309,000 in Aggregate Principal Amount of Sewer Revenue Bond, Series 2009; Providing for the Rights and Remedies of and Security for the Registered Owners of Such Bond; Authorizing Execution and Delivery of all Documents Relating to the Issuance of Such Bond; Authorizing the Sale and Providing for the Terms and Provisions of Such Bond and Adopting Other Provisions Relating Thereto" (the "Ordinance") authorizing the issuance of Sewer Revenue Bond, Series 2009 (the "Bond"), of the City in the amount of $309,000. The Bond will provide a portion of the funds to finance the cost of the acquisition and construction of betterments and improvements for the existing sewer system of the City including the construction of new and replacement lines and other improvements.

The entire amount of the principal of and interest on the Bond will be paid solely and only from the revenues received from operation of the sewer system of the City to be amortized over a period of 40 years. The Ordinance provides provisions with respect to the final interest rate, which may be but cannot exceed 4.50% per annum, and which may be finally determined therein or by supplemental resolution.

A certified copy of the Ordinance and a copy of the plans and specifications of the proposed project are available for examination by any interested person at City Hall during regular office hours from 9:00 a.m. to 4:00 p.m., Monday through Friday.

A public hearing will be held before the Council at the Montgomery City Hall on the 9th day of June, 2009, at 7:00 p.m., and any person or persons interested may appear before the Council and be heard as to whether or not the Ordinance shall be put into effect. Council will hear all suggestions, protests and objections to the issuance of the Bond.

Dated the 12th day May, 2009.

CITY (
MONTGOMER
Fayette Count
West Virgin
James F. Higgins, J
May
Greg Ingra
Record
6-3-WED-2-MH: LG 17

hin the publication area or areas of the aforesaid municipality and
uch newspaper averages in length four or more pages, exclusive of
r issue; that such newspaper is circulated to the general public at a
of consideration; that such newspaper is a newspaper to which the
: resorts for passing events of a political, religious, commercial and
and for current happenings, announcements, miscellaneous read-
dvertisements and other notices; that the annexed notice

E _____
(Description of notice)

lished in said newspaper once a week for two successive

2), commencing with the issue of the 27th day of

09 _____, and ending with the issue

____ day of June, 2009 _____, (and was posted at the

County Courthouse _____

_____ day of June, 2009 _____); that said annexed

ıblished on the following dates: _____

)3/09 _____ and that the

hing said annexed notice as aforesaid was $ 140.37

Signed Sonya G. Mitchell
Sonya G. Mitchell
Legal Advertising Clerk
Beckley Newspapers

ibed and sworn to before me in my said county this:
lune, 2009 _____
on expires March 27, 2011

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
BECKLEY, WEST VIRGINIA

Notary Public of Raleigh County,
West Virginia

06/10 '09 15:33 NO.970 02/03

AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS
BECKLEY, WEST VIRGINIA 25801

June 03, 2009

STATE OF WEST VIRGINIA
COUNTY OF FAYETTE, to wit:

I, Sonya G. Mitchell, being duly sworn upon my oath, do depose and say Legal Advertising Clerk for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Montgomery Herald, a Democratic 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 weekly for at least fifty weeks during the calendar year, in the municipality of Montgomery, Fayette 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 aforesaid municipality and 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 of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of NOTICE
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 27th day of May, 2009, and ending with the issue of the 3rd day of June, 2009, (and was posted at the Fayette County Courthouse on the 3rd day of June, 2009); that said annexed notice was published on the following dates: 05/27/09,06/03/09 and that the cost of publishing said annexed notice as aforesaid was $ 140.37

Signed Sonya G. Mitchell
Sonya G. Mitchell
Legal Advertising Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
3rd day of June, 2009

My commission expires March 27, 2011

Diana L. Stone
Notary Public of Raleigh County,
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. STONE
BECKLEY NEWSPAPERS
P. O. BOX 1231
BECKLEY, WV 25802
My commission expires March 27, 2011

COPY OF PUBLICATION

283.86 314.51
PAULEY JAMES M JR ETUX. PT LOTS 2-3 MANKIN SD, 357.34 382.70
PEGRAM GLORIA D, LOT 13 THOMPSON SD 4, 388.58 423.15
PERDUE ERNEST R AND, NEW LOT 72 CHERRY LANE, 332.54 357.53
PERRY GREGORY L, LOT 4 BLK 7 HIDDEN VALLEY, 470.32 507.96
PERRY GREGORY L AND HELEN J, .18 AC SURF (PT LTS 1AND2, BLK 7, 9.20 29.55
PERRY MARK A AND ROSETTA, 098/ARBUCKLE, 114.84 139.15
PETRY TINA M, LOT 14 SEC 6 COLLINWOOD AC. 321.05 345.87
PHARES JEFFREY A AND TREADWAY, LOT 18 RHODES SD, 539.22 579.44
PHILLIPS WAYNE THOMAS, PT LOT 62 SO HILLS SD, 282.62 313.22

MONTGOMERY CITY COUNCIL
May 12, 2009

CALL MEETING TO ORDER 7:30 p.m. by Mayor James F. Higgins Jr.

ROLL CALL

Present: Mayor James F Higgins Jr.
Recorder Greg Ingram
City Attorney Brian Parsons
Council Members Present: Pamela Lopez, Les Thomas, David White, Fred Lockard, Terrance Hamm

MINUTES OF PREVIOUS MEETING of April 14, 2009
Motion by Councilman Thomas and seconded by Councilwoman Lopez to accept the April 14, 2009 minutes. Motion Carried.

Motion By Councilman Lockard and seconded by Councilwoman Lopez to accept the Minutes of April 21, 2009 special meeting to lay the levy. Motion Carried.

TREASURER'S REPORT

Checking	$82,290.40
Money Market	$12,851.43
Investment Pool	$45,766.90
Investment Insurance	$21,021.98
Total	$161.930.71

Motion by Councilman Lockard and seconded by Councilman White to accept the Treasurer's report. Motion Carried.

FINANCE COMMITTEE REPORT
Motion by Councilman Lockard and seconded by Councilwoman Lopez to accept the finance Committee report and pay the Bills. Motion Carried.

Councilman Lockard and the finance committee recommended the city eliminate the city diesel fuel bulk tank and purchase fuel at local established business. Also recommended to eliminate all City issued credit cards and issue the new purchase cards as required to those that make city purchases. These two items tabled until later date.

CALL ON COUNCIL

- Councilman Lockard ask status of Union Rail Road crossing repairs. Mayor Higgins advised he is still waiting on response from Mr. Farley.

OLD BUSINESS

A. Substandard Housing – Mayor Higgins reported the subject house on 5th avenue has been purchased by Chuck Smith and he is currently in negotiations with contractors for asbestos removal and demolition. We have been assured the house would be removed.

The owners of the house on Rt61 that caught fire are in negations with the Community and Technical College to sell the property to the College. The house boat has been removed from the property.

Councilman Lockard stated there are several people interested in some of these properties. They may not be a concern in the near future.

NEW BUSINESS

a. Sewer Bond Ordinance – We must reenact the Sewer Revenue Bond enacted in 2006 in the amount of $309,000.00. Motion by Councilman Thomas and seconded by Councilman White to approve the resolution. Motion carried.

b. First Reading to Amend Chapter 13 Article 13 of City Code to remove 2nd paragraph – Motion by Councilman Lockard and seconded by Councilman White to remove 2nd paragraph from Chapter 13 Article 13 of the City Code. Motion Carried.

c. Park Board Appointments – Recorder Ingram provided Council a list of candidates for park board appointment. Motion by Councilman Lockard and seconded by Councilwoman Lopez to accept the proposed members as presented. Motion carried.

d. Pool Drains – Recorder Ingram provided information on the Virginia Graeme Baker pool and spa safety Act and an estimate of $2,805.00 to have pool drain covers installed. Motion by Councilman Lockard and seconded by Councilwoman Lopez to have the pool drain covers installed. Motion Carried.

e. Budget Revision – Motion by Councilwoman Lopez and seconded by Councilman Thomas to accept the budget revision and authorize The Recorder to sign and submit to the state Auditor. Motion Carried.

BEAUTIFICATION COMMITTEE REPORT Dave Cavalier reported the plantings and fence are in place on 3th avenue. at the park. The Fence was painted by Mr. Maynard and 3 New picnic tables are installed at the park by Brown Chevrolet. We will be working on the cross walks by the Rail Road tracks in the near future. Suggestion was made to replace the trash cans in front of the hospital.

PARK BOARD REPORT

Meeting may, 18 2009 at 7:00 PM. Greg reported on 4th of July events. Permission from Tech has been secured for the fireworks on Tech Field. Reported on games that will be provided for the kids and still working on getting a stage. Events are planned to be held on Front Street this year.

CALL ON COUNCIL

Mayor gave some ideas to eliminate some of the congestion on 3rd Avenue. Parking lot beside DJ Video probably will not be an option. Would like to propose to remove the meters from Washington street to 7-11 on the north side (Business Side) of the street, this is a total of 29 parking spaces. Change the 26 parking spaces on the South Side (RR Side) to 1 hour parking. Mayor suggest for council to think about these ideas and we will discuss at next month council meeting

Councilman Lockard reported the 4th and 5th grade students from Pratt Elementary school seeded some trout they raised in school in Morris creek.

Councilman Hamm suggested we allow Vendors at the 4th of July event to sell food and other items, he suggest charging 10.00 per table.

Councilman Hamm asked if the city had a rainy day fund and could we establish one. Councilman Lockard explained this is what the investment pool is for. Mayor explained difficulty to do this in the current economic environment we are in. May consider at a later date. Mayor explained the savings measures he is taking in the short term. Not going to replace Secretary or police chief positions. Mayor will assume duties of the police Chief and will refer any cases of conflict of interest to the magistrate court.

Councilman Hamm – Reported T.D. Jakes will be at Charleston Civic Center in August and reported a bus tour of this community was under consideration.

Councilman Hamm – Request consideration for recognition signage for Mr. Davenport and have him come here for presentation.

Councilman White – Reported he is assembling a work crew in June from Upper bound to perform small projects around town. Invited anyone else that would like to participate in this project. Notify Dave White if you are interested. Dr. Kennedy asked if we had a cleanup date. Mayor explained expenses involved and why we have not had one.

Councilman White – contacted the state about cleaning sidewalks on Montgomery bridge. State replied they don't clean sidewalks. Mayor said we can clean them up.

Motion by Councilwomen Lopez and seconded by Councilman Thomas to adjourn. Motion Carried.

Meeting Adjourned at 8:37 p.m.

Mayor James F. Higgins

Greg Ingram, Recorder

MONTGOMERY CITY COUNCIL
June 09, 2009

CALL MEETING TO ORDER 7:30 p.m. by Mayor James F. Higgins Jr.

ROLL CALL

Present:	Mayor James F Higgins Jr.
	Recorder Greg Ingram
	City Attorney Brian Parsons
	Council Members Present: Pamela Lopez, Les Thomas, David White, Fred Lockard,
Absent:	Councilman Terrance Hamm

MINUTES OF PREVIOUS MEETING of May 12, 2009
Motion by Councilman Thomas and seconded by Councilman White to accept the May 12, 2009 minutes. Motion Carried.

TREASURER'S REPORT

Checking	$24,638.40
Money Market	$32,851.43
Investment Pool	$45,775.13
Investment Insurance	$21,025.27
Total	$124,290.23

Motion by Councilman Lockard and seconded by Councilman White to accept the Treasurer's report. Motion Carried.

FINANCE COMMITTEE REPORT
Motion by Councilman Lockard and seconded by Councilman Thomas to accept the finance Committee report and pay the Bills. Motion Carried.

CALL ON COUNCIL

- Councilwoman Lopez request information on refuse pick up at Bridgemont CTC. Mayor responded that we will work something out.
- Councilman Lockard commented the economy is suffering a downturn and getting worse. Need to be very frugal with city funds.
- Councilman Lockard asked the Mayor to look into the $600.00 monthly contribution being made to the Fayette county library. These contributions were originally earmarked to help pay the mortgage on the new Montgomery library building at the corner of 6th Avenue and Ferry Street. This mortgage has been retired. Mayor will send letter to Fayette County library and ask what the monies are being allocated to now and do they still require a contribution for the Montgomery Library.

- Notified council city is getting out of the diesel business and eliminating this outlay of funds.

CALL ON PUBLIC:

- Brenda Mickle raised concern that her sanitary bill had increased from $16.00 last year to $73.00 this year. She was advised to come in and See Angie Tackett to examine the issue.

OLD BUSINESS

A. Substandard Housing – Mayor Higgins reported the subject house on 5th avenue has been purchased by Chuck Smith and he currently has a buyer and not sure of the demolition plan at this time.

   Brian Parsons reported he has looked at the houses on the demolition list and is prepared to send letters to some of the property owners. He will target the ones slated for demolition first. He has plans to go to Kanawha County next week to look at property records. Dave White and Fred Lockard ask questions about specific properties.

B. Motion by Councilman Lockard and seconded by Councilman Thomas to accept the Sewer bond ordinance as presented. Motion carried.

C. Second Reading to Amend Chapter 13 Article 13 of City Code to remove 2nd paragraph – Motion by Councilman Lockard and seconded by Councilman White to remove 2nd paragraph from Chapter 13 Article 13 of the City Code. Motion Carried.

NEW BUSINESS

A. Mayor request to have Mr. Gregory Lawson confirmed as Police Chief. Mr. Lawson explained why he desired to be police chief of Montgomery. Motion by Councilman Lockard and seconded by Councilman Thomas to confirm Mr. Lawson as Police Chief. Councilman Lockard asked Mr. Lawson if he was qualified in West Virginia, and he responded in the affirmative, but he would need to monitor a class to be certified. Councilwoman Lopez commented this was very important he get certified. Motion Carried.

B. Mr. Todd Morris from the Charleston Visitors and Convention Bureau explained a planned tour of Montgomery and surrounding areas by the Reverend T.D. Jakes. He requested permission to erect a sign in front of Reverend Jakes old original church on Lee Street. He advised that Reverend Jakes would pay for the sign and they would like to have an unveiling during their tour of the area in August 13 thru 15. Councilman Lockard asked what size would the sign be and commented it needs to be tasteful. Mr. Morris did not have the dimensions but will get them; however he did comment the sign would be much like the historical markers in other locations throughout the area. There was much discussion about where to locate the sign. Councilman White requested this be tabled until such time they could confirm a location and the size and design of the sign. Mr. Morris is to provide this information to council. Issue tabled until July Council meeting.

BEAUTIFICATION COMMITTEE REPORT Jane Ann Kennedy reported all planned projects are complete. They need more funding to plan more projects: However, she requested donations to purchase more plants for the planter on Rt.60 at the bridge. Councilman White commented he would work on donations for this flower project.

PARK BOARD REPORT

Meeting June 15, 2009 at 6:00 PM. Greg reported on 4th of July events. Permission from Tech has been secured for the fireworks on Tech Field. Reported on games that will be provided for the kids and stage has been secured for the band. Events are planned to be held on Front Street this year. Park board has purchased a large tent to be used for city functions. Reported the ice cream has been donated and the fireworks permit has been received. Reported the City Pool opened on time.

CALL ON COUNCIL

Councilman White thanked Recorder Ingram for efforts to get the pool open. Commented brush needs cut on Rt. 60 side of Montgomery bridge, he may get people Friday to work on this project. Councilman White asked what we needed to do to get the fishing pier project in motion. Mayor responded we need money and this project may have to wait until better economic times.

Councilman Thomas thanked Recorder Ingram for efforts to get the pool open on time. He also welcomed Mr. Lawson as the new Chief of Police of Montgomery, and thanked Mr. Todd Morris for his presentation concerning Reverend T.D. Jakes visit to Montgomery.

Councilwoman Lopez asked Jane Ann Kennedy how much money she needed for the planter at the Montgomery Bridge. She replied between $250.00 and $450.00.

Recorder Ingram thanked the park board for their effort on the pool and Fourth of July planning. Gave a special thanks to Marshall Murray for getting water in the pool on time.

Motion by Councilwomen Lopez and seconded by Councilman Thomas to adjourn. Motion Carried.

Meeting Adjourned at 8:24 p.m.

Mayor James F. Higgins

Greg Ingram, Recorder

CALL MEETING TO ORDER 7:30 p.m. by Mayor James F. Higgins Jr.

ROLL CALL

Present: Mayor James F Higgins Jr.
Recorder Greg Ingram
City Attorney Brian Parsons
Council Members Present: Terrance Hamm, Fred Lockard, Pamela Lopez, Les Thomas, David White

Absent: None

MINUTES OF PREVIOUS MEETING August 11, 2009

Motion by Councilor Thomas and seconded by Councilor White to accept the August 11, 2009 minutes. Motion Carried.

TREASURER'S REPORT

Checking	$9,418.18
Money Market	$8,909.89
Investment Pool	$19,782.27
Investment Insurance	$33,034.03
Total	$71,144.37

Motion by Councilor Lopez and seconded by Councilor White to accept the Treasurer's report. Motion Carried.

FINANCE COMMITTEE REPORT

Motion by Councilor Lockard and seconded by Councilor Thomas to accept the finance Committee report and pay the Bills. Motion Carried.

Mayor Higgins reported we had to lay off 3 workers. One was a temporary and two were permanent workers (Ron Drake and Donald George) and we moved Shawn Mosley to the street department. This is a savings of $7,585.00 per month. This may not be the last layoff we will encounter. These layoffs are largely due to the $60,000.00 in law suit deductibles.

Mayor explained his administrative authority to take this action in absence of council approval.

CALL ON COUNCIL

- Councilor Lockard presented the issue of coal dust on residents house and confirmed John Colograsso had brought photos to City hall. In addition he asked the Mayor to address this issue.

  Mayor Higgins commented he has received the photographs and is in the process of writing the coal company a letter. Mayor Higgins also explained the city and state code gives him the ability to fine the coal company under extraterritorial powers.

- Councilor Lockard expressed a request to change the parking spots on Washington Street by Frank's Pizza to 15 minutes and would like this given to the street department to review. We do not believe 15 minutes is enough time. Mayor Higgins assigned this issue to the street department to report back at next council meeting.

- Councilor Lockard expressed problems of the parking spots on Front Street by the bus station. Problem is extended length vehicles. We would like to change the angle of 4 spots above the bus station and eliminate the handicap parking that is not being used. Councilor Lockard made a motion to change the parking angle to accommodate larger vehicles and eliminate the Handicap parking spot that is not used. Motion seconded by councilor White. Motion Carried.

- Councilor Lockard expressed a problem with residential parking on 1st ave. and students parking in that area. Suggested it be residential parking only. Mayor explained historical issues and potential problems to give out residential parking.

- Councilor Lockard explained the brown fields grant program with the watershed and Marshall University had failed. Councilor Lockard made a Motion for the City of Montgomery to partner with the water shed in seeking the brown fields grant to address problems with the stream entering into the city. Motion seconded by Councilor Thomas. Motion Carried.

- Councilor white expressed concerns about parking on Third Avenue by the Bingo hall. Has received a lot of complaints and asked can we designate this as small parking only. Mayor Higgins expressed his personal opinion to allow enough one hour parking by the rail road tracks and eliminate the parking on the north side of the street. This would only effect from the Corner of bank bar and grill to 7-11. Eliminate north side parking spaces and move center line closer to the store fronts. This would widen the street and accommodate larger vehicle parking. Mayor Higgins gave this to the street committee

and request Councilor White talk to the business owners and give them the opportunity to express their concerns.

- Councilor White expressed concerns on parking meters on 4th Ave. Can we eliminate these meters? Mayor explained process to make recommendations to council.

- Councilor White asked can we put a vacancy tax on some of the substandard housing units in the city. Mayor Higgins explained the home rule taxation and it is only available to municipalities that have been afforded the home rule ability. Councilor Lockard suggested we raise the fire and police protection fee due to the likelihood of empty buildings to burn. Mayor explained recent Supreme Court ruling. City Attorney parsons explained the risk involved.

- Councilor White expressed concerns about the empty apartment house by the City Pool. Mayor Higgins explained we can use the ordinance on an eyesore. There was discussion of vandalism and reasons the window were boarded up. Can we send them a letter to clean it up and then fine them with the second letter?

- Recorder Ingram reported the final cost of the Code update is $2,209.22. All codes are now on the internet, office personnel have electronic copies on their computers and we have received the new hardcopy code books. This is about half the requested $4,500.00 made several months ago for this update.

CALL ON PUBLIC:

- No Comments

OLD BUSINESS

A. Substandard Housing - This item was discussed in the call on council.

B. Second reading - Ordinance to regulate police response to loud parties, gatherings and events. Motion by Councilor Thomas and seconded by Councilman White to accept this second reading.
Councilor Hamm expressed concerns of this ordinance's use and its application. He expressed it is broad and can be loosely interpreted and is subject to be misused. He expressed we already have laws in place to police these problems. Mayor explained reasonable interpretation and jurisprudence will prevail and that the city had nothing on

the books to address parties. This will give people a reference to party guidelines in the City of Montgomery. After discussion motion carried by a 4 to 1 margin with Councilors White, Lopez, Lockard, and Thomas voting in the affirmative and Councilor Hamm voting in the negative. Motion Carried.

NEW BUSINESS

A. Motion by Councilor Hamm and seconded by Councilor Lopez to authorize the Mayor to sign contract and Resolution for the community participation grant through the West Virginia Development office. Motion Carried

B. Motion by Councilor Lockard and seconded by Councilor Lopez to approve supplemental resolution amending sewer bond ordinance to more fully provide for the issuance of the sewer bond. Motion Carried.

C. Motion by Councilor Thomas and seconded by Councilor White to approve loan resolution from rural utilities service for $309,000.00 sewer revenue bond. Motion carried.

D. Motion by Councilor Lockard and seconded by Councilor Lopez to have Trick or Treat on October 31 for 2 hours from 6 to 8 PM. Motion Carried.

E. Motion by Councilor Lockard and seconded by councilor Lopez to take paper recycle items to Valley high school and let them collect for this paper; and the City of Montgomery to pay Kanawha County $200.00 every two months to pick up a plastic and can bin at the city garage. Councilor Hamm questioned the balance between this and the layoff of personnel. Motion carried by a 4 to 1 margin with Councilors White, Lopez, Lockard and Thomas voting in the affirmative and Councilor Hamm voting in the negative. Motion Carried.

F. Motion by Councilor Lockard and seconded by Councilor Thomas to withhold travelers insurance deductable payment of $15,000.00 until legal review by the City attorney is complete. Motion Carried

BEAUTIFICATION COMMITTEE REPORT David Cavalier gave report that ongoing projects are still in process and asked for suggestions. Fountain that was broken will be replaced by an unidentified donor.

PARK BOARD REPORT

Recorder Greg Ingram reported on the leak at the swimming pool. It is suspect that the leak is in the water return line. Discussion on options was given. Decided to have city workers to try and locate the leak and if possible make the repairs. Also reported on the need for new life guard stands and chairs. The pool also needs sand blasted and repainted. May need to look for Grants and donations. Prices for some of these items are forthcoming. Park board is working on Christmas parade and will decide on a theme this month.

CALL ON COUNCIL

Councilor Hamm asked if the layoff would have any impact on City business. Mayor explained it would not and explained the process of layoffs.

Councilor Hamm expressed concerns that the City do something to make the Tech students feel welcome on the City side of the tracks. Suggested The Police department give the black students organization at W V Tech a small presentation.

Councilor Lockard gave example of a child getting caught in a pool drain and stated we did the right thing at the pool by replacing the pool drain covers.

Council Lockard asked the mayor to reenact the urban renewal authority in the city.

Call on Public

Question about who is organizing the Oktoberfest. Mayor explained Diana Wilson at the EDC.

Motion by Councilor Lopez and seconded by Councilor Thomas to adjourn. Motion Carried.

Meeting Adjourned at 8:58 p.m.

Mayor James F. Higgins

Greg Ingram, Recorder

COPY

LAW OFFICES
GOODWIN & GOODWIN, LLP
300 SUMMERS STREET, SUITE 1500
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. BOX 2107
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000
TELECOPIER (304) 344-9692

www.goodwingoodwin.com

201 THIRD STREET
PARKERSBURG, WEST VIRGINIA 26101
(304) 485-2345

P.O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
(304) 372-2651

September 9, 2009

Ms. Sara Boardman, Executive Director
West Virginia Municipal Bond Commission
1207 Quarrier Street, Suite 401
Charleston, WV 25301

Re: City of Montgomery, Sewer Revenue Bond, Series 2009

Dear Ms. Boardman:

Enclosed please find the New Issue Report Form that has been prepared in connection with the above-referenced transaction and sent to you for filing in your office in regard to the same. Upon completion of the transcript, we will forward a bound copy to you for your reference. In the meantime, if you have any questions concerning this transaction, please feel free to contact me.

Sincerely yours,

Bill Bragg

William K. Bragg, Jr.

WKB/aks
Enclosure

WV MUNICIPAL BOND COMMISSION
1207 Quarrier Street, Suite 401
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: September 9, 2009

ISSUE: City of Montgomery
Sewer Revenue Bond, Series 2009
ADDRESS: 706 Third Avenue
Montgomery, WV 25136 COUNTY: Fayette
PURPOSE: New Money X
OF ISSUE: Refunding __ Refunds issue dated: N/A
ISSUE DATE: September 10, 2009 CLOSING DATE: September 10, 2009
ISSUE AMOUNT: $309,000 RATE: 4.375%
1ST DEBT SERVICE DUE: 10/10/09 1ST PRINCIPAL DUE: 10/10/11
1ST DEBT SERVICE AMOUNT: $_____* PAYING AGENT: Municipal Bond Commission**

BOND COUNSEL: Goodwin & Goodwin, LLP
Contact Person: W.K. Bragg, Jr.
Phone 346-7000

LENDER: Rural Utilities Service
Contact Person: Audrey Gwinn
Phone: (304) 253-9597 Ext. 170

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: James F. Higgins, Jr.
Position: Mayor
Phone: (304) 442-5181

----------DEPOSITS TO MBC AT CLOSE:----------

___ Accrued Interest: $_____0
___ Capitalized Interest:$_____0
By ___ Wire ___ Reserve Account: $___0
___ Check ___ Other:

----------REFUNDS & TRANSFERS BY MBC AT CLOSE:----------

___ To Escrow Trustee: $___N/A
By ___ Wire ___ To Issuer: $___N/A
___ Check ___ To Cons. Invest. Fund:$___N/A
___ IGT ___ Other:

Notes: * Subject to actual amount advanced at closing.
** Only if Lender no longer owns the Bond.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS
REQUIRED: _____
TRANSFERS
REQUIRED: _____

WEST VIRGINIA
Water Development Authority
Celebrating 34 Years of Service 1974 - 2008

CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

CONSENT TO ISSUANCE OF PARITY BOND AND PARITY LIEN

In reliance upon a certificate of Smith, Cochran & Hicks, P.L.L.C., the City of Montgomery's independent certified public accountant, and the opinion of Goodwin & Goodwin, LLP, the City of Montgomery's bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the $1,164,146 City of Montgomery Sewer Revenue Bonds, Series 1987 A (the "Series 1987 A Bonds"), $285,539 City of Montgomery Sewer Revenue Bonds, Series 1987 B (the "Series 1987 B Bonds"), $648,387 City of Montgomery Sewer Revenue Bonds, Series 1993 A (the "Series 1993 A Bonds"), and $21,613 City of Montgomery Sewer Revenue Bonds, Series 1993 B (the "Series 1993 B Bonds"), hereby consents to the issuance of the City of Montgomery Sewer Revenue Bond, Series 2009 (the "Series 2009 Bond"), to be issued in the original aggregate principal amount of $309,000, under the terms of the Bond Ordinance authorizing the Series 2009 Bond, on a parity with respect to liens, pledge and source of and security for payment with the Series 1987 A Bonds and the Series 1993 A Bonds, and senior and prior to the Series 1987 B Bonds and the Series 1993 B Bonds.

WITNESS my signature on this 10th day of September, 2009.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Authorized Representative

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wwda.org

$309,000
CITY OF MONTGOMERY
SEWER REVENUE BOND, SERIES 2009

ACCEPTANCE OF APPOINTMENT OF DEPOSITORY BANK

City National Bank of West Virginia, at its office located in Montgomery, Fayette County, West Virginia, hereby accepts appointment as Depository Bank in connection with an Ordinance of the City of Montgomery (the "City") duly enacted by the City Council of the City (the "Council") and effective on June 9, 2009, as supplemented by a Supplemental Resolution duly adopted by the Council and effective on June 9, 2009 (collectively, the "Ordinance"), authorizing issuance of City of Montgomery, Sewer Revenue Bond, Series 2009, dated September 10, 2009, in the aggregate principal amount of $309,000, and agrees to perform all duties of Depository Bank as set forth in the Ordinance.

Witness my signature as of the 10th day of September, 2009.

CITY NATIONAL BANK OF WEST VIRGINIA

By: Michelle Fox
Branch Manager

CITY OF MONTGOMERY, WEST VIRGINIA
SEWER REVENUE BONDS, SERIES 1987 A AND SERIES 1987 B
and
SEWERAGE SYSTEM
INTERIM CONSTRUCTION FINANCING

BOND AND NOTES ORDINANCE

Table of Contents

Subject			Page
ARTICLE I - STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS			
	Section 1.01	Authority for this Ordinance	4
	Section 1.02	Findings	4
	Section 1.03	Bond Legislation Constitutes Contract	6
	Section 1.04	Definitions	7
ARTICLE II - AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT			
	Section 2.01	Authorization of Construction and Acquisition of the Project	16
ARTICLE III - AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT			
	Section 3.01	Authorization of Bonds	16
	Section 3.02	Terms of Bonds	16
	Section 3.03	Execution of Bonds	17
	Section 3.04	Authentication and Registration	17
	Section 3.05	Negotiability, Transfer and Registration	18
	Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	18
	Section 3.07	Bonds not to be Indebtedness of Issuer	19
	Section 3.08	Bonds Secured by Pledge of Net Revenues	19
	Section 3.09	Form of Original Bonds	19
		FORM OF SERIES 1987 A BOND	
		FORM OF SERIES 1987 B BOND	
Subject			Page
	Section 3.10	Sale of Original Bonds; Execution of Loan Agreement with Authority	34

ARTICLE IV - INTERIM CONSTRUCTION FINANCING

Section 4.01	Authorization and General Terms	34
Section 4.02	Terms and Security for Notes; Trust Indentures	34
Section 4.03	Notes are Special Obligations	34
Section 4.04	Letters of Credit	35

ARTICLE V - SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01	Establishment of Funds and Accounts with Depository Bank	36
Section 5.02	Establishment of Funds and Accounts with Commission	36
Section 5.03	System Revenues; Flow of Funds	36

ARTICLE VI - BOND PROCEEDS, FUNDS AND ACCOUNTS

Section 6.01	Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds	42
Section 6.02	Disbursement from the Bond Construction Trust Fund	43

ARTICLE VII - ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01	General Covenants of the Issuer	45
Section 7.02	Bonds and Notes not to be Indebtedness of the Issuer	45
Section 7.03	Bonds Secured by Pledge of Net Revenues	45
Section 7.04	Initial Schedule of Rates and Charges	46
Section 7.05	Sale of the System	46
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	47
Section 7.07	Parity Bonds	48
Section 7.08	Books and Receipts	51
Section 7.09	Rates	51
Section 7.10	Operating Budget and Audit	52
Section 7.11	No Competing Franchise	53
Section 7.12	Enforcement of Collections	53
Section 7.13	No Free Services	54
Section 7.14	Insurance and Construction Bonds	54
Section 7.15	Mandatory Connections	55
Section 7.16	Completion of Project	55

Subject		Page
ARTICLE VIII - INVESTMENT OF FUNDS; NON ARBITRAGE		
Section 8.01	Investments	56
Section 8.02	Restrictions as to Arbitrage Bonds	56
Section 8.03	Rebates of Excess Arbitrage Earnings	57
Section 8.04	Covenant to Amend Ordinance	57
Section 8.05	Public Purpose Bonds	57
Section 8.06	Private Activity Bond Covenant	58
Section 8.07	Filing Covenant	58
Section 8.08	Federal Guarantee Covenant	58
Section 8.09	Restriction of Yield on Bond Proceeds	58
ARTICLE IX - DEFAULT AND REMEDIES		
Section 9.01	Events of Default	59
Section 9.02	Remedies	59
Section 9.03	Appointment of Receiver	60
ARTICLE X - DEFEASANCE		
Section 10.01	Defeasance of Series 1987 A Bonds	62
Section 10.02	Defeasance of Series 1987 B Bonds	63
ARTICLE XI - MISCELLANEOUS		
Section 11.01	Amendment or Modification of Bond Legislation	65
Section 11.02	Bond Legislation Constitutes Contract	65
Section 11.03	Severability of Invalid Provisions	65
Section 11.04	Headings, Inc.	65
Section 11.05	Amendments to Maintain Tax Exemption	65
Section 11.06	Conflicting Provisions Repealed	66
Section 11.07	Covenant of Due Procedure, Etc.	66
Section 11.08	Public Notice of Proposed Financing	66
Section 11.09	Effective Date	67
SIGNATURES		
CERTIFICATION		
EXHIBIT A -	Copy of Petition	
EXHIBIT B -	Trust Indenture	
EXHIBIT C -	Loan Agreement	
EXHIBIT D -	Supplemental Loan Agreement	
EXHIBIT E -	Ordinance - Rates & Charges	
EXHIBIT F -	Public Hearing Notice	

CITY OF MONTGOMERY, WEST VIRGINIA

ORDINANCE

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF CITY OF MONTGOMERY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $1,760,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1987 A, NOT MORE THAN $440,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1987 B, AND NOT MORE THAN $3,500,000.00 INTERIM CONSTRUCTION FINANCING, CONSISTING OF GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES OR BOTH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any resolutions supplemental hereto, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 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. City of Montgomery (the "Issuer") is a municipal corporation organized and existing under the laws of the State of West Virginia.

B. The Issuer now owns facilities for the collection, treatment, purification and disposal of sewage. The custody, operation and maintenance of the sewer system, both within and without the corporate limits of the City, is under the supervision and control of the Sanitary Board, which was

created and given such supervision and control by ordinance. The constructon and acquisition of certain extensions, improvements and betterments to the then existing sewer system and the refunding of certain then outstanding sewer revenues bonds were financed by the proceeds delivered from $465,000.00 in aggregate principal amount of Sewer Revenue Bonds dated April 1, 1963, issued pursuant to an Ordinance passed by the Council of Montgomery on the 4th day of February, 1963 (the "Prior Ordinance"). The Prior Bonds are outstanding on the date of enactment of this Ordinance in the aggregate principal amount of $256,000.00.

C. The Sanitary Board pursuant to the provisions of Chapter 16, Article 13, Section 5, of the Code of West Virginia of 1931, as amended, has petitioned the City Council and has requested that an Ordinance be passed to amend and renact the Montgomery City Code to reflect new sewer rates and charges and to enact this Ordinance and authorize the project and financing provided for hereby. Attached hereto as Exhibit "A" is a copy of the said petition.

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Prior Bonds and the Bonds (as hereinafter defined) and all Sinking Fund, Reserve Account and other payments provided for in the Prior Ordinance and herein.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of not more than $2,200,000.00 in two series, being the Series 1987 A Bonds in the aggregate principal amount of not more than $1,760,000.00, and the Series 1987 B Bonds in the aggregate principal amount of not more than $440,000.00 (collectively, the "Bonds"), and (at the option of the Issuer) to issue contemporaneously therewith, or as soon as practicable thereafter, its sewerage system grant anticipation notes, or a note or notes evidencing a line of credit, or both (collectively, the "Notes") in the aggregate principal amount of not more than $3,500,000.00 to temporarily finance costs of construction and acquisition of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Notes during the term thereof and upon the Bonds prior to and during construction or acquisition and for 6 months after completion of construction of the Project; engineering, and legal expenses; expenses for estimates of cost and revenues, expenses for plans, specifications and surveys; any administrative fees and expenses of the Authority; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of

registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and Notes and such other expenses as may be necessary or incident to the financing herein authorized, the construction or acquisition 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, including, with respect to the Notes, any fees to the Credit Bank, as hereinafter defined, and any costs of obtaining insurance thereon; provided that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or Notes or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs the Project, as hereinafter defined.

F. The period of usefulnesss of the System after completion of the Project is not less than 40 years.

G. It is in the best interests of the Issuer that its Original Bonds (as hereinafter defined) be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement and a supplemental loan agreement (collectively, the "Loan Agreement") to be entered into between the Issuer and the Authority, upon receipt of bids, in form satisfactory to the Issuer and the Authority.

H. There are not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bonds as to lien and source of and security for payment other than the Prior Bonds. The Series 1987 B Bonds shall be junior and subordinate to the Series 1987 A Bonds as set forth herein. The Design Notes issued to pay the Consulting Engineers and the Step I loan from the Autority shall be paid in full upon issuance of the Bonds. The Notes, if issued, will not be payable from the Net Revenues, but shall be payable from Grant Receipts, Surplus Revenues and proceeds of a letter of credit, and certain other specified sources, all as shall be set set forth in the Indenture or the Supplemental Resolution authorizing the Notes.

I. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will have expired (without any successful rehearing or appeal) prior to the issuance of any Bonds or Notes hereunder.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds and the Notes by

those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds and Notes, respectively, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series and between any one Note and any other Note, 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" shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

"Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Authorized Officer" shall mean the Mayor of the Issuer or any temporary Mayor or other officer authorized as such duly appointed by the Governing Body.

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

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

"Bond Legislation," "Ordinance," "Bond and Notes Ordinance" or "Local Act" shall mean this Bond and Note Ordinance and all orders, ordinances and resolutions supplemental hereto or amendatory hereof.

"Bonds Registrar" shall mean the bank or other entity to be designated as such in the Supplemental Resolution andits successors and assigns.

"Bonds" shall mean the Original Bonds, and any bonds on a parity therewith authorized to be issued hereunder.

"Clerk" shall mean the recording officer of the Governing Body of the Issuer.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Consulting Engineers" shall mean Kelley, Gidley, Blair & Wolfe, Inc., Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

"Council" shall mean the Council of the City or any other governing body of the City that succeeds to the functions of the Council as presently constituted and shall be deemed to refer also to the Sanitary Board of the City to the full extent of the powers relating to the System, as hereinafter defined conferred upon said Sanitary Board.

"Credit Bank" shall mean the isuance of any letter of credit obtained by the Issuer for the benefit of the Trustee as security for the Notes, all as shall be set forth in the Supplmental Resolution.

"Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"Design Notes" shall mean the not more than $95,000 in aggregate principal amount of notes issued by or on behalf of the Sanitary Board to finance temporarily the costs of, among other things, design of the project.

"Eligible Costs" shall mean Costs of the Project which are reimbursable in full on a dollar-for-dollar basis from EPA Grant Receipts, the total of which are equal in amount to the EPA Grant.

"EPA" shall mean the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" shall mean the grant from the EPA pursuant to the commitment therefor.

"FDIC" shall mean the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

"Government Obligations" shall mean 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 Agreement" shall mean a written commitment for the payment of the EPA Grant or any of the Other Grants, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which Grant is to be paid to the Issuer; provided that, "EPA Grant Agreement" shall mean only the Grant Agreement relating to the EPA Grant and "Other Grant Agreements" shall mean only those Grant Agreements relating to the Other Grants.

"Grant Receipts" shall mean all moneys received by the Issuer on account of any Grant after the date of issuance of the Notes; provided that "EPA Grant Receipts" shall mean only Grant Receipts on account of the EPA Grant, and"Other Grant Receipts" shall mean only Grant Receipts on account of any or all of the Other Grants.

"Grants" shall mean, collectively, the EPA Grant and the Other Grants, as hereinafter defined.

"Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Section 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" shall mean any certified public accountant or firm of certified public accountants which shall 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.

"Indenture" or "Trust Indenture" shall mean the Trust Indenture which may be entered into between the Issuer and the Trustee relating to the Notes in substantially the form attached hereto as Exhibit "B" and all supplements or amendments thereto.

"Issuer" or "City" shall mean the City of Montgomery, West Virginia in Fayette County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement, to be entered into between the Authority and the Issuer providing for the purchase of the Original Bonds from the Issuer by the Authority, the forms of which are attached as Exhibit "C" & "D" and the execution and delivery by the Issuer authorized by this Ordinance.

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

"Noteholder," "Holder of the Notes" or any similar term shall mean the person, whenever used herein with respect to an outstanding Note or Notes, in whose name such Note is registered.

"Notes" or "GAN" shall mean collectively, the not more than $3,500,000.00 in aggregate principal amount of Sewerage System Grant Anticipation Notes, originally authorized hereby, or the not more than $3,500,000.00 in aggregate principal amount of a note or notes evidencing a line of credit originally authorized hereby, and unless the context clearly indicates otherwise, the terms "Notes or "GAN" includes any refunding Notes or GAN of the Issuer.

"Notes Construction Trust Fund" shall mean the Notes Construction Trust Fund which may be established by Section 4.02 of the Indenture.

"Notes Debt Service Fund" shall mean the Notes Debt Service Fund which may be established by Section 4.01 of the Indenture.

"Notes Registrar" shall mean the bank to be designated as such in the Indenture or the Supplemental Resolution and its successors and assigns.

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

of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean, collectively, the not more than $1,760,000.00 in aggregate principal amount of Series 1987 A Bonds and the not more than $440,000.00 in aggregate principal amount of Series 1987 B Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted and authorized by this Bond Legislation.

"Original Notes Purchaser" shall mean in the event grant anticipation notes are issued, Young Moore & Company of Charleston, West Virginia, or if said Original Notes Purchaser and the Issuer are unable to agree upon such sale within terms and limits allowed by the Act, such other original purchaser of the Notes as shall be named in a resolution supplemental hereto, and, in the event a note or notes evidencing a line of credit are issued, such bank or banks as shall be named in a resolution supplemental hereto.

"Other Grants" shall mean collectively, any other grant hereafter received by the Issuer to aid in financing any Costs.

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

"Parity Bonds" shall mean additonal Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" shall mean the bank or banks or other entity designated as such for the Bonds and/or the Notes in the Indenture or in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

"Program" shall mean the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Project" shall mean the acquisition and construction of a new sewage treatment plant, gravity and pressure collector sewers, lift stations, force mains and all necessary appurtenances.

"Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

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

(c) Pre-refunded municipal obligations meeting the following conditions:

(A) The bonds are (i) not to be redeemed prior to maturity or the trustee has been given irrevocable instructions concerning their calling and redemption and (ii) the issuer has covenanted not to redeem such bonds other than as set forth in such instructions;

(B) The bonds are secured by ash or Government Obligations which may be applied only to interest, principal, and premium payments of such bonds;

(C) The principal of and interest on the Government Obligations (plus any cash in the escrow fund) are sufficient to met the liabilities of the bonds;

(D) The Government Obligations serving as security for the bonds are held by an escrow agent or trutee; and

(E) The Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent.

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

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

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

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

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

interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(i) With respect to the Notes, the Investment Agreement which may be entered into by and between the Trustee and the bank designated as "Investment Bank" in the Supplemental Resolution;

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

(k) 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," "Noteholder," "Bondholder," "Holder" or any similar term shall mean, whenever used herein with respect to an outstanding Bond, Note, Bonds or Notes, the person in whose name such Bond or Note is registered.

"Registrar" shall mean as appropriate either the Bond Registrar or the Notes Registrar or both.

"Renewal and Replacement Fund" shall mean the Renewal and Replacement Fund created by Section 5.01.

"Revenue Fund" shall mean the Revenue Fund established by Section 5.01 hereof.

"Sanitary Board" or "Board" shall mean the Sanitary Board of the City established by an ordinance duly enacted by the Council of the City and any successors to the functions thereof.

"Series 1987 A Bonds" or "Series A Bonds" shall mean the not more than $1,760,000.00 in aggregate principal amount of Sewer Revenue Bonds, Series 1987 A of the Issuer.

"Series 1987 A Bonds Reserve Account" shall mean the Series 1987 A Bonds Reserve Account established in the Series 1987 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1987 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1987 A Bonds inany year.

"Series 1987 A Bonds Sinking Fund" shall mean the Series

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 201. Authorization of Construction and Acquisition of the Project. There is hereby authorized the construction and acquisition of the Project, at an estimated cost of $3,272,750.00 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 Notes and the Bonds hereby authorized shall be applied as provided in the Indenture, if any, and Article VI hereof, respectively.

ARTICLE III

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

Section 3.01. Authorization of Original Bonds. For the purposes of capitalizing interest on the Original Bonds, funding a reserve account for each series of Original Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any of such purposes, there shall be issued negotiable Original Bonds of the Issuer, in an aggregate principal amount of not more than $2,200,000.00. Said Bonds shall be issued in two series, to be designated respectively, "Sewer Revenue Bonds, Series 1987 A," and "Sewer Revenue Bonds, Series 1987 B," in the aggregate principal amount of not more than $1,760,000.00 and $440,000.00, respectfully, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. Such Bonds shall be issued contemporaneously with or prior to issuance of the Notes, if any. The proceeds of the Bonds remaining after funding of the Reserve Accounts and capitalization of interest, if any, shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Bonds shall bear interest at such rate or rates, not exceeding the then legal maximum, payable seminnually 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

1987 A Sinking Fund established by Section 5.02 hereof.

"Series 1987 B Bonds" or "Series B Bonds" shall mean the not more than $440,000.00 in aggregate principal amount of Sewer Revenue Bonds, Series 1987 B, of the Issuer.

"Series 1987 B Bonds Reserve Account" shall mean the Series 1987 B Bonds Reserve Account established in the Series 1987 B Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1987 B Bonds Reserve Requirement" shall mean, as of the date of calculation, the maximum amount of principal which will become due on the Series 1987 B Bonds in any year.

"Series 1987 B Bonds Sinking Fund" shall mean the Series 1987 B Bonds Sinking Fund established by Section 5.02 hereof.

"State" shall mean the State of West Virginia.

"Supplemental Resolution" shall mean any ordinance, resolution 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 Notes or Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Notes or the Original Bonds, as the case may be, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" shall mean the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Prior Bonds, the Bonds or any other obligations of the Issuer, including the reserve account for the Prior Bonds, the Renewal and Replacement Fund and the Reserve Accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" shall mean the works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof, owned by theCity and under the supervision and control of the Sanitary Board, and any additions, improvements or betterments thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

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

"Trustee" shall mean the banking institution designated as trustee for the Noteholders under the Indenture, if any, and its successors and assigns.

Resolution. The Bonds shall be payable as to principal at the office of the Paying Agent in any currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying 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 Original Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a payment record attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Bonds of each series shall be exchangeable at the option and expense of the Holder for other fully registered 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, in such denomination as determined by a Supplemental Resolution. The registered Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the 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 3.04. Authentication and Registration. No 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 forms set forth in Section 3.09 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 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 the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and, each successive 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 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 any of the Bonds remain outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney or legal representative 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 Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchange or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of 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 therewih, 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 Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of such redemption and ending on such interest payment date or redemption date.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost.

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

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

Section 3.08. Bonds Secured by Pledge of Net Revenues; Series 1987 B Bonds to be Junior and Subordinate to Series 1987 A Bonds. The payment of the debt service of all the Series 1987 A Bonds shall be secured forthwith equally and ratably with each other, on a basis junior and subordinate to the Prior Bonds, by a lien on the Net Revenues derived from the System. The payment of the debt service of all the Series 1987 B Bonds shall also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, but junior and subordinate to the lien on such Net Revenues in favor of the Holders of the Series 1987 A Bonds and the Prior Bonds. Such Net Revenues in an amount sufficient, after all payments on account of the Prior Bonds, to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Original Bonds. The text of the Original Bonds shall be in substantially the following forms, 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 1987 A Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY SEWER REVENUE
BOND, SERIES 1987 A

No. AR-1 $1,164,146.00

KNOW ALL MEN BY THESE PRESENTS: That the City of Montgomery, 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 West Virginia Water Development Authority (the "Authority") or registered assigns the sum of One Million One Hundred Sixty Four Thousand One Hundred Forty Six and No/100 Dollars ($1,164,146), in annual installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated hereby by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning April 1, 1988. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

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

15, 1987.

This Bond is issued (i) to pay costs of acquisition and construction of certain additions, improvements and betterments to the existing sewage treatment system, collection and transportation facilities of the Issuer (the "Project"); (ii) to pay interest on the Bonds of this series (the "Bonds") during the construction of the Project and for approximately 18 months thereafter; (iii) to fund the reserve account for the Bonds; and (iv) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on August 24, 1987, effective September 15, 1987, as supplemented by a resolution duly adopted by the Issuer on the 26th day of October, 1987, (collectively called 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 contemporaneously with the Sewer Revenue Bonds, Series 1987 B, of the Issuer (the "Series 1987 B Bonds"), issued in the aggregate principal amount of $285,539, which Series 1987 B Bonds are junior and subordinate with respect to liens and sources of and security for payment to the Bonds.

This Bond is junior, subordinate and inferior as to lien on and source and security for payment from the net revenues and in all other respects to the City's Sewer Revenue Bonds dated as of April 1, 1963, outstanding as of the date hereof in the aggregate principal amount of $256,000 (the "Prior Bonds").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1987 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Series 1987 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the

Bond Legislation the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient together with other revenues of the System to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required to pay in any year the maximum amount due of principal of and interest on the Bonds, the Series 1987 B Bonds, and the Prior Bonds and on all other obligations secured by or payable from such revenues prior to or on a parity with the Bonds, or the Series 1987 B Bonds, provided however, that so long as there exists in the Series 1987 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in any year, and in the reserve account established for the Series 1987 B Bonds and any other obligations outstanding prior to or on a parity with the Bonds or the Series 1987 B Bonds, including the Prior Bonds, in an amount at least equal to the respective requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney or legal representative duly in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney or legal representative 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 moneys received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together

with all other obligations of the 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 revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the CITY OF MONTGOMERY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated October 27, 1987.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1987 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above on the date set forth below.

_____
as Registrar

By: _____
Its Authorized Officer

Dated: October 27, 1987

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[FORM OF ASSIGNMENT]

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

[Form of Series 1987 B Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY, WEST VIRGINIA
SEWER REVENUE BOND, SERIES 1987 B

No. BR-1 $285,539.00

KNOW ALL MEN BY THESE PRESENTS: That the City of Montgomery, 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 West Virginia Water Development Authority (the "Authority") or registered assigns the sum of Two Hundred Eighty Five Thousand Five Hundred Thirty Nine and No/100 Dollars ($285,539), in annual installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated hereby by reference, without interest.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, at any time, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with the Loan Agreement between the Issuer and the Authority, dated October 15, 1987.

This Bond is issued (i) to pay costs of acquisition and construction of certain new additions, improvements and betterments to the existing sewage treatment system, collection and transportation facilities of the Issuer (the "Project"); (ii) to fund the reserve account for the Bonds of this series (the "Bonds"); and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on August 24, 1987, effective September 15, 1987, as supplemented by resolution duly adopted by the Issuer on the

26th day of October, 1987, (collectively called 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 payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1987 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same except from said special fund provided from the Net Revenues, the moneys in the Series 1987 B Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient together with other revenues of the System to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance year equal to at least 115% of the maximum amount required to pay in any year the maximum amount due of principal of and interest on the Bonds, the Series 1987 A Bonds, the Prior Bonds and on all other obligations secured by or payable from such revenues prior to or on a parity with the Bonds, or the Series 1987 A Bonds, provided however, that so long as there exists in the Series 1987 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in any year, and in the reserve accounts established for the Series 1987 A Bonds and the Prior Bonds and any other obligations outstanding prior to or on a parity with the Bonds or the Series 1987 A Bonds, in an amount at least equal to the respective requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly in writing, upon the surrender of this Bond

together with a written instrument of transfer satisfactory to the Bond 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 moneys received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond; provided that said lien upon moneys in the Bond Construction Trust Fund is subordinate to the lien of the Series 1987 A Bonds.

This Bond is junior, subordinate and inferior as to lien on and source and security for payment from the net revenues and in all other respects to the City's Sewer Revenue Bonds dated as of April 1, 1963, outstanding as of the date hereof in the aggregate principal amount of $256,000 (the "Prior Bonds") and is junior, subordinate and inferior as to lien on and source and security for payment from the net revenues and in all other respects to the City's. Sewer Revenue Bonds, Series 1987 A, issued simultaneously herewith in the aggregate principal amount of $1,164,146 (the "Series 1987 A Bonds").

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, the CITY OF MONTGOMERY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated October 27, 1987.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1987 B Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above on the date set forth below.

_____
as Registrar

By: _____
Its Authorized Officer

Dated: October 27, 1987

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[FORM OF ASSIGNMENT]

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.10. Sale of Original Bonds; Execution of Loan Agreement with Authority. The Original Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in substantially the formsattached hereto as Exhibits "B" & "C" and made a part hereof, and the Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority and such execution and delivery is ratified and confirmed.ARTICLE IV

INTERIM CONSTRUCTION FINANCING

Section 4.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the Grant Receipts, the Issuer may issue and sell its Notes in the aggregate principal amount of not to exceed $3,500,000.00. The Notes may be in the form of grant anticipation notes or as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, and as shall be set forth in a resolution supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture or Supplemental Resolution, as applicable.

Section 4.02. Terms of and Security for Notes; Trust Indenture. The Notes shall be issued in fully registered form, in the denomination of $5000 or any integral multiple thereof, with such terms and secured in the manner set forth in the Indenture, if applicable, or supplemental resolution, if no Indenture is used.

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the Grant Receipts, the moneys in the funds and accountscreated under the Indenture, if any, the net proceeds of any draw under the letter of credit issued bythe Credit Bank or any refunding notes, the Surplus Revenues, if any, and any other sources described in the Indenture or supplemental resolution. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the Indenture.

Section 4.04. Letters of Credit. As additional security for the Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or sums set forth therein but not to exceed $200,000.00 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the Credit Bank. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by the Depository Bank:

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

(1) Series 1987 A Bonds Sinking Fund;

(a) Within the Series 1987 A Bonds Sinking Fund, the Series 1987 A Bonds Reserve Account.

(2) Series 1987 B Bonds Sinking Fund;

(a) Within the Series 1987 B Bonds Sinking Fund, the Series 1987 B Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.

A. So long as the Prior Bonds are outstanding, the Gross Revenues shall be deposited in the sewer revenue fund established by Section 5 of the Prior Ordinance (the "Prior Revenue Fund"). Moneys in the Prior Revenue Fund shall first be disposed of as provided by Section 5(1)(2) and (3) of the Prior Ordinance.

B. After payment or defeasance of the Prior Bonds, the entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner herein provided. From the Revenue Fund, the City shall first each month pay the current Operating Expenses of the System.

C. Thereafter, from the moneys remaining in the Prior Revenue Fund or, after payment or defeasance of the Prior Bonds from the moneys in the Reveue Fund the Issuer shall next, on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1987 A Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1987 A Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Series 1987 A Bonds on the next ensuing semi-annual interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1987 A Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

D. The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1987 A Bonds, apportion and set apart out of the Prior Revenue Fund or the Revenue Fund, as the case may be, and remit to the Commission for deposit in the Series 1987 A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1987 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1987 A Bonds Sinking Fund and the next annual principal payment date is less than 13 months then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

E. The City shall next from the Prior Revenue Fund or, after payment or defeasance of the Prior Bonds, from the Revenue Fund, on the first day of each month commencing thirteen (13) months prior to the first day of payment Series 1987 A Bonds, remit to the Commission for deposit in the Series 1987 A Reserve Account, an amount equal to 1/120 of the Series 1987 A Reserve Account Requirement; provided, that no further payments shall be made into the Series 1987 A 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 1987 A Reserve Account Requirement. Once the Series 1987 A Reserve Account has been funded at the Series 1987 A Reserve Account Requirement, whether from Series 1987 A Bond proceeds or such monthly payments or otherwise, the City shall next remit to the

Commission for deposit in the Series 1987 A Reserve Account an amount equal to any deficiency in the Series 1987 A Reserve Account Requirement. Any withdrawals from the Series 1987 A Reserve Account which result in a reduction in the balance of the Series 1987 A Reserve Account to below the Series 1987 A Reserve Account Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full.

F. The Issuer shall next from the Prior Revenue Fund or, after payment or defeasance of the Prior Bonds from the moneys remaining in the Revenue Fund on the first day of each month, commencing with the month succeeeding the first full calendar month after commencement of operation of the Project; (i) transfer to the Renewal and Replacement Fund a sum equal to 2-1/2% of the Gross Revenues each month, exclusive of any payments for account of the Series 1987 A Bonds Bonds Reserve Account; (ii) all funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and from each other and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for extensions or improvements to the System or for making emergency repairs or replacements to the System; provided that any deficiencies in the Series 1987 A Bonds Reserve Account shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

G. The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1987 B Bonds, apportion and set apart out of the Prior Revenue Fund after payment or defeasance of the Prior Bonds from the Revenue Fund and remit to the Commission for deposit in the Series 1987 B Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1987 B Bonds on the next ensuing principal payment date.

H. The City shall next from the Prior Revenue Fund, or, after payment or defeasance of the Prior Bonds, from the Revenue Fund, on the first day of each month commencing 13 months prior to the first date of payment of the Series 1987 B Bonds, remit to the Commission for deposit in the Series 1987 B Reserve Account an amount equal to 1/120 of the Series 1987 B Reserve Account Requirement; provided, that no further payments shall be made into the Series 1987 B 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 1987 B Reserve Account Requirement. Once the Series 1987 B Reserve Account has been funded at the Series 1987 B Reserve Account

Requirement, the City shall next remit to the Commission for deposit in the Series 1987 B Reserve Account an amount equal to any deficiency in the Series 1987 B Reserve Account Requirement. Any withdrawals from the Series 1987 B Reserve Account which result in a reduction in the balance of the Series 1987 B Reserve Account to below the Series 1987 B Reserve Account Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full.

Moneys in the Series 1987 A Bonds Sinking Fund and the Series 1987 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective series of Bonds as the same shall become due. Moneys in the Series 1987 A Bonds Reserve Account and the Series 1987 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the respective series of Bonds, as the same shall come due, when other moneys in the attendant Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the several Sinking Funds and Reserve Accounts shall be returned not less than once each year, by the Commission to the Issuer, for deposit in the Revenue Fund, and such amounts shall be applied in full, first to the next ensuing interest payments, if any, due on the respective Series of Bonds, and then to the next ensuing principal payments due thereon.

As and when additional Bonds ranking on a parity with the Series 1987 B Bonds are issued, provision shall be made for additional payments into the Series 1987 B Sinking Fund sufficient to pay the interest, if any, on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Series 1987 B Reserve Account in an amount equal to the maximum principal and interest, if any, on the the Series 1987 B Bonds, including such additional Series 1987 B Bonds which by their terms are payable from such Sinking Fund, coming due in any year.

As and when additional Bonds ranking on a parity with the Series 1987 A Bonds are issued, provision shall be made for additional payments into the Series 1987 A 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 Series 1987 A Reserve Account in an amount equal to the maximum principal and interest on the the Series 1987 A Bonds, including such additional Series 1987 A Bonds which by their terms are payable from such Sinking Fund, coming due in year year.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission by the Issuer at the times provided herein.

The payments into the Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Saturday, Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

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

I. Whenever all of the required and provided transfers and payments from Prior Revenue Fund or the the Revenue Fund, as the case may be, into the several funds, as hereinbefore provided, are current and there remains in said Fund a balance in excess of the estimated amounts required to be so transferred and paid on account of the Prior Bonds and into the Sinking Funds, including the Reserve Account therein, and the Renewal and Replacement Fund 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 Issuer, including, but not limited to, payment to the Trustee for deposit in the Notes Debt Service Fund, as defined in the Indenture.

J. 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 fees and charges when due.

K. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in any funds and accounts created by the Prior Ordinance other than with the Commission, and in the Revenue Fund and the Renewal and Replacement Fund

shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

L. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinbefore 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.

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

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

O. All Tap Fees shall be deposited by the Issuer, as received, in the Bond Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System, provided that, in the event Notes are issued, Tap Fees may, with the written consent of the Authority be deposited otherwise.

ARTICLE VI

ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS

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

A. From the proceeds of the Series 1987 A Bonds, there shall be deposited with the Commission in the Series 1987 A Bonds Sinking Fund, the amount specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1987 A Bonds for the period commencing on the date of issuance of the Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. There shall next be paid, from the proceeds of the Bonds, be credited to the Construction Trust Fund and then paid to the Depository Bank, the amount necessary to pay in full all prior borrowings of the Issuer in connection with the Project, including interest accrued thereon, and the Depository Bank shall, concurrently with such deposit, pay such borrowings as directed by the Issuer.

C. Next, from the proceeds of the Series 1987 A Bonds, there shall be first credited to the Construction Trust Fund and then deposited with the Commission in the Series 1987 A Reserve Account a sum equal to the Series 1987 A Reserve Requirement and from the proceeds of the Series 1987 B Bonds, there shall be first credited to the Construction Trust Fund and then deposited with the Commission in the Series 1987 B Reserve Account a sum equal to the Series 1987 B Reserve Requirement.

D. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02.

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

1987 B Bonds being junior and subordinate to that of the Series 1987 A Bonds. In the event that Notes are issued, the disposition of funds in the Bonds Construction Trust Fund may be modified from that set forth herein, with the written consent of the Authority.

Section 6.02. Disbursements From the Bond Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Disbursements from the Bond Construction Trust Fund, except for the costs of issuance thereof 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 and the Consulting Engineers, stating:

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

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

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

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

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

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the 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 Bond Construction Trust Fund to the Series 1987 A Bonds Reserve Account, and when fully funded to the Series 1987 B Bonds Reserve Account, and when both Reserve Accounts are fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply such moneys in full, first to the next ensuing interest payments, if any, due on the respective series of Bonds and next to the next ensuing principal payments due thereon.

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 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 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 said Bonds or the interest thereon is Outstanding and unpaid.

Until the payment in full of the principal of and interest on the Notes when due, the covenants, agreements and provisions contained in this Bond Legislation, shall, where applicable, also inure to the benefit of the Holders of the Notes and the Trustee therefor and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by the Trustee or any Holder or Holders of said Notes as prescribed in the Indenture; provided, that Section 7.04 and Section 7.09 shall not be applied to the Notes.

Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall 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 funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds or Notes, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Series 1987 A Bonds shall be secured forthwith equally and ratably with each other, by a lien on the Net Revenues derived from the System, which lien shall be junior and subordinate to that of the Prior Bonds. The payment of the debt service of all the Series 1987 B Bonds shall also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, but junior and subordinate to the lien on such Net Revenues in favor of the Holders of the Series 1987 A Bonds and the holders of the Prior Bonds. Such Net Revenues in an amount sufficient, after all payments on account of the Prior Bonds, to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve

Accounts therein and the Renewal and Replacement Fund, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 7.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System has been passed and approved by the Council as of June 30, 1987. A copy of the Ordinance so passed is attached hereto as Exhibit "E".

Section 7.05. Sale of the System. The System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds and Notes, if any, Outstanding, or to effectively defease this Resolution in accordance with Section 10.01 hereof and, if entered into and not previously defeased, the Indenture in accordance with Section 8.01 thereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the 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. With respect to the Notes, such proceeds in an amount sufficient to pay the Notes in full shall be applied to the payment of the Notes, either at maturity or, if allowable under the Supplemental Resolution or Indenture, prior thereto.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, 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, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fisal Year in excess of $10,000 and not in excess of $50,000, shall with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of the such par value or otherwise, shall be deposited in the Renewal and Replacement Fund. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provision of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all the Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Cconsulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally to the Notes issued under the Indenture or supplemental resolution prior to or on a parity with the lien on behalf of such Notes until such Notes have been defeased in accordance with the provisions of the Indenture and the Bond Legislation; provided that Parity Bonds having a lien on the net revenues, which may dilute the amount of Surplus Revenues available for the Notes may be issued to complete the Project. So long as any of the Bonds are Outstanding, no obligations 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 Bonds may be issued; provided, however, that additional Parity Bonds may

be issued as provided for in Section 7.07 hereof. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional Parity 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 1987 A Bonds and the Series 1987 B Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made on account of the Prior Bonds and into the Reserve Accounts, the Sinking Fund and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the 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 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 Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

No Parity Bonds shall be issued which shall be payable out of the revenues of the System prior to or on a parity with the Series 1987 A Bonds so long as the Series 1987 B Bonds are outstanding. All Parity Bonds issued hereunder so long as the Series 1987 B Bonds are outstanding shall be on a parity in all respects with the Series 1987 B Bonds only.

No Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Clerk a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds,

plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding year for principal of and interest on the following:

(A) Prior Bonds and any other obligations secured by and payable from the revenues of the System prior to the Bonds;

(B) The Bonds then Outstanding;

(C) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and

(D) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, or which are otherwise not subject to further appeal, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer the period for appeal of which has expired prior to issuance of such Parity Bonds or which are otherwise not subject to further appeal.

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

All covenants and other provisions of this Bond 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 Bonds and the Holders of any Parity Bonds 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 revenues of the System and their source of and security or payment from said revenues, wihout preference of any Bond of one series over any other Bonds of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Ordinance required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued puruant to this Bond Ordinance.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

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 1987 A Bonds and the Series 1987 B 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 1987 A Bonds or the Series 1987 B Bonds.

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

B. Notwithstanding the foregoing, or any provision of Section 7.06 to the contrary, additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 7.07, if there is first obtained by the Issuer the

written consent of the Authority to the issuance of bonds on a parity with the Series 1987 A Bonds.

Section 7.08. 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 or of a Note or Notes issued pursuant to this Bond Legislation or the Trustee shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Consulting Engineers, the Trustee and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds or Notes, as the case may be, 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 the Prior Ordinance this Bond Legislation and the Indenture with respect to the Prior Bonds, said Bonds or Notes, as the case may be, and the status of all said funds and acounts.

C. The amount of any Prior Bonds, Bonds, Notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said

Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds or Notes, as the case may be, and shall file said report with the Trustee and the Authority, or any other original purchaser of the Bonds.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges as established will be continuously on file with the Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the payments into the funds created hereunder and under the Prior Ordinance. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient along with other revenues of the System (i) to pay for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds, the Prior Bonds, and all other obligations secured by or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event that an amount equal to or in excess of the Reserve Requirements are on deposit in the Reserve Accounts andreserve accounts for bonds prior to or on a parity with the Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations, including the Prior Bonds, secured by or payable from such revenues prior to or on a parity with the Bonds.

Section 7.10. Operating Budget and Audit. 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 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 recommendations by the Consulting Engineer, which finding and recommendations shall state in detail the purpose of and

necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Trustee and the Authority and to any Holder of any Bonds or Notes, as the case may be, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Trustee and to any Holder of any Bonds or Notes, as the case may be, or anyone acting for and in behalf of such Holder of any Bonds or Notes, as the case may be.

In addition, the Issuer shall annually cause the records of the System to be audited by an independent certified public accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

Section 7.11. 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 7.12. 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 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, all delinquent 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 and facilities of the System and any services of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for services of the System and will not restore such services of either System until all delinquent charges for the services of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum edtent permitted by law.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.14. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds or the Notes 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, with such beneficence as shall be required by Section 2.8 of the Loan Agreement. Such insurance shall initially cover the following risks and be in the following amounts:

(A) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurance 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 received by the Issuer shall be deposited in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for other purposes of the Renewal and

Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors, as their interests may appear, during construction of the Project in the full insurable value thereof, all as required by the Loan Agreement. The City shall carry such other insurance as required by the Authority, including but not limited to flood isurance and business interruption isurance, to the extent available at reasonable cost to the City.

(B) PUBLIC LIABILITY INSURANCE, with limits of not less than $500,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $100,000 per occurrence for 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 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 compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

B. The Issuer shall also require all contractors engaged in the constructon 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.

Section 7.15. Connection. 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.

Section 7.16. Completion of Project. The Issuer will complete the Project and operate and maintain the System in good condition.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

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

Except as provided in the Indenture, if any, with respect to funds and accounts created thereby, 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 created or charged to the appropiate 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 accured interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 8.02. Restrictions as to Arbitrage Bonds. The Issuer hereby covenants, and hereby so instructs the Bond Commission and the Trustee that they 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 to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section

148 of the Internal Revenue Code of 1986 (or any successor provision) and an Authorized Officer shall deliver his certificate, based upon this covenant, with regard thereto to the purchaser ofthe Original Bonds.

Secton 8.03. Rebates of Excess Arbitrage Earnings. In accordance with Section 148(f)(C) of the Code, the Issuer represents that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of the all tax-exempt obligations (other than private activity bonds as defined in Section 142 of the Code) issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 1987 will not exceed $5,000,000. Therefore, the Issuer believes that it is except from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Issuer is in fact subject to such rebate requirements the Issuer hereby covenants to rebate to the United States Government the amounts required by the Code and to take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of the interest on the Bonds.

Section 8.04. Covenant to Amend Ordinance. The City retains the right to make any amendments, insertions or deletions by Supplemental Resolution to this Ordinance as the City deems desirable or necessary prior to the issuance of the Bonds, including but not limited to amendments, insertions and deletions to comply with the Code. Notwithstanding the provisions of Section 11.01 hereof, the City shall without consent of the Owners of any Bonds or Notes, as the case may be, amend or supplement this Ordinance by a resolution supplemental hereto or any amendatory ordinance to comply with the Code if such amendment or supplement is necessary to preserve the tax-exempt status of the Bonds or Notes. The Council of the City hereby retains the specific authority to amend this Ordidnance or supplement it by resolution to comply with the Code. In its determination to amend or supplement this Ordinance,the City may rely on the opinion of nationally recognized bond counsel.

Section 8.05. Public Purpose Bonds. The City shall use the Original Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be operated solely for a public purpose and as a local governmental activity

of the City.

Section 8.06. Private Activity Bond Covenant. The City shall not permit at any time or times any of the proceeds of the bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

Section 8.07. Filing Covenant. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds, including, without limitation, the information return required under Section 149(e) of the Code.

Section 8.07. Federal Guarantee Covenant. The Bonds, in whole or in part, are not and will not be directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

Section 8.08. Restriction of Yield on Bond Proceeds. The City shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE IX

DEFAULT AND REMEDIES

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

(A) If default occurs in the due and punctual payment of the principal of or interest on any Notes; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Notes set forth in this Bond Legislation, any supplemental resolution, or in the Notes, 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 Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Note; 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.

B. 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 any Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the 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 Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of Bonds; or

(C) If the Issuer files a petition seeking reorganizaton or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a

Note or Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her right 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 Notes or Bonds, as the case may be, (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 Notes or Bonds, as the case may be, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Notes or Bonds, or the rights of such Registered Owners, provided however, that no remedy herein stated may be exercised by a Noteholder in a manner which adversely affects any remedy available to the Bondholders or the holders of the Prior Bonds and provided further, that all rights and remedies of the Holders of the Series 1987 B Bonds shall be subject to those of the Holders of the Series 1987 A Bonds and all rights and remedies of the Holders of the bonds shall be subject to those 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 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 reciver 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 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 Sytem 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 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 to 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 Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jursidiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

Any rights of the Registered Owners of the Series 1987 B Bonds with respect to the remedies provided by this Section shal be subject to the prior and senior rights of the Registered Owners of the Series 1987 A Bonds.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Series 1987 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1987 A Bonds, the principal of and interest due or to become due thereon, at the time and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1987 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1987 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1987 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of and interest on such Series 1987 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1987 A Bonds shall, prior to the maturiy thereof, be deemed to have been paid within the meaning and with the effect expressed in the firs paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same or earlier time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1987 A Bonds on and prior to the maturity dates thereof or to a prior redempion date thereof (including in such instance, any premium to come due thereon). Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1987 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the maturity dates thereof, and interest

earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 10.02. Defeasance of Series 1987 B Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1987 B Bonds, the principal of and interest due or to become due thereon, at the time and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1987 B Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1987 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1987 B 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 Agents at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of and interest on such Series 1987 B Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1987 B Bonds shall, prior to the maturiy thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same or earlier time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1987 B Bonds on and prior to the maturity dates thereof or to a prior redemption date thereof (including in such instance any premiums to come due thereon). Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1987 B Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the maturity dates thereof, and interest

earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Notes or Bonds shall be made without the consent in writing of the Registered Owners of 66-23% or more in prinicipal amount of the Notes or Bonds so affected and then Outstanding; provided, that no charge shall be made in the maturity of any Bond or Bonds or any Note or Notes or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds or Notes respectively, required for consent to the above-permitted amendments or modifications.

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 Notes, 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 jursidiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution, the Indenture, if any, the Bonds or the Notes, if any.

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

Section 11.05. Amendments to Maintain Tax Exemption. The Issuer hereby covenants to make any amendment or supplements to this Ordinance and to the Indenture authorized hereby to enable the interest on the Notes or Bonds to be and remain exempt from federal income taxation, and to preserve such tax exemption until the maturity or redemption thereof without further consent of the Holders of the Bonds or the Notes.

Section 11.06. Conflicting Provisions Repealed. All 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 no provision of the Prior Ordinance shall be repealed hereby so long as the Prior Bonds are outstanding. So long as any of the Prior Bonds is outstanding, in the event of an otherwise unreconcilable conflict between the Prior Ordinance and this Ordiance, the Prior Ordiance shall govern; provided, that a conflict shall be deemed reconcilable if satisfaction of one ofthe provisionsat least complies with the other.

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 enactment of this Ordinance do exist, have happened, have been performed and have been taken in compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, 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 qualifed for such office.

Section 11.08. Publication of Ordinance; Public Hearing. The Clerk hereby is authorized and directed to publish an abstract of this Ordinance and a notice of public hearing in substantially the form appended hereto as Exhibit "F" as a Class II legal advertisement in compliance with the provisions of Chapter 59, Article III, of the Code of West Virginia, 1931, as amended, in The Charleston Daily Mail, The Charleston Gazette and The Montgomery Herald, the latter being the only newspaper published in the City and the prior two being of general circulation in the City. Said abstract and notice shall be published twice, the first such publication being not less than 10 days prior to the date of public hearing, and the second such publication being not less than seven days or nor more than 13 days following said first publication but prior to the date of public hearing.

It is hereby determined that said abstract in such form contains sufficient information of the contents of this Ordinance.

The Council of the City shall conduct a public hearing on the date stated in said abstract and notice and shall permit any person interested in the Ordinance and the proposed issuance of the Series 1987 A Bonds and Series 1987 B Bonds to present protests, objections and suggestions relevant thereto.

CERTIFICATION

Certified a true copy of the Bond and Notes Ordinance duly enacted by the Council of the City of Montgomery on this 27th day of October, 1987.

[SEAL]

James F. Higgins, Jr.
Mayor

CITY OF MONTGOMERY

Sewer Revenue Bonds
Series 1987 A and Series 1987 B

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1987 A AND SERIES 1987 B OF THE CITY OF MONTGOMERY; AUTHORIZING, APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the city council ("Governing Body") of the City of Montgomery (the "Issuer"), has duly and officially enacted a bond and notes ordinance, effective September 15, 1987 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF CITY OF MONTGOMERY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $1,760,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1987 A, NOT MORE THAN $440,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1987 B, AND NOT MORE THAN $3,500,000.00 INTERIM CONSTRUCTION FINANCING, CONSISTING OF GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES OR BOTH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds of the Issuer (the "Bonds"), in an aggregate principal amount of not to exceed $2,200,000 to be issued in two series, the Series 1987 A Bonds to be in an aggregate principal amount of not more than $1,760,000 (the "Series 1987 A Bonds") and the Series 1987 B Bonds to be in an aggregate principal amount of not more than $440,000 (the Series 1987 B Bonds"), and has authorized the execution and delivery of a loan agreement

relating to the Series 1987 A Bonds dated October 15, 1987, and a supplemental loan agreement relating to the Series 1987 B Bonds, also dated October 15, 1987 (sometimes collectively referred to herein as the "Loan Agreement"), by and between the Issuer and West Virginia Water Development Authority (the "Authority"), all in accordance with West Virginia Code 1931, as amended, Chapter 16, Article 13 (the "Act"); and in the Bond Ordinance it is provided that the exact principal amounts, maturity dates, interest rates, interest and principal payment dates, sale prices 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 Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Loan Agreement be entered into and ratified by the Issuer, that the exact principal amounts, the prices, the maturity dates, the redemption provisions, the interest rates and the interest and principal payment dates of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

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

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:

(A) The Sewer Revenue Bonds, Series 1987 A, of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $1,164,146. The Series 1987 A Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2026, shall bear interest at the rate of 8.38% per annum, payable semiannually on April 1 and October 1 of each year, first interest payable April 1, 1988, shall be subject to redemption only upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1987 A Bonds, and shall be payable in installments of principal on October 1 of each of the years and in the amounts as set forth in "Schedule X," attached thereto and to the Loan Agreement and incorporated therein by reference and hereby specifically approved.

(B) The Sewer Revenue Bonds, Series 1987 B, of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of $285,539. The Series 1987 B Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2026, shall be interest free, shall be subject to redemption only upon the written consent of the Authority, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1987 B Bonds, and shall be payable in installments of principal on October 1 of each of the years and in the amounts as set forth in "Schedule X," attached thereto and to the Supplemental Loan Agreement and incorporated therein by reference and hereby specifically approved.

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

Section 3. The Issuer does hereby approve, accept and ratify the Loan Agreement, copies of which are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby ratified and approved. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon.

Section 4. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, as Registrar for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and One Valley Bank, National Association, in substantially the form attached hereto, and the execution and delivery by the Mayor of the Registrar's Agreement, 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 direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent for the Bonds.

Section 6. The Issuer does hereby appoint The Merchants National Bank, Montgomery, West Virginia, as Depository Bank under the Bond Ordinance.

Section 7. Series 1987 A Bond proceeds in the amount of $152,216 shall be deposited in the Series 1987 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 1987 A Bond proceeds in the amount of

$102,365.44 and Series 1987 B Bond proceeds in the amount of $7,514.34 shall be deposited in the Series 1987 A Bonds Reserve Account and the Series 1987 B Bonds Reserve Account, respectively.

Section 9. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about October 27, 1987, to the Authority pursuant to the Loan Agreement.

Section 10. The financing of the Project which is projected to cost $3,100,000 in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer. The issuance of the Bonds on a basis subordinate to the Prior Bonds is being authorized in an effort to aid in the abatement or reduction of the pollution of waters and streams situate in and about the City, including the Kanawha River. The Authority is agreeable to accepting the subordinate lien, as the principal amount of the Prior Bonds will constitute less than 20% of the bonds outstanding after the issuance of the Bonds.

Section 11. 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 in the West Virginia "Consolidated Fund," and therefore the Issuer hereby directs the Depository Bank and the Paying Agent to take such actions as may be necessary to cause such moneys to be invested in the Consolidated Fund until advised by the Issuer to the contrary.

Section 12. 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 Secton 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. They will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 13. In accordance with Section 148(f)(4)(C) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer), and that the aggregate face amount of the all

tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 1987 will not exceed $5,000,000, excluding, however, tax-exempt obligations which are not outstanding as of the date of delivery of the Bonds.

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

Adopted this 26th day of October, 1987.

CITY OF MONTGOMERY

By _____
Mayor

ANALYSIS OF 7.00% BORROWING COST FOR LOCAL ISSUER

---------- 1986 SERIES A BONDS ----------

PERIOD ENDING 10/1	COUPON	PRIN.	INTEREST	SERVICE
1988	8.38		90,509.76	90,509.76
1989	8.38	4,809	97,555.43	102,364.43
1990	8.38	5,213	97,152.44	102,365.44
1991	8.38	5,649	96,715.59	102,364.59
1992	8.38	6,123	96,242.21	102,365.21
1993	8.38	6,636	95,729.10	102,365.10
1994	8.38	7,192	95,173.00	102,365.00
1995	8.38	7,795	94,570.31	102,365.31
1996	8.38	8,447	93,917.09	102,364.09
1997	8.38	9,156	93,209.23	102,365.23
1998	8.38	9,922	92,441.96	102,363.96
1999	8.38	10,754	91,610.50	102,364.50
2000	8.38	11,656	90,709.31	102,365.31
2001	8.38	12,632	89,732.54	102,364.54
2002	8.38	13,690	88,673.98	102,363.98
2003	8.38	14,838	87,526.75	102,364.75
2004	8.38	16,081	86,283.33	102,364.33
2005	8.38	17,429	84,935.74	102,364.74
2006	8.38	18,890	83,475.19	102,365.19
2007	8.38	20,472	81,892.21	102,364.21
2008	8.38	22,188	80,176.66	102,364.66
2009	8.38	24,047	78,317.30	102,364.30
2010	8.38	26,063	76,302.16	102,365.16
2011	8.38	28,246	74,118.08	102,364.08
2012	8.38	30,613	71,751.07	102,364.07
2013	8.38	33,179	69,185.70	102,364.70
2014	8.38	35,960	66,405.30	102,365.30
2015	8.38	38,973	63,391.85	102,364.85
2016	8.38	42,238	60,125.91	102,363.91
2017	8.38	45,778	56,586.37	102,364.37
2018	8.38	49,615	52,750.17	102,365.17
2019	8.38	53,772	48,592.44	102,364.44
2020	8.38	58,278	44,086.34	102,364.34
2021	8.38	63,162	39,202.65	102,364.65
2022	8.38	68,455	33,909.67	102,364.67
2023	8.38	74,191	28,173.14	102,364.14
2024	8.38	80,409	21,955.94	102,364.94
2025	8.38	87,147	15,217.66	102,364.66
2026	8.38	94,448	7,914.74	102,362.74
		1,164,146	2,816,218.82	3,980,364.82

---------- 1986 SERIES A BONDS ----------

PERIOD ENDING 10/1	ZERO COUPON BONDS
	.00
1988	.00
1989	7,514.34
1990	7,514.18
1991	7,514.18
1992	7,514.18
1993	7,514.18
1994	7,514.18
1995	7,514.18
1996	7,514.18
1997	7,514.18
1998	7,514.18
1999	7,514.18
2000	7,514.18
2001	7,514.18
2002	7,514.18
2003	7,514.18
2004	7,514.18
2005	7,514.18
2006	7,514.18
2007	7,514.18
2008	7,514.18
2009	7,514.18
2010	7,514.18
2011	7,514.18
2012	7,514.18
2013	7,514.18
2014	7,514.18
2015	7,514.18
2016	7,514.18
2017	7,514.18
2018	7,514.18
2019	7,514.18
2020	7,514.18
2021	7,514.18
2022	7,514.18
2023	7,514.18
2024	7,514.18
2025	7,514.18
2026	7,514.18
	285,539.00

CITY OF MONTGOMERY, WEST VIRGINIA
SEWER REVENUE BONDS, SERIES 1992 A AND SERIES 1992 B
and
SEWERAGE SYSTEM
INTERIM CONSTRUCTION FINANCING

BOND AND NOTES ORDINANCE

Table of Contents

Subject		Page
ARTICLE I - STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS		
Section 1.01	Authority for this Ordinance	
Section 1.02	Findings	
Section 1.03	Bond Legislation Constitutes Contract	
Section 1.04	Definitions	
ARTICLE II - AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT		
Section 2.01	Authorization of Construction and Acquisition of the Project	
ARTICLE III - AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT		
Section 3.01	Authorization of Bonds	
Section 3.02	Terms of Bonds	
Section 3.03	Execution of Bonds	
Section 3.04	Authentication and Registration	
Section 3.05	Negotiability, Transfer and Registration	
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	
Section 3.07	Bonds not to be Indebtedness of Issuer	
Section 3.08	Bonds Secured by Pledge of Net Revenues	
Section 3.09	Form of Original Bonds	
FORM OF SERIES 1992 A BOND		
FORM OF SERIES 1992 B BOND		

ubject | Page

Section 3.10 Sale of Original Bonds; Execution of Loan Agreement with Authority

RTICLE IV - INTERIM CONSTRUCTION FINANCING

Section 4.01 Authorization and General Terms
Section 4.02 Terms and Security for Notes; Trust Indentures
Section 4.03 Notes are Special Obligations
Section 4.04 Letters of Credit

RTICLE V - SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01 Establishment of Funds and Accounts with Depository Bank
Section 5.02 Establishment of Funds and Accounts with Commission
Section 5.03 System Revenues; Flow of Funds

ARTICLE VI - BOND PROCEEDS, FUNDS AND ACCOUNTS

Section 6.01 Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds
Section 6.02 Disbursement from the Bond Construction Trust Fund

ARTICLE VII - ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01 General Covenants of the Issuer
Section 7.02 Bonds and Notes not to be Indebtedness of the Issuer
Section 7.03 Bonds Secured by Pledge of Net Revenues
Section 7.04 Initial Schedule of Rates and Charges
Section 7.05 Sale of the System
Section 7.06 Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances
Section 7.07 Parity Bonds
Section 7.08 Books and Receipts
Section 7.09 Rates
Section 7.10 Operating Budget and Audit
Section 7.11 No Competing Franchise
Section 7.12 Enforcement of Collections
Section 7.13 No Free Services
Section 7.14 Insurance and Construction Bonds
Section 7.15 Mandatory Connections
Section 7.16 Completion of Project
Section 7.17 Engineers Certificate
Section 7.18 Budget

Subject **Page**

ARTICLE VIII - INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01 Investments
Section 8.02 Restrictions as to Arbitrage Bonds
Section 8.03 Rebates of Excess Arbitrage Earnings
Section 8.04 Covenant to Amend Ordinance
Section 8.05 Public Purpose Bonds
Section 8.06 Private Activity Bond Covenant
Section 8.07 Filing Covenant
Section 8.08 Federal Guarantee Covenant
Section 8.09 Restriction of Yield on Bond Proceeds

ARTICLE IX - DEFAULT AND REMEDIES

Section 9.01 Events of Default
Section 9.02 Remedies
Section 9.03 Appointment of Receiver

ARTICLE X - DEFEASANCE

Section 10.01 Defeasance of Series 1992 A Bonds
Section 10.02 Defeasance of Series 1992 B Bonds

ARTICLE XI - MISCELLANEOUS

Section 11.01 Amendment or Modification of Bond Legislation
Section 11.02 Bond Legislation Constitutes Contract
Section 11.03 Severability of Invalid Provisions
Section 11.04 Headings, Inc.
Section 11.05 Amendments to Maintain Tax Exemption
Section 11.06 Conflicting Provisions Repealed
Section 11.07 Covenant of Due Procedure, Etc.
Section 11.08 Public Notice of Proposed Financing
Section 11.09 Effective Date

SIGNATURES
CERTIFICATION
EXHIBIT A - Copy of Petition
EXHIBIT B - Trust Indenture
EXHIBIT C - Loan Agreement
EXHIBIT D - Supplemental Loan Agreement
EXHIBIT E - Ordinance - Rages & Charges
EXHIBIT F - Public Hearing Notice

CITY OF MONTGOMERY, WEST VIRGINIA

ORDINANCE

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF CITY OF MONTGOMERY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $850,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1992 A, NOT MORE THAN $200,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1992 B, AND NOT MORE THAN $1,000,000 INTERIM CONSTRUCTION FINANCING, CONSISTING OF GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES OR BOTH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any resolutions supplemental hereto, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 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. City of Montgomery (the "Issuer") is a municipal corporation organized and existing under the laws of the State of West Virginia.

B. The Issuer now owns facilities for the collection, treatment, purification and disposal of sewage. The custody, operation and maintenance of the sewer system, both within and without the corporate limits of the City, is under the supervision and control of the Sanitary Board, which was created and given such supervision and control by ordinance.

The construction and acquisition of certain extensions, improvements and betterments to the then existing sewer service systems were financed by the proceeds of City of Montgomery Sewer Revenue Bonds Series 1963 in the aggregate principal amount of $465,000 and City of Montgomery Sewer Revenue Bonds Series 1987 A and Series 1987 B in the aggregate principal amount of $1,449,685. (the "Prior Bonds").

C. The Sanitary Board pursuant to the provisions of Chapter 16, Article 13, Section 5, of the Code of West Virginia 1931, as amended, has petitioned the City Council and has requested that an Ordinance be passed to amend and re-enact the Montgomery City Code to reflect new sewer rates and charges and to enact this Ordinance and authorize the project and financing provided for hereby. Attached hereto as Exhibit "A" is a copy of the said petition.

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Prior Bonds and the Bonds (as hereinafter defined) and all Sinking Fund, Reserve Account and other payments provided for in the 1963 Bond Ordinance and the 1987 Bond and Notes Ordinance (the "Prior Bond Ordinances") and herein.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of not more than $850,000 in two series, being the Series 1992 A Bonds in the aggregate principal amount of not more than $850,000, and the Series 1992 B Bonds in the aggregate principal amount of not more than $200,000 (collectively, the "Bonds"), and (at the option of the Issuer) to issue comtemporaneously therewith, or as soon as practicable thereafter, its sewerage system grant anticipation notes, or a note or notes evidencing a line of credit, or both (collectively, the "Notes") in the aggregate principal amount of not more than $1,000,000 to temporarily finance costs of construction and acquisition of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Notes during the term thereof and upon the Bonds prior to and during construction or acquisition and for 6 months after completion of construction of the Project; engineering, and legal expenses; expenses for estimates of cost and revenues, expenses for plans, specifications and surveys; any administrative fees and expenses of the Authority; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and Notes and such other expenses as may be necessary or incident to the financing herein authorized, the construction or acquisition 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, including, with respect to the Notes, any fees to the Credit Bank, as hereinafter defined, and any costs of obtaining insurance thereon; provided that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or Notes or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs the Project, as hereinafter defined.

F. The period of usefulness of the System after completion of the Project is not less than 40 years.

G. It is in the best interests of the Issuer that its Original Bonds (as hereinafter defined) be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement and a supplemental loan agreement (collectively, the "Loan Agreement") to be entered into between the Issuer and the Authority, upon receipt of bids, in form satisfactory to the Issuer and the Authority.

H. There are outstanding obligations of the Issuer which will rank either senior and prior to, on parity with, or junior and subordinate to the Original Bonds as to liens, pledge, source of and security for payment, which obligations are designated and have the respective lien positions, together with the Original Bonds as follows:

Designation	Lien Position
City of Montgomery Sewer Revenue Bonds Series 1963 issued in the original aggregate principal amount of $465,000 (the "Series 1963 Bonds")	First Lien
City of Montgomery Sewer Revenue Bonds Series 1987 A (the "Series 1987 A Bonds") issued in the original aggregate principal amount of $1,164,146	Second Lien
City of Montgomery Sewer Revenue Bonds Series 1987 B (the "Series 1987 B Bonds") issued in the original aggregate principal amount of $285,539	Third Lien
City of Montgomery Sewer Revenue Bonds Series 1992 A (the "Series 1992 A Bonds")	Second Lien

City of Montgomery Sewer Revenue Bonds Series 1992 B (the "Series 1992 B Bonds") Third Lien

The Series 1963 Bonds are hereinafter called it's "First Lien Bonds" and the Series 1987 A Bonds and the Series 1992 A Bonds are hereinafter called the "Second Lien Bonds". The Series 1987 B Bonds and the Series 1992 B Bonds are hereinafter called the "Third Lien Bonds".

The Prior Bonds shall rank senior and superior to the lien on the Net Revenues to the liens of the Series 1992 A and Series 1992 B Bonds.

The Series 1992 A Bonds shall be issued on a parity with the Series 1987 A Bonds, and senior and prior to the Series 1987 B Bonds and the 1992 B Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Series 1992 B Bonds Shall be issued on a parity with the Series 1987 B Bonds and junior and subordinate to the Series 1987 A Bonds and the Series 1992 A Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Grant Anticipation Notes, if issued, will not be payable from Gross Revenues, but shall be payable from Grant Receipts, Surplus Revenues and proceeds of a letter of credit, if any, all as shall be set forth in the Indenture or the Supplemental Resolution authorizing the Notes.

I. The Issuer has received (or will receive prior to issuance of the Original Bonds) the written consent of the Authority to issuance of the Original Bonds with lien positions with respect to the Prior Bonds as set forth in paragraph H of this Section 1.02.

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

K. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a

Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will have expired (without any successful rehearing or appeal) prior to the issuance of any Bonds or Notes hereunder.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Original Bonds and the Notes by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Original Bonds and Notes, respectively, all which shall be of equal rank and without preference, priority or distinction between any one Original Bond of a series and any other Original Bonds of the same series and between any one Note of a series and any other Note of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

"Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Authorized Officer" shall mean the Mayor of the Issuer or any temporary Mayor or other officer authorized as such duly appointed by the Governing Body.

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

"Bondholder", "Holder of the Bonds", "Holder" or any similar term whenever used herein with respect to an Outstanding Bond or Bonds shall mean the person in whose name such Bond is registered.

"Bond Legislation", "Ordinance", "Bond and Notes Ordinance" or "Local Act" shall mean this Bond and Note Ordinance and all orders, ordinances and resolutions supplemental hereto or amendatory hereof.

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

"Bonds" shall mean the Original Bonds, and any bonds on a parity therewith authorized to be issued hereunder.

"Clerk" shall mean the recording officer of the Governing Body of the Issuer.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Consulting Engineers" shall mean Kelley, Gidley, Blair & Wolfe, Inc., Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

"Council" shall mean the Council of the City or any other governing bond of the City that succeeds to the functions of the Council as presently constituted and shall be deemed to refer also to the Sanitary Board of the City to the full extent of the powers relating to the System, as hereinafter defined conferred upon said Sanitary Board.

"Credit Bank" shall mean the issuance of any letter of credit obtained by the Issuer for the benefit of the Trustee as security for the Notes, all as shall be set forth in the Supplemental Resolution.

"Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"Eligible Costs" shall mean Costs of the Project which are reimbursable in full on a dollar-for-dollar basis from EPA Grant Receipts, the total of which are equal in amount to the EPA Grant.

"EPA" shall mean the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" shall mean the grant from the EPA pursuant to the commitment therefor.

"FDIC" shall mean the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

"Government Obligations" shall mean 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 Agreement" shall mean a written commitment for the payment of the EPA Grant or any of the Other Grants, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which Grant is to be paid to the Issuer; provided that, "EPA Grant Agreement" shall mean only the Grant Agreement relating to the EPA Grant and "Other Grant Agreements" shall mean only those Grant Agreements relating to the Other Grants.

"Grant Receipts" shall mean all moneys received by the Issuer on account of any Grant after the date of issuance of the Notes; provided that "EPA Grant Receipts" shall mean only Grant Receipts on account of the EPA Grant, and "Other Grant Receipts" shall mean only Grant Receipts on account of any or all of the Other Grants.

"Grants" shall mean, collectively, the EPA Grant and the Other Grants, as hereinafter defined.

"Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Section 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" shall mean Smith, Cochran and Hicks, or any certified public accountant or firm of certified public accountants which shall 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.

"Indenture" or "Trust Indenture" shall mean the Trust Indenture which may be entered into between the Issuer and the Trustee relating to the Notes in substantially the form attached hereto as Exhibit "B" and all supplements or amendments thereto.

"Investment Property" shall mean any security (as said term is defined in Section 165(G)(2)(a) or (B) of the Code), obligation, annuity contract, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is

excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" or "City" shall mean the City of Montgomery, West Virginia in Fayette County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement, to be entered into between the Authority and the Issuer providing for the purchase of the Original Bonds from the Issuer by the Authority, the forms of which are attached as Exhibit "C" & "D" and the execution and delivery by the Issuer authorized by this Ordinance.

"Net Proceeds" shall mean the face amount of the Original Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the respective Reserve Accounts. 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 Original Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Noteholder", "Holder of the Notes" or any similar term shall mean the person, whenever used herein with respect to an Outstanding Note or Notes, in whose name such Note is registered.

"Notes" or "GAN" shall mean collectively, the not more than $1,000,000 in aggregate principal amount of Sewerage System Grant Anticipation Notes, originally authorized hereby, or the not more than $1,000,000 in aggregate principal amount of a note or notes evidencing a line of credit originally authorized hereby, and unless the context clearly indicates otherwise, the terms "Notes" or "GAN" includes any refunding Notes or GAN of the Issuer.

"Notes Construction Trust Fund" shall mean the Notes Construction Trust Fund which may be established by Section 4.02 of the Indenture.

"Notes Debt Service Fund" shall mean the Notes Debt Service Fund which may be established by Section 4.01 of the Indenture.

"Notes Registrar" shall mean the bank to be designated as such in the Indenture or the Supplemental Resolution and its successors and assigns.

"Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the

foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar, Paying Agent and the Trustee (all as herein defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds or Notes, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean, collectively, the not more than $850,000 in aggregate principal amount of Series 1992 A Bonds and the not more than $200,000 in aggregate principal amount of Series 1992 B Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted and authorized by this Bond Legislation.

"Original Notes Purchaser" shall mean the original purchaser of the Notes as shall be named in a resolution supplemental hereto, and, in the event a note or notes evidencing a line of credit are issued, such bank or banks as shall be named in a resolution supplemental hereto.

"Other Grants" shall mean collectively, any other grant hereafter received by the Issuer to aid in financing any Costs.

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

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

"Paying Agent" shall mean the bank or banks or other entity designated as such for the Bonds and/or the Notes in the Indenture or in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

"Program" shall mean the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Prior Bonds" shall mean City of Montgomery Sewer Revenue Bonds Series 1963 in the aggregate principal amount of $465,000.

"Prior Ordinances" shall mean The City of Montgomery Sewer Revenue Bonds Series 1963 Ordinance and The City of Montgomery Sewer Revenue Bonds Series 1987 A and 1987 B Ordinance.

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

"Project" shall mean the acquisition, construction and repairing of existing sanitary sewer lines and additional storm drainage lines.

"Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

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

(c) Pre-refunded municipal obligations meeting the following conditions:

(1) The bonds are (i) not to be redeemed prior to maturity or the trustee has been given irrevocable instructions concerning their calling and redemption and (ii) the issuer has covenanted not to redeem such bonds other than as set forth in such instructions;

(2) The bonds are secured by ash or Government Obligations which may be applied only to interest, principal, and premium payments of such bonds;

(3) The principal of and interest on the Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the bonds;

(4) The Government Obligations serving as security for the bonds are held by an escrow agent or trustee; and

(5) The Government Obligations are not available to satisfy and other claims, including those against the trustee or escrow agent.

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

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

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

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

(h) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (f), above, with banks or national banking associations which are

members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(i) With respect to the Notes, the Investment Agreement which may be entered into by and between the Trustee and the bank designated as "Investment Bank" in the Supplemental Resolution;

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

(k) 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", "Noteholder", "Bondholder", "Holder" or any similar term shall mean, whenever used herein with respect to an Outstanding Bond, Note, Bonds or Notes, the person in whose name such Bond or Note is registered.

"Registrar" shall mean as appropriate either the Bond Registrar or the Notes Registrar or both.

"Renewal and Replacement Fund" shall mean the Renewal and Replacement Fund created by Section 5.01.

"Revenue Fund" shall mean the Revenue Fund established by Section 5.01 hereof.

"Sanitary Board" or "Board" shall mean the Sanitary Board of the City established by an ordinance duly enacted by the Council of the City and any successors to the functions thereof.

"Series 1987 A Bonds" shall mean City of Montgomery Sewer Revenue Bonds Series 1987 A issued in the aggregate principal amount of $1,164,146.

"Series 1987 B Bonds" shall mean City of Montgomery Sewer Revenue Bonds Series 1987 B issued in the aggregate principal amount of $285,539.

"Series 1992 A Bonds" or "Series A Bonds" shall mean the not more than $750,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1992 A of the Issuer.

"Series 1992 A Bonds Reserve Account" shall mean the Series 1992 A Bonds Reserve Account established in the Series 1992 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1992 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1992 A Bonds in any year.

"Series 1992 A Bonds Sinking Fund" shall mean the Series 1992 A Sinking Fund established by Section 5.02 hereof.

"Series 1992 B Bonds" or "Series B Bonds" shall mean the not more than $100,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1992 B, of the Issuer.

"Series 1992 B Bonds Reserve Account" shall mean the Series 1992 B Bonds Reserve Account established in the Series 1992 B Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1992 B Bonds Reserve Requirement" shall mean, as of the date of calculation, the maximum amount of principal which will become due on the Series 1992 B Bonds in any year.

"Series 1992 B Bonds Sinking Fund" shall mean the Series 1992 B Bonds Sinking Fund established by Section 5.02 hereof.

"State" shall mean the State of West Virginia.

"Supplemental Resolution" shall mean any ordinance, resolution 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 Notes or Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Notes or the Original Bonds, as the case may be, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" shall mean the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 1963 Bonds and the Series 1987 A Bonds and Series 1987 B Bonds, the Bonds or any other obligations of the Issuer, including the reserve account for the Prior Bonds, the Renewal and Replacement Fund and the Reserve Accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" shall mean the works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof, owned by the City and under the

supervision and control of the Sanitary Board, and any additions, improvements or betterments thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

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

"Trustee" shall mean the banking institution designated as trustee for the Noteholders under the Indenture, if any, and its successors and assigns.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the construction and acquisition of the Project, at an estimated cost of $778,091.91 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 Notes and the Bonds hereby authorized shall be applied as provided in the Indenture, if any, and Article VI hereof, respectively.

ARTICLE III

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

Section 3.01. Authorization of Original Bonds. For the purposes of capitalizing interest on the Original Bonds, funding a reserve account for each series of Original Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any of such purposes, there shall be issued negotiable Original Bonds of the Issuer, in an aggregate principal amount of not more than $850,000. Said Bonds shall be issued in two series, to be designated respectively, "Sewer Revenue Bonds, Series 1992 A," and "Sewer Revenue Bonds, Series 1992 B," in the aggregate principal amount of not more than $850,000 and $200,000, respectfully, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. Such Bonds shall be issued contemporaneously with or prior to issuance of the Notes, if any. The proceeds of the

Bonds remaining after funding of the Reserve Accounts and capitalization of interest, if any, shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Bonds shall bear interest at such rate or rates, not exceeding the then legal maximum, payable semiannually 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. The Bonds shall be payable as to principal at the office of the Paying Agent in any currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying 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 Original Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a payment record attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Bonds of each series shall be exchangeable at the option and expense of the Holder for other fully registered 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, in such denomination as determined by a Supplemental Resolution. The registered Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the 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 3.04. Authentication and Registration. No 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 forms set forth in Section 3.09 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 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 the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and, each successive 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 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 any of the Bonds remain Outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney or legal representative 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 Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchange or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of 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 Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any

proposed redemption of Bonds, next preceding the date of such redemption and ending on such interest payment date or redemption date.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation for 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 Registration 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 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Series 1992 B Bonds to be Junior and Subordinate to Series 1992 A Bonds. The payment of the debt service of all the Series 1992 A Bonds shall be secured forthwith equally and ratably with the Series 1987 A Bonds, on a basis junior and subordinate to the Series 1963 Bonds, by a lien on the Net Revenues derived from the System. The payment of the debt service of all the Series 1992 B Bonds shall also be secured forthwith equally and ratably with the Series 1987 B Bonds by a lien on the Net Revenues derived from the System, but junior and subordinate to the lien on such Net Revenues in favor of the Holders of the Series 1963 Bonds and the Series 1992 A Bonds. Such Net Revenues in an amount sufficient, after all payments on account of the Series 1963 Bonds, the Prior Bonds, to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereunder established, are hereby irrevocably pledged to the payment of the principal of and the interest on the Series 1987 A Bonds, the Series 1987 B Bonds, the Series 1992 A Bonds and the Series 1992 B Bonds as the same become due.

Section 3.09. Form of Original Bonds. The text of the Original Bonds shall be in substantially the following forms, 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.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY SEWER REVENUE
BOND, SERIES 1993 A

No. AR-1 $648,387

KNOW ALL MEN BY THESE PRESENTS: That the City of Montgomery, 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 West Virginia Water Development Authority (the "Authority") or registered assigns the sum of Six Hundred Forty-Eight Thousand Three Hundred Eighty-Seven and NO/100 Dollars ($648,387.00), in annual installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated hereby by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning April 1, 1993. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of Charleston National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 1st day of the month preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with the Loan Agreement between the Issuer and the Authority, dated January 19, 1993.

This Bond is issued (i) to pay costs of acquisition and construction of certain additions, improvements and betterments to the existing sewage treatment system, collection and

transportation facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on May 27, 1992, effective May 27, 1992, as supplemented by a resolution duly adopted by the Issuer on the 12th day of January, 1993, (collectively called 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 junior, subordinate and inferior as to lien on and source and security for payment from the net revenues and in all other respects to the City's Sewer Revenue Bonds dated as of April 1, 1963, Outstanding as of the date hereof in the aggregate principal amount of $170,000. The City has previously issued The City of Montgomery Sewer Revenue Bonds Series 1987 A in the aggregate principal amount of $1,164,146 which are on a parity as to the lien and security with the Bonds.

This Bond is issued comtemporaneously with the Sewer Revenue Bonds, Series 1993 B, of the Issuer (the "Series 1993 B Bonds"), issued in the aggregate principal amount of $21,613.00 which Series 1993 B Bonds are junior and subordinate with respect to liens and sources of and security for payment to the Bonds and are issued on a parity with the Series 1987 B Bonds.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1993 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Series 1993 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient together with other revenues of the System to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least

115% of the maximum amount required to pay in any year the maximum amount due of principal of and interest on the Bonds, the Series 1993 B Bonds, and the Prior Bonds, the Series 1987 A Bonds, the Series 1987 B Bonds and on all other obligations secured by or payable from such revenues prior to or on a parity with the Bonds, or the Series 1993 B Bonds, provided however, that so long as there exists in the Series 1993 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in any year, and in the reserve account established for the Series 1993 B Bonds and any other obligations Outstanding prior to or on a parity with the Bonds or the Series 1993 B Bonds, including the Prior Bonds, the Series 1987 A Bonds and the Series 1987 B Bonds, in an amount at least equal to the respective 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 transferrable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney or legal representative duly in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney or legal representative 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 moneys received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a line upon such moneys, until so applied, in favor of the owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the CITY OF MONTGOMERY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorded, and has caused this Bond to be dated _____ ____, 1992.

[SEAL]

_____
MAYOR

ATTEST:

_____
Recorder

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[FORM OF ASSIGNMENT]

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY, WEST VIRGINIA
SEWER REVENUE BOND, SERIES 1993 B

No. BR-1 $21,613

KNOW ALL MEN BY THESE PRESENTS: That the City of Montgomery, 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 West Virginia Water Development Authority (the "Authority") or registered assigns the sum of Twenty-One Thousand Six Hundred Thirteen and NO/100 Dollars ($21,613.00), in annual installments on October 1, of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated hereby by reference, without interest.

Principal installments of this Bond are payable in any coin or currency which, on the respective dated 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, at any time, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with the Loan Agreement between the Issuer and the Authority, dated January 19, 1993.

This Bond is issued (i) to pay costs of acquisitions and construction of certain new additions, improvements and betterments to the existing sewage treatment system, collection and transportation facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on May 27, 1992, effective June 16, 1992, as supplemented by resolution duly adopted by the Issuer on the 12th day of January, 1993, (collectively called 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 junior, subordinate and inferior as to lien on and source and security for payment from the Net Revenues and in all other respects to the City's Sewer Revenue Bonds dated as of April 1, 1963, Outstanding as of the date hereof in the aggregate principal amount of $170,000 and City of Montgomery Sewer Revenue Bonds Series 1987 A and on a parity with City of Montgomery Sewer Revenue Bonds Series 1987 B and is junior, subordinate and inferior as to lien on and source and security for payment from the net revenues and in all other respects to the City's Sewer Revenue Bonds, Series 1993 A, issued simultaneously herewith in the aggregate principal amount of $648,387 (the "Series 1993 A Bonds").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1993 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same except from said special fund provided from the Net Revenues, the moneys in the Series 1993 B Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient together with other revenues of the System to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance year equal to at least 115% of the maximum amount required to pay in any year the maximum amount due of principal of and interest on the Bonds, the Series 1993 A Bonds, the Prior Bonds, the Series 1987 A Bonds and the Series 1987 B Bonds and on all other obligations secured by or payable from such revenues prior to or on a parity with the Bonds, or the Series 1993 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in any year, and in the reserve accounts established for the Series 1993 A Bonds and the Prior Bonds, the Series 1987 A Bonds, the Series 1987 B Bonds and any other obligations Outstanding prior to or on a parity with the Bonds or

the Series 1993 A Bonds, in an amount at least equal to the respective 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 Charleston National Bank as Registrar by the registered owner, or by its attorney duly in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond 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 moneys received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond; provided that said lien upon moneys in the Bond Construction Trust Fund is subordinate to the lien of the Series 1993 A Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, the CITY OF MONTGOMERY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorded, and has caused this Bond to be dated _____ ___, 1992.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[FORM OF ASSIGNMENT]

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

_____

_____

_____

_____

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

Dated: _____ ___, 1992.

_____

In the presence of:

_____

Section 3.10. Sale of Original Bonds; Execution of Loan Agreement with Authority. The Original Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in substantially the forms attached hereto as Exhibits "B" & "C" and made a part hereof, and the Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority and such execution and delivery is ratified and confirmed.

Section 3.11. "Amended Schedule A" Filing; Tender of Series 1992 B Bonds. Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor. In the event such schedule reflects an excess of funding for the Project, or if the Authority is otherwise advised of an excess, the Authority may tender the Series 1992 B Bonds to the Issuer for payment in an amount equal to such excess to the extent such excess is lawfully available therefor. Notwithstanding the foregoing, if the Issuer has Notes outstanding upon completion of acquisition and construction of the Project, it will advise the Authority of such fact and submit a second schedule to the Authority upon payment of such Notes, and the Authority will not tender its Series 1992 B Bonds for payment until the outstanding Notes have been paid.

ARTICLE IV

INTERIM CONSTRUCTION FINANCING

Section 4.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the Grant Receipts, the Issuer may issue and sell its Notes in the aggregate principal amount of not to exceed $1,000,000. The Notes may be in the form of grant anticipation notes or as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, and as shall be set forth in a resolution supplemental hereto. The Notes shall bear interest from the date or dated, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture or Supplemental Resolution, as applicable.

Section 4.02. Terms of and Security for Notes; Trust Indenture. The Notes shall be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, on such terms and secured in the manner set forth in the Indenture, if applicable, or supplemental resolution, if no Indenture is used.

Section 4.03. Notes are Special Obligations. The Notes be special obligations of the Issuer payable as to cipal and interest solely from the Grant Receipts, the moneys the funds and accounts created under the Indenture, if any, net proceeds of any draw under the letter of credit issued by redit Bank or any refunding notes, the Surplus Revenues, if and any other sources described in the Indenture or lemental resolution. The Notes do not and shall not itute an indebtedness of the Issuer within the meaning of constitutional or statutory provisions. The general funds of Issuer are not liable, and neither the full faith and credit the taxing power of the Issuer is pledged for the payment of otes. The Holders of the Notes shall never have the right ompel the forfeiture of any property of the Issuer. The shall not be a debt of the Issuer, nor a legal or equitable ge, charge, lien or encumbrance upon any property of the er or upon any of its income, receipts or revenues except as rth in the Indenture.

Section 4.04. Letters of Credit. As additional security the Notes, the Issuer may obtain a letter or letters of t from a bank or banks, pursuant to which such bank or banks agree to pay to the Trustee, upon presentation by the ee of certain certificates, the sum or sums set forth in, but not to exceed $200,000.00 in the aggregate. In the of a draw under any such letter of credit, the Issuer shall its refunding notes to the Credit Bank. Any such letter of t shall be authorized and shall have such terms as shall be rth in a resolution supplemental hereto.

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with itory Bank. The following special funds or accounts are ed with and shall be held by the Depository Bank:

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with ssion. The following special funds or accounts are hereby lished with the Commission:

(1) Series 1992 A Bonds Sinking Fund;

(a) Within the Series 1992 A Bonds Sinking Fund, the Series 1992 A Bonds Reserve Account.

(2) Series 1992 B Bonds Sinking Fund;

(a) Within the Series 1992 B Bonds Sinking Fund, the Series 1992 B Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.

A. So long as the Prior Bonds are Outstanding, the Gross Revenues shall be deposited in the sewer revenue fund established by Section 5 of the Prior Ordinance (the "Prior Revenue Fund"). Moneys in the Prior Revenue Fund shall first be disposed of as provided by Section 5(1)(2) and (3) of the Prior Ordinance.

B. After payment or defeasance of the Prior Bonds, the entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for there purposes and in the manner herein provided. From the Revenue Fund, the City shall first each month pay the current Operating Expenses of the System.

C. Thereafter, from the moneys remaining in the Prior Revenue Fund or, after payment or defeasance of the Prior Bonds from the moneys in the Revenue Fund the Issuer shall next, on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1987 A Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1987 A Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Series 1987 A 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 1987 A Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date, simultaneously therewith the Issuer shall, on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1992 A Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1992 A Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Series 1992 A 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 1992 A Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

D. The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1987 A Bonds, apportion and set apart out of the Prior Revenue Fund or the Revenue Fund, as the case may be, and remit to the Commission for deposit in the Series 1987 A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1987 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1987 A Bonds Sinking Fund and the next annual principal payment date is less than 13 months then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date, simultaneously therewith the Issuer shall, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1992 A Bonds, apportion and set apart out of the Prior Revenue Fund or the Revenue Fund, as the case may be, and remit to the Commission for deposit in the Series 1992 A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1992 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1992 A Bonds Sinking Fund and the next annual principal payment date is less than 13 months then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

E. The Issuer shall next from the Prior Revenue Fund or, after payment or defeasance of the Prior Bonds, from the Revenue Fund, on the first day of each month commencing 13 months prior to the first day of payment Series Bonds, remit to the Commission for deposit in the Series 1987 A Reserve Account, an amount equal to 1/120 of the Series 1987 A Reserve Account Requirement; provided, that no further payments shall be made into the Series 1987 A 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 1987 A Reserve Account Requirement. Once the Series 1987 A Reserve Account has been funded at the Series 1987 A Reserve Account Requirement, whether from Series 1987 A Bond proceeds or such monthly payments or otherwise, the City shall next remit to the Commission for deposit in the Series 1987 A Reserve Account an amount equal to any deficiency in the Series 1992 A Reserve Account Requirement. Any withdrawals from the Series 1987 A Reserve Account which result in a reduction in the balance of the Series 1987 A Reserve Account to below the Series 1987 A Reserve Account Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full, the Issuer shall simultaneously therewith, on the first day of each month, commencing 13 months prior to the first day of payment Series Bonds, remit to the Commission for deposit in the Series 1992 A Reserve Account, an amount equal to 1/120 of the Series 1992 A Reserve Account Requirement; provided, that no

further payments shall be made into the Series 1992 A 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 1992 A Reserve Account Requirement. Once the Series 1992 A Reserve Account has been funded at the Series 1992 A Reserve Account Requirement, whether from Series 1992 A Bond proceeds or such monthly payments or otherwise, the City shall next remit to the Commission for deposit in the Series 1992 A Reserve Account an amount equal to any deficiency in the Series 1992 A Reserve Account Requirement. Any withdrawals from the Series 1992 A Reserve Account which result in a reduction in the balance of the Series 1992 A Reserve Account to below the Series 1992 A Reserve Account Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full.

F. The Issuer shall next from the Prior Revenue Fund on, after payment or defeasance of the Prior Bonds from the moneys remaining in the Revenue Fund on the first day of each month, commencing with the month succeeding the first full calendar month after commencement of operation of the Project transfer to the Renewal and Replacement Fund a sum equal to 2-1/2% of the Gross Revenues each month, exclusive of any payments for account of the Series 1987 A and 1992 A Bonds Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and from each other and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for extensions or improvements to the System or for making emergency repairs or replacements to the System; provided that any deficiencies in the Series 1987 A Bonds Reserve Account and Series 1992 A Bonds Reserve Account shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

G. The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1987 B Bonds, apportion and set apart out of the Prior Revenue Fund after payment or defeasance of the Prior Bonds from the Revenue Fund and remit to the Commission for deposit in the Series 1987 B Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1987 B Bonds on the next ensuing principal payment date, and the Issuer shall simultaneously therewith, commencing 13 months prior to the first date of payment of principal on the Series 1992 B Bonds, apportion and set apart out of the Prior Revenue Fund after payment or defeasance of the Prior Bonds from the Revenue Fund and remit to the Commission for deposit in the Series 1992 B Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1992 B Bonds on the next ensuing principal payment date.

H. The Issuer shall next from the Prior Revenue Fund, or, after payment or defeasance of the Prior Bonds, from the Revenue Fund, on the first day of each month commencing 13 months prior to the first date of payment of the Series 1987 B Bonds, remit to the Commission for deposit in the Series 1987 B Reserve Account an amount equal to 1/120 of the Series 1987 B Reserve Account Requirement; provided, that no further payments shall be made into the Series 1987 B 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 1987 B Reserve Account Requirement. Once the Series 1987 B Reserve Account has been funded at the Series 1987 B Reserve Account Requirement, the City shall next remit to the Commission for deposit in the Series 1987 B Reserve Account an amount equal to any deficiency in the Series 1987 B Reserve Account Requirement. Any withdrawals from the Series 1987 B Reserve Account which result in a reduction in the balance of the Series 1987 B Reserve Account to below the Series 1987 B Reserve Account Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full, the Issuer shall simultaneously therewith, on the first day of each month commencing 13 months prior to the first date of payment of the Series 1992 B Bonds, remit to the Commission for deposit in the Series 1992 B Reserve Account an amount equal to 1/120 of the Series 1992 B Reserve Account Requirement; provided, that no further payments shall be made into the Series 1992 B 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 1992 B Reserve Account Requirement. Once the Series 1992 B Reserve Account has been funded at the Series 1992 B Reserve Account Requirement, the City shall next remit to the Commission for deposit in the Series 1992 B Reserve Account an amount equal to any deficiency in the Series 1992 B Reserve Account Requirement. Any withdrawals from the Series 1992 B Reserve Account which result in a reduction in the balance of the Series 1992 B Reserve Account to below the Series 1992 B Reserve Account Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full.

Moneys in the Series 1992 A Bonds Sinking Fund and the Series 1992 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective Series of Bonds as the same shall become due. Moneys in the Series 1992 A Bonds Reserve Account and the Series 1992 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the respective series of Bonds, as the same shall come due, when other moneys in the attendant Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the several Sinking Funds and Reserve Accounts shall be returned not less than once each year, by the Commission to the Issuer, for deposit in the Revenue Fund, and such amounts shall be applied in full, first to

the next ensuing interest payments, if any, due on the respective Series of Bonds, and then to the next ensuing principal payments due thereon.

As and when additional Bonds ranking on a parity with the Series 1992 A Bonds are issued, provision shall be made for additional payments into the Series 1992 A Sinking Fund sufficient to pay the interest, if any, on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Series 1992 A Reserve Account in an amount equal to the maximum principal and interest, if any, on the Series 1992 A Bonds, including such additional Series 1992 A Bonds which by their terms are payable from such Sinking Fund, coming due in any year.

As and when additional Bonds ranking on a parity with the Series 1992 B Bonds are issued, provision shall be made for additional payments into the Series 1992 B Sinking Fund sufficient to pay the interest, if any, on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Series 1992 B Reserve Account in an amount equal to the maximum principal and interest, if any, on the Series 1992 B Bonds, including such additional Series 1992 B Bonds which by their terms are payable from such Sinking Fund, coming due in any year.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission by the Issuer at the times provided herein.

The payments into the Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Saturday, Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

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

I. Whenever all of the required and provided transfers and payments from Prior Revenue Fund or the Revenue Fund, as the case may be, into the several funds, as hereinbefore provided, are current and there remains in said Fund a balance in excess of the estimated amounts required to be so transferred and

paid on account of the Prior Bonds and into the Sinking Funds, including the Reserve Account therein, and the Renewal and Replacement Fund 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 Issuer, including, but not limited to, payment to the Trustee for deposit in the Notes Debt Service Fund, as defined in the Indenture.

J. 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 fees and charges when due.

K. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in any funds and accounts created by the Prior Ordinance other than with the Commission, and in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

L. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinbefore 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.

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

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

O. All Tap Fees shall be deposited by the Issuer, as received, in the Bond Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System, provided that, in the event Notes are issued, Tap Fees may, with the written consent of the Authority be deposited otherwise.

ARTICLE VI

ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS

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

A. From the proceeds of the Series 1992 A Bonds, there shall be deposited with the Commission in the Series 1992 A Bonds Sinking Fund, the amount specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1992 A Bonds for the period commencing on the date of issuance of the Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. There shall next be paid, from the proceeds of the Bonds, be credited to the Construction Trust Fund and then paid to the Depository Bank, the amount necessary to pay in full all prior borrowings of the Issuer in connection with the Project, including interest accrued thereon, and the Depository Bank shall, concurrently with such deposit, pay such borrowings as directed by the Issuer.

C. Next, from the proceeds of the Series 1992 A Bonds, there shall be first credited to the Construction Trust Fund and then deposited with the Commission in the Series 1992 A Reserve Account a sum equal to the Series 1992 A Reserve Requirement and from the proceeds of the Series 1992 B Bonds, there shall be first credited to the Construction Trust Fund and then deposited with the Commission in the Series 1992 B Reserve Account a sum equal to the Series 1992 B Reserve Requirement.

D. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02.

E. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project, and until so expended, are hereby pledged as additional security for the Bonds with the lien on account of the Series 1992 B Bonds being junior and subordinate to that of the Series 1992 A Bonds. In the event that Notes are issued, the disposition of funds in the Bonds Construction Trust Fund may be modified from that set forth herein, with the written consent of the Authority.

Section 6.02. Disbursements From the Bond Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Disbursements from the Bond Construction Trust Fund, except for the costs of issuance thereof 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 and the Consulting Engineers, stating:

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

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

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

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

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

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the 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 Bond Construction Trust Fund to the Series 1992 A Bonds Reserve Account, and when fully funded to the Series 1992 B Bonds Reserve Account, and when both Reserve Accounts are fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply such moneys in full, first to the next ensuing interest payments, if any, due on the respective series of Bonds and next to the next ensuing principal payments due thereon.

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 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 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 said Bonds or the interest thereon is Outstanding and unpaid.

Until the payment in full of the principal of and interest on the Notes when due, the covenants, agreements and provisions contained in this Bond Legislation, shall, where applicable, also inure to the benefit of the Holders of the notes and the Trustee therefore and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by the Trustee or any Holder or Holders of said Notes as prescribed in the Indenture; provided, that Section 7.04 and Section 7.09 shall not be applied to the Notes.

Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall 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 funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds or Notes, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of all the Series 1992 A Bonds issued hereunder shall be secured forthwith equally and ratably with each other, by a lien on the Net Revenues derived from the operation of the System, on a parity with the lien on said Net Revenues in favor of the Holders of the Series 1987 A Bonds but junior and subordinate to the lien held by the holders of the Prior Bonds and further, senior and prior to the lien on said Net Revenues in favor of the Holders of the Series 1987 B Bonds and the Series 1992 B Bonds. The payment of the debt service of the Series 1992 B Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on said Net Revenues, on a parity with the lien on said Net Revenues in favor of the Holders of the Series 1987 Supplemental Bonds, and junior and subordinate to the lien on said Net Revenues in favor of the Holders of the Series 1987 Bonds and the Series 1992 A Bonds. The Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the

Prior Bonds and the Bonds and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System has been passed and approved by the Council as of May 27, 1992. A copy of the Ordinance so passed is attached hereto as Exhibit "E".

Section 7.05. Sale of the System. The System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds and Notes, if any, Outstanding, or to effectively defease this Resolution in accordance with Section 10.01 hereof and, if entered into and not previously defeased, the Indenture in accordance with Section 8.01 thereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the 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. With respect to the Notes, such proceeds in an amount sufficient to pay the Notes in full shall be applied to the payment of the Notes, either at maturity or, if allowable under the Supplemental Resolution or Indenture, prior thereto.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000 the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, 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, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of $10,000 but not in excess of $50,000, shall with the written consent of the Authority, by remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of the such par value or otherwise, shall be deposited in the Renewal and Replacement Fund. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provision of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all the Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bons for the 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 in this Section 7.06 and in Section 7.07B, the Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally to the Notes issued under the Indenture or supplemental resolution prior to or on a parity with the lien on behalf of such Notes until such Notes have been defeased in accordance with the provisions of the Indenture and the Bond Legislation; and so long as any of the Bonds are Outstanding, 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 Bonds; provided, however, that additional Bonds on a parity with the Series 1992 B Bonds only may be issued as provided for in Section 7.07 hereof. All obligations issued by the Issuer after the issuance of the 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 1992 A Bonds and the Series 1992 B Bonds; provided, that no such subordinate obligations shall be issued unless all payments

required to be made into the Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the 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 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 Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1992 B Bond. No Parity Bonds shall be issued which shall be payable out of the revenues of the System on a parity with the Series 1992 A Bonds, unless the Series 1992 B Bonds are no longer outstanding.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall 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 Prior Bonds and any other obligations with a lien on the Gross Revenues prior to or on a parity with the Bonds;

(2) The Bonds then Outstanding;

(3) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(4) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

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

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

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

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 Prior Bonds, the Series 1992 A Bonds and the Series 1992 B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Prior Bonds, the Series 1992 A Bonds or the Series 1992 B Bonds.

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

B. Notwithstanding the foregoing, or any provision of Section 7.06 to the contrary, additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 7.07, if there is first obtained by the Issuer the written consent of the Authority to the issuance of bonds on a parity with the Bonds.

Section 7.08. 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 or of a Note or Notes issued pursuant to this Bond Legislation or the Trustee shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Consulting Engineers, the Trustee and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds or Notes, as the case may be, 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 the Prior Ordinance this Bond Legislation and the Indenture with respect to the Prior Bonds, said Bonds or Notes, as the case may be, and the status of all said funds and accounts.

C. The amount of any Prior Bonds, Bonds, Notes or other obligations Outstanding.

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

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges as established will be continuously on file with the Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the payments into the funds created hereunder and under the Prior Ordinance. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient along with other revenues of the System (i) to pay for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds, the Prior Bonds, and all other obligations secured by or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event that an amount equal to or in excess of the Reserve

Requirements are on deposit in the Reserve Accounts and reserve accounts for bonds prior to or on a parity with the Bonds, including the Prior Bonds, the Series 1987 A Bonds and the Series 1987 B Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations, including the Prior Bonds, the Series 1987 A Bonds and the Series 1987 B Bonds secured by or payable from such revenues prior to or on a parity with the 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.

Section 7.10. Operating Budget and Audit. 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 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 recommendations by the Consulting Engineer, which finding and recommendations shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Trustee and the Authority and to any Holder of any Bonds or Notes, as the case may be, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Trustee and to any Holder of any Bonds or Notes, as the case may be, or anyone acting for and in behalf of such Holder of any Bonds or Notes, as the case may be.

In addition, the Issuer shall annually cause the records of the System to be audited by an independent certified public accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

Section 7.11. 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 7.12. 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 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, all delinquent 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 and facilities of the System and any services of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for services of the System and will not restore such services of either System until all delinquent charges for the services of the System, plus reasonable interest 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. The City shall discontinue water service for nonpayment of sewer bills in compliance with the rules and regulations of the Public Service Commission.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.14. Insurance and Construction Bonds.

A. The Issuer hereby covenants and agrees that so long as any of the Bonds or the Notes 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, with such beneficence as shall be required by Section 2.8 of the Loan Agreement. Such insurance shall initially cover the following risks and be in the following amounts:

(a) FIRE, LIGHTENING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurance 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 received by the Issuer shall be deposited in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for other purposes of the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors, as their 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 interest may appear. The City shall carry such other insurance as required by the Authority, including but not limited to flood insurance and business interruption insurance to the extent available at a reasonable cost to the City.

(b) PUBLIC LIABILITY INSURANCE, with limits of not less than $500,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $100,000 per occurrence for 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 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 compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

B. 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. 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 7.15. Connection. 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.

Section 7.16. Completion of Project. The Issuer will complete the Project and operate and maintain the System in good condition.

Section 7.17. Engineer's Certificate. The Governmental Agency shall have obtained a certificate of a professional engineer, licensed by the State, to the effect that the Water Development Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Water Development Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Water Development Project.

Section 7.18. Gross Proceeds. The Governmental Agency will furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Code from time to time as the Authority may request.

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

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Original 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 Original Bonds during the term thereof is, under the terms of the Original Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the

event that both (A) in excess of 5% of the Net Proceeds of the Original Bonds are used for a Private Business Use, and (B) an amount said excess of 5% of the principal or 5% of the interest due on the Original Bonds during the term thereof is, under the terms of the Original 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 in excess over said 5% of Net Proceeds of the Original Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Original Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Original Bonds are used, directly or indirectly, to make or finance a loan (other than loans constitution 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 Original Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

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

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

Section 7.20. Budget. The Governmental Agency shall annually adopt a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof, (i) to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, the Governmental Agency will terminate the services of any water

facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, that the Governmental Agency will enter into a termination agreement with the water provider, and (ii) the Governmental Agency will furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Code) from time to time as the Authority may request.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

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

Except as provided in the Indenture, if any, with respect to funds and accounts created thereby, 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 created or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to 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 Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Trustee, if any, and 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. Arbitrage. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Original Bonds which would cause the Original Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Original Bonds) so that the interest on the Original 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 8.03. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Original Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Original Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year in which the Original Bonds are issued does not and will not exceed $5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Original Bonds. For purposes of this first paragraph of Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code be treated as not issued by such entity; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code to each entity to which such entity is subordinate, be treated as assigned by such other entity, and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

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

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

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

Section 8.04. Covenant to Amend Ordinance. The City retains the right to make any amendments, insertions or deletions by Supplemental Resolution to this Ordinance as the City deems desirable or necessary prior to the issuance of the Bonds, including but not limited to amendments, insertions and deletions to comply with the Code. Notwithstanding the provisions of Section 11.01 hereof, the City shall without consent of the Owners of any Bonds or Notes, as the case may be, amend or supplement this Ordinance by a resolution supplemental hereto or any amendatory ordinance to comply with the Code if such amendment or supplement is necessary to preserve the tax-exempt

status of the Bonds or Notes. The Council of the City hereby retains the specific authority to amend this Ordinance or supplement it by resolution to comply with the Code. In its determination to amend or supplement this Ordinance, the City may rely on the opinion of nationally recognized bond counsel.

Section 8.05. Public Purpose Bonds. The City shall use the Original Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be operated solely for a public purpose and as a local governmental activity of the City.

Section 8.06. Private Activity Bond Covenant. The City shall not permit at any time or times any of the proceeds of the bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

Section 8.07. Restriction of Yield on Bond Proceeds. The City shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default.

A. Each of the following events shall constitute an "Event of Default" with respect to the Notes:

(a) If default occurs in the due and punctual payment of the principal of or interest on any Notes; or

(b) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Notes set forth in this Bond Legislation, any supplemental resolution, or in the Notes, 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 Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Note; 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.

B. 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 any Bonds; or

(b) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the 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 Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of Bonds; 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 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Note or Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her right 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 Notes or Bonds, as the case may be, (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 Notes or Bonds, as the case may be, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Notes or Bonds, or the rights of such Registered Owners, provided however, that no remedy herein stated may be exercised by a Noteholder in a manner which adversly affects any remedy available to the Bondholders or the holders of the Prior Bonds, Series 1987 A Bonds and Series 1987 B Bonds and provided further, that all rights and remedies of the Holders of the Series 1992 B Bonds shall be subject to those of the Holders of the Series 1992 A Bonds and all rights and remedies of the Holders of the Bonds shall be subject to those 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 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 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, 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 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 to 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 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 the ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

Any rights of the Registered Owners of the Series 1992 B Bonds with respect to the remedies provided by this Section shall be subject to the prior and senior rights of the Registered Owners of the Series 1992 A Bonds.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Series 1992 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1992 A Bonds, the principal of and interest due or to become due thereon, at the time and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1992 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1992 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1992 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of and interest on such Series 1992 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1992 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same or earlier time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1992 A Bonds on and prior to the maturity dates thereof or to a prior redemption date thereof (including in such instance, any premium to come due thereon). Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1992 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the maturity

dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge, for the purpose of this Section, securities shall mean and include only Government Obligations.

Section 10.02. Defeasance of Series 1992 B Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1992 B Bonds, the principal of and interest due or to become due thereon, at the time and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1992 B Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1992 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1992 B 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 Agents at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of and interest on such Series 1992 B Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1992 B Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same or earlier time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1992 B Bonds on and prior to the maturity dates thereof or to a prior redemption date thereof (including in such instance, any premium to come due thereon). Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1992 B Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge, for the purpose of this Section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Noes or Bonds shall be made without the consent in writing of the Registered Owners of 66-23% or more in principal amount of the Notes or Bonds so affected and then Outstanding; provided, that no charge shall be made in the maturity of any Bond or Bonds or any Note or Notes at the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds or Notes respectively, required for consent to the above-permitted amendments or modifications.

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 Notes, 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, the Indenture, if any, the Bonds or the Notes, if any.

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

Section 11.05. Amendments to Maintain Tax Exemption. The Issuer hereby covenants to make any amendment or supplements to this Ordinance and to the Indenture authorized hereby to enable the interest on the Notes or Bonds to be and remain exempt from federal income taxation, and to preserve such tax exemption until the maturity or redemption thereof without further consent of the Holders of the Bonds or the Notes.

Section 11.06. Conflicting Provisions Repealed. All 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 no provision of the Prior

Ordinance shall be repealed hereby so long as the Prior Bonds are outstanding. So long as any of the Prior Bonds are outstanding, in the event of an otherwise unreconcilable conflict between the Prior Ordinance and this Ordinance, the Prior Ordinance shall govern; provided, that a conflict shall be deemed reconcilable if satisfaction of one of the provisions at least complies with the other.

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 enactment of this Ordinance do exist, have happened, have been performed and have been taken in compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, 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. Publication of Ordinance; Public Hearing. The Clerk hereby is authorized and directed to publish an abstract of this Ordinance and a notice of public hearing in substantially the form appended hereto as Exhibit "F" as a Class II legal advertisement in compliance with the provisions of Chapter 59, Article III, of the Code of West Virginia, 1931, as amended, in The Charleston Daily Mail, The Charleston Gazette and The Montgomery Herald, the latter being the only newspaper published in the City and the prior two being of general circulation in the City. Said abstract and notice shall be published twice, the first such publication being not less than 10 days prior to the date of public hearing, and the second such publication being not less than seven days or not more than 13 days following said first publication but prior to the date of public hearing.

It is hereby determined that said abstract in such form contains sufficient information of the contents of this Ordinance.

The Council of the City shall conduct a public hearing on the date stated in said abstract and notice and shall permit any person interested in the Ordinance and the proposed issuance of the Series 1992 A Bonds and Series 1992 B Bonds to present protests, objections and suggestions relevant thereto.

Section 11.09. Effective Date. This Ordinance shall take effect after the public hearing and otherwise in accordance with law.

First Reading: May 13, 1992

Second Reading: May 27, 1992

Public Hearing: June 16, 1992

CERTIFICATION

Certified a true copy of the Bond and Notes Ordinance duly enacted by the Council of the City of Montgomery on this 27th day of May, 1992.

[SEAL]

_____

MAYOR

CERTIFICATION

Certified a true copy of the Bond and Notes Ordinance duly enacted by the Council of the City of Montgomery on this 27th day of May, 1992.

[SEAL]

Ben Carson

MAYOR

CITY OF MONTGOMERY

Sewer Revenue Bonds
Series 1993 A and Series 1993 B

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1993 A AND SERIES 1993 B OF THE CITY OF MONTGOMERY; AUTHORIZING, APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the city council ("Governing Body") of the City of Montgomery (the "Issuer"), has duly and officially enacted a bond and notes ordinance, effective June 16, 1992 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF CITY OF MONTGOMERY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $850,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1992 A, NOT MORE THAN $200,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1992 B, AND NOT MORE THAN $1,000,000 INTERIM CONSTRUCTION FINANCING, CONSISTING OF GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES OR BOTH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds of the Issuer (the "Bonds"), in an aggregate principal amount of not to exceed $1,050,000 to be issued in two series, the Series 1993 A Bonds to be in an aggregate principal amount of not more than $850,000 (the "Series 1993 A Bonds") and the Series 1993 B Bonds to be in an aggregate principal amount of not more than $200,000 (the "Series 1993 B Bonds"), and has authorized the execution and delivery of a loan agreement

relating to the Series 1993 A Bonds dated January 19, 1993, and a supplemental loan agreement relating to the Series 1993 B Bonds, also dated January 19, 1993 (sometimes collectively referred to herein as the "Loan Agreement"), by and between the Issuer and West Virginia Water Development Authority (the "Authority"), all in accordance with West Virginia Code 1931, as amended, Chapter 16, Article 13 (the "Act"); and in the Bond Ordinance it is provided that the exact principal amounts, maturity dates, interest rates, interest and principal payment dates, sale prices 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 Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Loan Agreement be entered into and ratified by the Issuer, that the exact principal amounts, the prices, the maturity dates, the redemption provisions, the interest rates and the interest and principal payment dates of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

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

Section 1. Section 3.01 of the Bonds and Notes Ordinance is hereby amended to read as follows:

Section 3.01. Authorization of Original Bonds. For the purposes of capitalizing interest on the Original Bonds, funding a reserve account for each series of Original Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any of such purposes, there shall be issued negotiable Original Bonds of the Issuer, in an aggregate principal amount of not more than $850,000. Said Bonds shall be issued in two series, to be designated respectively, "Sewer Revenue Bonds, Series 1993 A," and "Sewer Revenue Bonds, Series 1993 B," in the aggregate principal amount of not more than $850,000 and 200,000, respectfully, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. Such Bonds shall be issued contemporaneously with or prior to issuance of the Notes, if any. The proceeds of the Bonds remaining after funding of the Reserve Accounts and capitalization of interest, if any, shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued:

(A) The Sewer Revenue Bonds, Series 1993 A, of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $648,387. The Series 1993 A Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2031, shall bear interest at the rate of 7.75% per annum, payable semiannually on April 1 and October 1 of each year, first interest payable April 1, 1993, shall be subject to redemption only upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1993 A Bonds, and shall be payable in installments of principal on October 1 of each of the years and in the amounts as set forth in "Schedule X," attached thereto and to the Loan Agreement and incorporated therein by reference and hereby specifically approved.

(B) The Sewer Revenue Bonds, Series 1993 B, of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of $21,613. The Series 1993 B Bonds shall be dated the date of delivery thereof, shall finally mature October 31, 2031, shall be interest free, shall be subject to redemption only upon the written consent of the Authority, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1993 B Bonds, and shall be payable in installments of principal on October 1 of each of the years and in the amounts as set forth in "Schedule X," attached thereto and to the Supplemental Loan Agreement and incorporated therein by reference and hereby specifically approved.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the forms provided in the Bond Ordinance.

Section 4. The Issuer does hereby approve, accept and ratify the Loan Agreement, copies of which are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby ratified and approved. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon.

Section 5. The Issuer does hereby appoint and designate Charleston National Bank, Charleston, West Virginia, as Registrar for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and Charleston National Bank, in substantially the form attached hereto, and the execution and delivery by the

Mayor of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

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

Section 7. The Issuer does hereby appoint The Merchants National Bank, Montgomery, West Virginia, as Depository Bank under the Bond Ordinance.

Section 8. Series 1993 A Bond proceeds in the amount of $0 and Series 1993 B Bond proceeds in the amount of $0 shall be deposited in the Series 1993 A Bonds Reserve Account and the Series 1993 B Bonds Reserve Account, respectively.

Section 9. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about January 19, 1993, to the Authority pursuant to the Loan Agreement.

Section 10. The financing of the Project which is projected to cost $809,623 in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer. The issuance of the Bonds on a basis subordinate to the City of Montgomery Sanitary Sewer Revenue Bonds Series 1963 and the issuance of the 1993 A Bonds on a parity with the City of Montgomery Sanitary Sewer Revenue Bonds Series 1987 A and the issuance of the 1993 B Bonds on a parity with the City of Montgomery Sanitary Sewer Revenue Bonds Series 1987 B is being authorized in an effort to aid in the abatement or reduction of the pollution of waters and streams situate in and about the City, including the Kanawha River. The Authority is agreeable to accepting the subordinate lien.

Section 11. The Issuer hereby determines that it is in the best interest of the Issuer to invest all monies in qualified investments as established by the Bond Ordinance, and therefore the Issuer hereby directs the Depository Bank and the Paying Agent to take such actions as may be necessary to cause such monies to be invested in the said qualified investments until advised by the Issuer to the contrary.

Section 12. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the "Code"),

by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. They will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 13. In accordance with Section 148(f) (4) (C) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer), and that the aggregate face amount of the all tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 1993 will not exceed $5,000,000.

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

Adopted this 12th day of January, 1993.

CITY OF MONTGOMERY

By: Ben Carson
Mayor

SCHEDULE "X"

West Virginia Water Development Authority
Total Local Loan from Series 1991 A Pool
Debt Service Schedule - City of Montgomery

NIC=7.57%
WAM=27.77 yrs

Closing: 1/19/93
Total Amount Borrowed: $670,000.00

Date	Coupon	Principal	Interest	Debt Service	Interest Free Loan	Total Debt Service
10/1/93	7.75%	$2,892.00	$35,174.99	$38,066.99	$554.18	$38,621.17
10/1/94	7.75%	3,116.00	50,025.86	53,141.86	554.18	53,696.04
10/1/95	7.75%	3,357.00	49,784.37	53,141.37	554.18	53,695.55
10/1/96	7.75%	3,618.00	49,524.21	53,142.21	554.18	53,696.39
10/1/97	7.75%	3,898.00	49,243.81	53,141.81	554.18	53,695.99
10/1/98	7.75%	4,200.00	48,941.72	53,141.72	554.18	53,695.90
10/1/99	7.75%	4,526.00	48,616.22	53,142.22	554.18	53,696.40
10/1/00	7.75%	4,876.00	48,265.45	53,141.45	554.18	53,695.63
10/1/01	7.75%	5,254.00	47,887.56	53,141.56	554.18	53,695.74
10/1/02	7.75%	5,661.00	47,480.38	53,141.38	554.18	53,695.56
10/1/03	7.75%	6,100.00	47,041.65	53,141.65	554.18	53,695.83
10/1/04	7.75%	6,573.00	46,568.90	53,141.90	554.18	53,696.08
10/1/05	7.75%	7,082.00	46,059.49	53,141.49	554.18	53,695.67
10/1/06	7.75%	7,631.00	45,510.64	53,141.64	554.18	53,695.82
10/1/07	7.75%	8,223.00	44,919.23	53,142.23	554.18	53,696.41
10/1/08	7.75%	8,860.00	44,281.95	53,141.95	554.18	53,696.13
10/1/09	7.75%	9,546.00	43,595.30	53,141.30	554.18	53,695.48
10/1/10	7.75%	10,286.00	42,855.49	53,141.49	554.18	53,695.67
10/1/11	7.75%	11,083.00	42,058.32	53,141.32	554.18	53,695.50
10/1/12	7.75%	11,942.00	41,199.39	53,141.39	554.18	53,695.57
10/1/13	7.75%	12,868.00	40,273.88	53,141.88	554.18	53,696.06
10/1/14	7.75%	13,865.00	39,276.61	53,141.61	554.18	53,695.79
10/1/15	7.75%	14,940.00	38,202.08	53,142.08	554.18	53,696.26
10/1/16	7.75%	16,098.00	37,044.23	53,142.23	554.18	53,696.41
10/1/17	7.75%	17,345.00	35,796.63	53,141.63	554.18	53,695.81
10/1/18	7.75%	18,689.00	34,452.39	53,141.39	554.18	53,695.57
10/1/19	7.75%	20,138.00	33,004.00	53,142.00	554.18	53,696.18
10/1/20	7.75%	21,699.00	31,443.30	53,142.30	554.18	53,696.48
10/1/21	7.75%	23,380.00	29,761.63	53,141.63	554.18	53,695.81
10/1/22	7.75%	25,192.00	27,949.68	53,141.68	554.18	53,695.86
10/1/23	7.75%	27,144.00	25,997.30	53,141.30	554.18	53,695.48
10/1/24	7.75%	29,248.00	23,893.64	53,141.64	554.18	53,695.82
10/1/25	7.75%	31,515.00	21,626.92	53,141.92	554.18	53,696.10
10/1/26	7.75%	33,957.00	19,184.51	53,141.51	554.18	53,695.69
10/1/27	7.75%	36,589.00	16,552.84	53,141.84	554.18	53,696.02
10/1/28	7.75%	39,425.00	13,717.19	53,142.19	554.18	53,696.37
10/1/29	7.75%	42,480.00	10,661.75	53,141.75	554.18	53,695.93
10/1/30	7.75%	45,772.00	7,369.55	53,141.55	554.18	53,695.73
10/1/31	7.75%	49,319.00	3,822.22	53,141.22	554.16	53,695.38
		$648,387.00	$1,409,065.28	$2,057,452.28	$21,613.00	$2,079,065.28

Prepared 1/11/93

$175,000
THE CITY OF MONTGOMERY, WEST VIRGINIA
SEWER REVENUE BONDS, SERIES 1996A

BOND ORDINANCE

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF MONTGOMERY, WEST VIRGINIA, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN $175,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE CITY OF MONTGOMERY, WEST VIRGINIA, SEWER REVENUE BONDS, SERIES 1996A; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BOND; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BOND; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BOND; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any resolutions supplemental hereto, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West

Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

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

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, or any other agency of the State that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer or any other officer authorized as such duly appointed by the Council.

"Bank" means the bank to be set forth in a resolution supplemental hereto.

"Bondholders" "Holder of the Bonds," "Holder," "Registered Owner," "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 Register" means the books of the Issuer as hereinafter defined, maintained by the Bond Registrar as hereinafter defined for the registration and transfer of the Bond.

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

"Bonds" means the Bonds originally authorized hereby, and any pari passu additional bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

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

"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.

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

"Construction Trust Fund" means the Construction Trust Fund established by Section 5.02.

"Consulting Engineers" means Terradon Corporation, Charleston, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of sewerage systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Costs" or "Costs of the Project" or any similar phrase means those costs described in Section 1.04I hereof to be a part of the cost of construction and acquisition of the Project.

"Council" shall mean the Council of the City or any other governing body of the City that succeeds to the functions of the Council as presently constituted and shall be deemed to refer also to the Sanitary Board of the City to the full extent of the powers relating to the System, as hereinafter defined conferred upon said Sanitary Board.

"Certificate of Authentication and Registration" means the certificate of authentication and registration on the Bonds in substantially the form set forth in the Bond Forms contained herein.

"Closing Date" means the date upon which there is an exchange of the Bond for the proceeds representing the purchase of the Bonds by the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the 1996 Series A Bond, as hereinafter defined, during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment.

"Depository Bank" means a bank eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC, as hereinafter defined, which Depository Bank shall be named in the Supplemental Resolution, and any successor thereto.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(I) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Bonds, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

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

"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, including (I) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (I), which are irrevocably pledged for such purposes.

"Grants" shall mean, collectively, the Landfill Closure Assistance Program Grant and the Other Grants, as hereinafter defined.

"Gross Proceeds" means the sum of the following amounts:

(I) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment

of any original proceeds (as referenced in clause (I) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior obligations and which are deemed to become proceeds of the Bonds ratably as original proceeds of the Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds [as referenced in clauses (I) through (iii) above] of the Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Reserve Account and in any other fund established as a

reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

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

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

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income under Section 103 of the Code for federal income tax purposes.

"Issuer" or "City" shall mean The City of Montgomery, West Virginia in Fayette County, West Virginia, and, unless the context clearly indicates otherwise, includes the Council of the Issuer.

"Loan Agreement" means the Water Pollution Control Revolving Fund Loan Agreement dated January 16, 1996, by and among the Authority, the DEP and the Issuer providing for the purchase of the Bonds from the Issuer by the Authority and which is attached as Exhibit B hereto and incorporated herein by reference.

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the respective 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 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System, as hereinafter defined 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 of Project, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent, other than those capitalized as part of the Costs of Project, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Original Bond" or "Bond originally authorized hereby" or similar phrases shall mean not more than $175,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1996A issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

"Other Grants" shall mean collectively, any other grant hereafter received by the Issuer to aid in financing any Costs.

"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 moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents, notices or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof.

"Paying Agent" means the Commission.

"Prior Bonds" means the City's Sewer Revenue Bonds, Series 1993A and 1993B issued in the original principal amount of $648,387 and $21,813, respectively, the City's Sewer Revenue Bonds Series 1987A and 1987B issued in the original principal amount of $1,164,146 and $285,539 respectively, and the City's Sewer Revenue Bonds, Series 1963 issued in the original principal amount of $405,000.

"Prior Ordinances" shall mean The City of Montgomery Sewer Revenue Bonds, Series 1963 Ordinance dated _____, 1963, The City of Montgomery Sewer Revenue Bonds, Series 1987 A and 1987 B Ordinance dated October 27, 1987 and The City of Montgomery Sewer Revenue Bonds, Series 1993A and 1993B Ordinance dated May 27, 1992.

"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.

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

"Project" shall mean the wastewater treatment facility project described in Exhibit A attached hereto, constituting extensions, additions, betterments and improvements to the existing sewerage system of the City.

"PSC" means the Public Service Commission of West Virginia and any successors to the functions thereof.

"PSC Order" means the recommended decision of the PSC in Case No. 95-0112-S-CN which was entered by the Administrative Law Judge on June 29, 1995, and which became the final PSC order on July 19, 1995, as such order shall be supplemented or amended from time to time.

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

(a) Government Obligations;

(b) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; the

Governmental National Mortgage Association; the Tennessee Valley Authority or the Washington Metropolitan Area Transit Authority;

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

(d) 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 such Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time account or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time account;

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

(f) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (d) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of

said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of paid repurchase agreements, and provided further that the owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

(h) Advance-Refunded Municipal Bonds.

"Rebate Fund" means the fund created pursuant to Section 8.02 hereof.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01.

"Reserve Account" means the account in the Sinking Fund, as hereafter defined, created by Section 5.02(1)(a) hereof.

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

"Revenue Fund" means the Revenue Fund established by Section 5.01.

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

"Recorder" means the Recorder of the Issuer.

"Sanitary Board" or "Board" shall mean the Sanitary Board of the City established by an ordinance duly enacted by the Council of the City and any successors to the functions thereof.

"Sinking Fund" means the Sinking Fund established by Section 5.02(1) hereof.

"State" means the State of West Virginia.

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

"Surplus Revenues" means the Net Revenues not required by this Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including but not limited to the Renewal and Replacement Fund, the Reserve Account and Sinking Fund, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, owned by the Issuer, and any improvements or extensions thereof, both within and without said Issuer.

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

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Bonds, produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

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.

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.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of adoption of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the Registered Owners of 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 benefit, protection and security of the Registered Owners of any and all such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a public corporation and political subdivision of the State of West Virginia.

B. The Issuer presently owns and operates a sewage treatment plant or plants and some or all of collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection,

treatment and disposal in a sanitary manner of sewage and industrial wastes (herein referred to as the "System").

C. The construction and acquisition of certain extensions, improvements and betterments to the then existing sewer service systems were financed by the proceeds of The City of Montgomery Sewer Revenue Bonds, Series 1963 issued in the aggregate principal amount of $465,000 and The City of Montgomery Sewer Revenue Bonds, Series 1987 A and Series 1987 B issued in the aggregate principal amount of $1,449,685, The City of Montgomery Sewer Revenue Bonds, Series 1993 A and Series 1993 B issued in the aggregate principal amount of $1,050,000 (the "Prior Bonds").

D. The Prior Bonds of the Issuer are Outstanding in the approximate principal amount of $639,022 and19,950, respectively for the Series 1993A and Series 1993B Bonds, $1,120,729 and $232,940, respectively, for the Series 1987A and Series 1987B Bonds.

E. The Issuer derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

F. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain improvements and extensions to the existing System of the City, consisting of the Project, at an estimated cost of $796,000, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of twenty (20) years.

G. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Bonds and all sinking fund, reserve account and other payments provided for herein, in the Supplemental Resolution and in the PSC Order, and the principal of and interest on and debt service requirements for the Prior Bonds.

H. The estimated maximum cost of the construction and acquisition of the Project and issuance of the Bonds is $796,000, of which $175,000 will be permanently obtained from the Bond herein authorized, $611,000 from a Landfill Closure Assistance Program Grant and a $10,000 contribution from the City. The City may obtain such grants and contributions from other sources as may be necessary to pay Costs.

I. It is deemed necessary for the Issuer to issue its sewerage revenue bonds in the total aggregate principal amount of not more than $175,000 to permanently finance a portion of the cost of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest on the Original Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; amounts which may be deposited in the Reserve Account; engineering, fiscal agents and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority or DEP and any defaulted interest thereon, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Original Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the 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 Original Bonds or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

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

K. It is in the best interests of the Issuer that the Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement. The Issuer has received, or will receive prior to the Bond closing date, written consent from the owner of the Prior Bonds, to issue the Bonds on a parity with

the lien of the Prior Bonds. The Issuer has met the parity test as set forth in the Prior Ordinance.

The Issuer has received from an independent certified public accountant that it meets the parity established in Prior Ordinances.

L. The Original Bond shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the Prior Bonds.

M. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the construction, acquisition and operation of the Project and the System and the issuance of the Bonds, or will have so complied prior to issuance of any Bonds, including, among other things and without limitation, the obtaining of the PSC Order, the time for rehearing and appeal of which expired.

N. The Issuer will not permit, at any time, 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 Code.

O. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

P. The Bonds will not be federally guaranteed within the meaning of the Code.

Q. It is reasonably anticipated that all proceeds of the Original Bonds will be spent within two years from the date of issuance.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the

acquisition and construction of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers and heretofore filed in the Office of the Governing Body. The proceeds of the Series 1996A Bonds hereby authorize and shall be applied as provided in Article VI hereof.

The Issuer has received bids or entered into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program.

ARTICLE III

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

Section 3.01. Authorization of Bond. For the purposes of paying the costs, not otherwise provided, of the construction and acquisition of the Project, funding a reserve account for the Bonds, and paying certain costs of issuance and related costs, or any of such purposes as shall be specified in the Supplemental Resolution, there shall be issued negotiable bonds of the Issuer in an aggregate principal amount of not to exceed $175,000. Said Bond shall be issued as one bond to be designated "The City of Montgomery Sewer Revenue Bonds, Series 1996A". The Original Bond shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding twenty-one (21) years after the date of issuance, and in such amount as shall be set out in Schedule X to the Loan Agreement and the Supplemental Resolution. The Original Bond shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Original Bond shall be as set forth on Schedule Y to the Loan Agreement. The Original Bond shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreement and as the Issuer shall prescribe by ordinance (or by supplemental or amendatory Ordinance of said Issuer as said Issuer shall determine) adopted in connection with the sale of such Original Bond.

The Bonds shall be payable as to principal at the principal office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner thereof, interest on the Original Bonds may be paid by wire transfer or other methods satisfactory to the Issuer, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bond shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreement and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bond in aggregate principal amount equal to the amount of said Bond then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bond; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bond may be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in said Supplemental Resolution and shall bear interest from such date.

Section 3.02. [Reserved]

Section 3.03. Additional Terms of Bonds. In addition to the terms set forth in Section 3.01 hereof and in anticipation of the sale of the Bonds to the Authority, the City covenants that the Bonds shall comply in all respects with the provisions of the Loan Agreement and of any resolution of the Authority and/or DEP.

Section 3.04. Execution of Bond. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and

attested by the Recorder. 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 Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bond shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.05. 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 forms set forth in Section 3.10, 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 Ordinance. The Certificate of Authentication and Registration on any 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 3.06. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bond 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 Bond shall be conclusively deemed to have agreed that such Bond 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 Bond shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain Outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bond.

The Bond 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 the Bond or transferring the Bond is exercised, the Bond shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bond, 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 obligated to make any such exchange or transfer of the Bond during the period commencing on the fifteenth day of the month preceding an interest payment date on the Bond or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of the Bond to be redeemed, and ending on such interest payment date or redemption date.

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing proof of its ownership thereof and 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.

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 anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.08. Bond not to be Indebtedness of the Issuer. The Bond shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Reserve Account. No Holder or Owners of any of the Bond shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Bond or the interest thereon.

Section 3.09. Bond Secured by Pledge of Net Revenues. The payment of the debt service on all the Original Bonds shall be secured forthwith equally and ratably with each other and the Prior Bonds by a shared first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established and as established in the Prior Resolution, are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

Section 3.10. Form of Original Bond. The text of the Original Bond 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 1996A Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF MONTGOMERY
SEWER REVENUE BONDS, SERIES 1996A

No. AR-1 $175,000

KNOW ALL MEN BY THESE PRESENTS: That The City of Montgomery, 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 West Virginia Water Development Authority (the "Authority") or registered assigns the sum of One Hundred Seventy Five Thousand and 00/00 Dollars ($175,000), 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 installments on the 1st day of September, 1996, the 1st day of December, the 1st day of March and the 1st day of June in each year beginning September 1, 1996, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of 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 DEP and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated January 16, 1996, among the Authority, the DEP and the Issuer.

This Bond is issued (i) to pay costs of acquisition and construction of a certain improvements, additions, extensions and

betterments to the existing wastewater treatment system of the Issuer (the "Project"), and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the 9th day of April, 1996, and a Supplemental Resolution adopted by the Issuer on the 29th day of April, 1996 (collectively called the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

This Bond ranks equally as to lien and security with the Prior Bonds, as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, on a parity with the lien of the Prior Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the 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 thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the 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 to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with or prior to the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the

maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year and in the reserve account for the Prior Bonds an amount 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 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.

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

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.

The use of any proceeds of this Bond for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity will constitute an Event of Default under the Ordinance as defined and set forth therein.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond,

together with all other obligations of the 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 revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, The City of Montgomery has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated _____, 1996.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: _____, 1996

_____
as Registrar

By _____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $		(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

Form of Assignment

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

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

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Original Bonds; Ratification and Execution of Loan Agreement with Authority and DEP. The Bonds shall be sold to the Authority pursuant to the terms and conditions of the Loan Agreement. The Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder 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, ratified and approved.

Section 3.12. Original Bonds are Issued as Parity Bonds. The Original Bonds are issued as and shall constitute Parity Bonds in accordance with the Prior Ordinance. Prior to the issuance of the Original Bonds, the Issuer must receive the written approval of the owner of the Prior Bonds.

Section 3.13. Certificate of Consulting Engineers. Prior to the issuance of the Original Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement 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 DEP and the Authority, the Project is adequate for the purposes for which it was designed, and the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project.

ARTICLE IV

[Reserved]

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts were either established by the Prior Ordinance or are created hereby and shall be held by the Depository Bank:

(1) Revenue Fund (when the Prior Bonds are no longer Outstanding);

(2) Operation and Maintenance Fund (when the Prior Bonds are no longer Outstanding);

(3) Renewal and Replacement Fund;

(4) Bond Construction Trust Fund; and

(5) Rebate Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

(1) Sinking Fund;

(a) Within the Sinking Fund, the Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. As long as the Prior Bonds are outstanding, the entire Gross Revenues shall be deposited pursuant to the terms of the Prior Ordinances. When the Prior Bonds are no longer Outstanding, the entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

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

(2) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and pay the amounts required by the Prior Ordinances to be deposited in the Prior Bonds Sinking Fund for payment of the principal of and interest on the Prior Bonds, and (I) simultaneously therewith, commencing 4 months prior to the first date of payment of interest on the Bonds for which interest has not been capitalized, apportion and set

apart out of the Revenue Fund and remit to the Commission, for deposit in the Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on said Bonds on the next ensuing quarterly interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 4 months prior to the first date of payment of principal on the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said 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 Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

The Issuer shall complete the "Monthly Payment Form," the 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 remittance check to the Authority by the 5th day of such calendar month.

(3) The Issuer shall next transfer from the Revenue Fund and pay to the Commission the amounts required by the Prior Ordinances to be deposited in the Prior Bonds Reserve Account and on the first day of each month, commencing 3 months prior to the first date of payment of principal of the Bonds, if not fully funded upon issuance of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Reserve Account, an amount equal to 1/120 of the Reserve Requirement; provided, that no further payments shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement.

(4) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the

Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the reserve account established with respect to the Prior Bonds or in the Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due. Moneys in the Reserve Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on moneys in the Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Sinking Fund.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to an amount below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Fund for payment of debt service on the Bonds have been made in full.

B. As and when additional Bonds ranking on a parity with the Original Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in an amount equal to the Reserve Requirement.

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

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

Moneys in the Reserve Account shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

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

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Account therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the Issuer.

D. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges then due. The Issuer shall also remit from the Revenue Fund to the Authority, on such dates as the Authority and the DEP shall require, the Issuer's allocable share of reasonable

administrative expenses of the Authority relating to the Program, if any.

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

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

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

Section 5.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the Original Bonds not required by the Project in the Reserve Account.

ARTICLE VI

APPLICATION OF ORIGINAL BOND PROCEEDS, FUNDS AND ACCOUNTS

Section 6.01. Application of Original Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Original Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Bonds, there shall be deposited with the The Merchants National Bank, Montgomery, West Virginia, as holder of the Reserve Account created for the Prior Bonds.

B. The remaining moneys derived from the sale of the Original Bonds shall be deposited by the Issuer as received from time to time in the Bond Construction Trust Fund hereinafter established.

C. There is hereby created and established with the Depository Bank a special fund, designated the "Bond Construction Trust Fund". The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in this Ordinance. Except with respect to any transfers to the Rebate Fund, moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Bonds.

Section 6.02. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

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

(1) A "Payment Requisition Form," attached to the Loan Agreement as Exhibit C, and

(2) A certificate, signed by the Mayor and the Consulting Engineers, stating:

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

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

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

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

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

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

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions set forth in the Prior Ordinances shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds as if they were set forth in full in this Ordinance. In addition to the other covenants, agreements and provisions of this Ordinance, the

Issuer hereby covenants and agrees with the owners of the 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 said Bonds, or the interest thereon, is Outstanding and unpaid.

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

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith equally and ratably with the Prior Bonds by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the respective Sinking Fund, including the Reserve Account therein, and all other payments provided for in this Ordinance and the Prior Ordinances are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and the Prior Bonds as the same become due, and for the other purposes provided in the Ordinance.

Section 7.04. Rates. Prior to issuance of the Original Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder and under the Prior Ordinances. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates at such

whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully or redeem at or prior to maturity all the Prior Bonds and the Bonds Outstanding, or to effectively defease this Ordinance in accordance with Sections 10.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Commission for deposit in the appropriate Sinking Funds, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds about to mature and to the redemption prior to maturity at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by ordinance, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by ordinance duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of

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 respective liens 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 7.08. Parity Bonds. A. No Parity Bonds payable out of the Net Revenues of the System may be issued without the prior written consent of the Authority and DEP, and as long as the Prior Bonds are outstanding, the written consent of the holder of the Prior Bonds. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

No Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions, additions, betterments or improvements to the System or refunding the entirety of one or more issues or series of bonds or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on the following:

(1) The Prior Bonds;
(2) The Subordinate Bonds
(3) The Original Bonds then Outstanding;

(4) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and

(5) The Parity Bonds then proposed to be issued.

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Secretary prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineers and 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 prior to issuance of such Parity Bonds.

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

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Original Bonds and the owners of any Parity Bonds 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 respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Bond over any other. The

Issuer shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Outstanding Prior Bonds and 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, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Bonds.

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

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Authority and DEP and anything to the contrary in this Section 7.08 notwithstanding, Parity Bonds may be authorized and issued by the Issuer pursuant to Supplemental Resolution solely to complete the Project as described in the Issuer's Program application to the Authority and DEP in accordance with the plans and specifications, in the event that the Original Bonds should be insufficient,

together with other funds lawfully available therefor, to pay all costs of acquisition and construction of the Project; provided, however, that, prior to the issuance of such Parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the Secretary a certificate to the effect that additional funds are necessary for such purpose. All such Parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such Parity Bonds shall be in years and amounts suggested by the Authority.

Section 7.09. Insurance and Construction Bonds. The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer will 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 the DEP, so long as the Authority is the Owner of the Bonds. The Issuer will itself, or will require each contractor and subcontractor to, obtain and 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, to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the Issuer shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar

to the System. The Issuer shall carry such other insurance as is required by the Authority and DEP and as set forth in the Loan Agreement, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

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.

Section 7.10. Consulting Engineers. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers. Such resident engineer shall certify to the Authority, the DEP and the Issuer 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 Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a Performance Certificate, the form of which is attached as Exhibit A to the Loan Agreement, and is incorporated herein by reference, to the DEP within 60 days of the end of the first year after the Project is completed.

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

writing of the certified operator employed at the 25% completion stage.

Section 7.11. Compliance With Loan Agreement, Rules and Regulations. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreement and to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 7.12. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the 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 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due

and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Issuer further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 7.14. No Competing Franchise. To the extent allowable by law, 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 7.15. Books, Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan Agreement or Grant Receipts or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation 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 owner of a Bond or Bonds issued pursuant to the Bond Ordinance shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the PSC and the Act. Separate control accounting records shall be maintained by the 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 the Council shall direct.

The Issuer shall file with the Consulting Engineers and the Authority and DEP, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues, Excess 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 Resolution with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Prior Bonds, Bonds, or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

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 owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report to the Authority and the DEP. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the Loan Agreement and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

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

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

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

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

Section 7.16. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal

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

Section 7.17. Mandatory Connection. The mandatory use of the sewerage facilities portion of the System is essential and necessary to protect and preserve the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the sewerage facilities portion of the System and shall cease the use of all other means for the

collection, treatment and disposal of sewage and waste matter from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the sewerage facilities portion of the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the sewerage facilities portion of the System, pay the rates and charges established therefor.

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

Section 7.18. Compliance with Loan Agreement. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

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

A. PUBLIC PURPOSE BONDS. The Issuer shall use the Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as local governmental activity of the Issuer.

B. PRIVATE ACTIVITY BOND COVENANT. 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 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 in order to assure the tax-exempt status of the Bonds.

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

D. 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 "federally guaranteed" within the meaning of Section 149(b) of the Code.

E. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax exempt status of the Bonds, including without limitation the information return required under Section 149(e) of the Code.

F. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludible from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 7.20. Statutory Mortgage Lien. For the further protection of the Bondholders, 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 on a parity with the lien of the Prior Bonds, and shall take effect immediately upon delivery of the Bonds and shall be for the benefit of all Owners of the Bonds.

Section 7.21. Completion of Project; Permits and Orders. 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 operation of the System.

Section 7.22. Completion of Project; Permits and Orders. 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.

ARTICLE VIII

INVESTMENT OF FUNDS; NON-ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Resolution, 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 direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

Except as specifically provided herein, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national

banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 8.02. Arbitrage. The Issuer covenants that (I) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return) with respect to the Bonds so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Rebate of Excess Investment Earnings to the United States. A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Ordinance, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Ordinance on account of the Bonds other than (I) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than $100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such last day is not a business day, or such earlier date as may be required under the Code or the Loan Agreement, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer

referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to the Construction Trust Fund until completion of the Project, and thereafter to the Revenue Fund.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 15 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 15 days following the last day of each Bond Year and within 15 days following the date of the retirement of the Bonds, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause (A)(I) of the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (I) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such

gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Bonds shall be determined based on the actual Yield of the Bonds during the period between the Closing Date for the Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bonds, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than $100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close if the computation period. Not later than 60 days after the retirement of the Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis and the Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep, and retain for a period of 6 years following the retirement of the Bonds, records of the determinations made pursuant to this Section 8.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 8.03, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further covenants to comply with all Regulations from time to time in effect and applicable to the Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

I. REPORTING TO AUTHORITY. The Issuer shall furnish to the Authority and DEP, annually, at such time as it is required to

perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority or DEP.

J. AMENDMENTS TO THIS SECTION. Notwithstanding any of the provisions herein to the contrary, the Issuer agrees to amend the provisions of this Section from time to time at the direction of the Authority in order to insure continuing compliance with Section 8.02 hereof.

Section 8.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE IX

DEFAULT AND REMEDIES

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

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

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, any Supplemental Resolution or in the 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 Construction Trust Fund Depository Bank, the Bond Registrar, any 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) An "Event of Default" as defined in the Prior Resolution.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his 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 this Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action at law or bill in equity enjoin any acts in violation of the Ordinance with respect to the Bonds, or the rights of such Registered Owners.

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 this Ordinance and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Issuer of such default, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the 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 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 Ordinance for Reserve, Sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the 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, 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 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 Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System. The provisions of this

section shall be subject to the Prior Ordinance and to the parity rights of the Prior Bonds.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners 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 the pledge of Net Revenues and other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due, the principal installments of and interest on the 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 Commission or its agent either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on the Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities

maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Ordinance. No material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of sixty-six and two-thirds percent (66 2/3%) or more in principal amount of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the revenues of the System without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance 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 on the Bonds and the Notes from the gross income of the Owners thereof.

Section 11.02. Ordinance Constitutes Contract. The provisions of the Ordinance 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 Ordinance shall be made in any manner, except as in this Ordinance 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 and the Bonds.

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

Section 11.05. Conflicting Provisions. All Ordinances or resolutions and parts thereof in conflict with the provisions of this Ordinance except the Prior Ordinances, are, to the extent of such conflict, hereby repealed.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder 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 11.07. Effective Date. This Ordinance shall take effect immediately upon adoption.

First Reading: April 2, 1996
Second Reading: April 9, 1996
Public Hearing: April 29, 1996

Mayor

Recorder

Date Adopted: April 29, 1996

EXHIBIT A -- Description of Project
EXHIBIT B -- Loan Agreement
EXHIBIT C -- Schedule of Rates

EXHIBIT A

DESCRIPTION OF PROJECT

EXHIBIT B

LOAN AGREEMENT

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, DESIGNATING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; APPROVING THE LOAN AGREEMENT WITH RESPECT TO THE BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the City Council (the "Governing Body") of the City of Montgomery, West Virginia (the "Issuer") has duly and officially adopted a Bond Ordinance on April 9, 1996 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF MONTGOMERY, WEST VIRGINIA, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN $175,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE CITY OF MONTGOMERY, WEST VIRGINIA, SEWER REVENUE BONDS, SERIES 1996A; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BOND; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BOND; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BOND; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Bond Ordinance provides for the issuance of the City of Montgomery, West Virginia Sewer Revenue Bonds, Series 1996A (the "Series 1996A Bonds"), in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2, of the Code of West Virginia, 1931, as amended, (the "Act") and other applicable provisions of the law, and the terms of the Loan Agreement entered into between the District, the Authority and the

West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment for the Series 1996A Bonds on January 16, 1996 (the "Loan Agreement"), but requires that the dates, interest rates, maturities, sale prices and other terms of the Bonds should be established by a supplemental resolution;

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

WHEREAS, the City Council (the "Governing Body") of the City of Montgomery, West Virginia (the "Issuer") deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal dates of the Bonds be fixed hereby in the manner stated herein; that the Loan Agreement be approved; and that other matters relating to the Bonds be herein provided for; and

WHEREAS, capitalized terms not otherwise defined shall have the meanings given such terms in the Resolution.

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

Section 1. Pursuant to the Ordinance, the Act, and this Supplemental Resolution, the Bonds shall be in the aggregate principal amount of $175,000, with the following provisions:

(A) The Series 1996A Bonds shall be originally issued in the form of a single bond, numbered AR-1 in the principal amount not to exceed $175,000. The Series 1996A Bond shall be dated the date of delivery thereof, shall finally mature September 1, 2016 and shall bear interest at the rate of two percent (2%) per annum, commencing September 1, 1996. Both principal of and interest on the Series 1996A Bonds are payable quarterly on each September 1, December 1, March 1, and June 1 of each year. The Series 1996A Bonds shall be subject to redemption upon the written consent of the Authority, upon payment of principal, interest and redemption premium, if any, and subject to the other requirements provided in the Loan Agreement, as long as the Authority or DEP shall be the registered owner of the Series 1996A Bonds, and shall be payable in installments of principal and interest in the amounts set forth on Schedule Y attached to the Loan Agreement and incorporated therein by reference. The Issuer shall pay the 1% Administration Fee as provided in the Bond Ordinance and the Loan Agreement.

(B) The Bonds shall be executed by Mayor of the Issuer by his manual signature and attested by the Recorder of the Issuer by their manual signatures and the seal of the Issuer shall be impressed thereon. The Bonds shall be sold to the Authority in accordance with the terms of the Loan Agreement at a price equal to 100% of the principal amount thereof.

Section 2. All other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the Issuer. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The Issuer does hereby ratify, approve and accept the Loan Agreement including the "Schedule X" and "Schedule Y" attached thereto, copies of which are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement and the performance of the obligations contained therein, on behalf of the Issuer have been and are hereby authorized, ratified, approved and directed. The Issuer hereby affirms all covenants and representations made in the Loan Agreement in the Application to the DEP and the Authority. The price of the respective Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds will be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer hereby appoints and designates United National Bank, Montgomery, West Virginia, as the Depository Bank, as provided in the Ordinance.

Section 5. The Issuer hereby appoints and designates Bank One, West Virginia, Charleston, National Association, as Registrar for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, in substantially the form attached hereto, and the execution and delivery by the Mayor of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

Section 6. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission (the "Commission"), Charleston, West Virginia as Paying Agent for the Bonds.

Section 7. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Bonds hereby and by the Bond

Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about May 2, 1996.

Section 8. The proceeds of the respective Bonds, shall be deposited in or credited to the respective Bond Construction Trust Fund subaccounts, as received from time to time for payment of Costs of the Project, including costs of issuance of the respective Bonds.

Section 9. [RESERVED.].

Section 10. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 11. The Issuer hereby directs the Depository Bank to initially invest all monies in the funds and accounts established under the Bond Ordinance in Qualified Investments further directed by the Issuer.

Section 12. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as a "private activity bond" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 13. This Supplemental Resolution shall be effective immediately upon adoption.

Dated: April 9, 1996

THE CITY OF MONTGOMERY, WEST VIRGINIA

{SEAL}

J. Higgins Jr.
Mayor

Garland Underwood
Recorder

$175,000 City of Montgomery
SRF Loan
2% interest rate, 1% annual fee

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
3/01/2009	2,256.00	2.00000%	377.17	2,633.17
6/01/2009	2,267.00	2.00000%	365.89	2,632.89
9/01/2009	2,278.00	2.00000%	354.55	2,632.55
12/01/2009	2,290.00	2.00000%	343.16	2,633.16
3/01/2010	2,301.00	2.00000%	331.71	2,632.71
6/01/2010	2,313.00	2.00000%	320.21	2,633.21
9/01/2010	2,324.00	2.00000%	308.64	2,632.64
12/01/2010	2,336.00	2.00000%	297.02	2,633.02
3/01/2011	2,347.00	2.00000%	285.34	2,632.34
6/01/2011	2,359.00	2.00000%	273.61	2,632.61
9/01/2011	2,371.00	2.00000%	261.81	2,632.81
12/01/2011	2,383.00	2.00000%	249.96	2,632.96
3/01/2012	2,395.00	2.00000%	238.04	2,633.04
6/01/2012	2,407.00	2.00000%	226.07	2,633.07
9/01/2012	2,419.00	2.00000%	214.03	2,633.03
12/01/2012	2,431.00	2.00000%	201.94	2,632.94
3/01/2013	2,443.00	2.00000%	189.78	2,632.78
6/01/2013	2,455.00	2.00000%	177.57	2,632.57
9/01/2013	2,467.00	2.00000%	165.29	2,632.29
12/01/2013	2,480.00	2.00000%	152.96	2,632.96
3/01/2014	2,492.00	2.00000%	140.56	2,632.56
6/01/2014	2,505.00	2.00000%	128.10	2,633.10
9/01/2014	2,517.00	2.00000%	115.57	2,632.57
12/01/2014	2,530.00	2.00000%	102.99	2,632.99
3/01/2015	2,542.00	2.00000%	90.34	2,632.34
6/01/2015	2,555.00	2.00000%	77.63	2,632.63
9/01/2015	2,568.00	2.00000%	64.85	2,632.85
12/01/2015	2,581.00	2.00000%	52.01	2,633.01
3/01/2016	2,594.00	2.00000%	39.11	2,633.11
6/01/2016	2,607.00	2.00000%	26.14	2,633.14
9/01/2016	2,620.00	2.00000%	13.10	2,633.10
TOTAL	175,000.00	-	38,254.83	213,254.83 *

*Plus a one-percent administrative fee to be paid quarterly in the amount of $239.10. The total administrative fee over the life of the loan is $19,128.

YIELD STATISTICS

Accrued Interest from 06/01/1996 to 06/01/1996...	-
Average Life.....	10.930 YEARS
Bond Years.....	1,912.73
Average Coupon.....	2.0000000%
Net Interest Cost (NIC).....	2.0000000%
Bond Yield for Arbitrage Purposes.....	
True Interest Cost (TIC).....	2.0050000%
Effective Interest Cost (EIC).....	3.0112585%

SCHEDULE Y

$175,000 City of Montgomery
SRF Loan
2% interest rate, 1% annual fee

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
6/01/1996	-	-	-	-
9/01/1996	1,758.00	2.00000%	875.00	2,633.00
12/01/1996	1,767.00	2.00000%	866.21	2,633.21
3/01/1997	1,775.00	2.00000%	857.38	2,632.38
6/01/1997	1,784.00	2.00000%	848.50	2,632.50
9/01/1997	1,793.00	2.00000%	839.58	2,632.58
12/01/1997	1,802.00	2.00000%	830.62	2,632.62
3/01/1998	1,811.00	2.00000%	821.61	2,632.61
6/01/1998	1,820.00	2.00000%	812.55	2,632.55
9/01/1998	1,829.00	2.00000%	803.45	2,632.45
12/01/1998	1,838.00	2.00000%	794.31	2,632.31
3/01/1999	1,848.00	2.00000%	785.12	2,633.12
6/01/1999	1,857.00	2.00000%	775.88	2,632.88
9/01/1999	1,866.00	2.00000%	766.59	2,632.59
12/01/1999	1,876.00	2.00000%	757.26	2,633.26
3/01/2000	1,885.00	2.00000%	747.88	2,632.88
6/01/2000	1,894.00	2.00000%	738.46	2,632.46
9/01/2000	1,904.00	2.00000%	728.99	2,632.99
12/01/2000	1,913.00	2.00000%	719.47	2,632.47
3/01/2001	1,923.00	2.00000%	709.90	2,632.90
6/01/2001	1,933.00	2.00000%	700.29	2,633.29
9/01/2001	1,942.00	2.00000%	690.62	2,632.62
12/01/2001	1,952.00	2.00000%	680.91	2,632.91
3/01/2002	1,962.00	2.00000%	671.15	2,633.15
6/01/2002	1,971.00	2.00000%	661.34	2,632.34
9/01/2002	1,981.00	2.00000%	651.49	2,632.49
12/01/2002	1,991.00	2.00000%	641.58	2,632.58
3/01/2003	2,001.00	2.00000%	631.63	2,632.63
6/01/2003	2,011.00	2.00000%	621.62	2,632.62
9/01/2003	2,021.00	2.00000%	611.57	2,632.57
12/01/2003	2,031.00	2.00000%	601.46	2,632.46
3/01/2004	2,041.00	2.00000%	591.31	2,632.31
6/01/2004	2,052.00	2.00000%	581.10	2,633.10
9/01/2004	2,062.00	2.00000%	570.84	2,632.84
12/01/2004	2,072.00	2.00000%	560.53	2,632.53
3/01/2005	2,083.00	2.00000%	550.17	2,633.17
6/01/2005	2,093.00	2.00000%	539.76	2,632.76
9/01/2005	2,104.00	2.00000%	529.29	2,633.29
12/01/2005	2,114.00	2.00000%	518.77	2,632.77
3/01/2006	2,125.00	2.00000%	508.20	2,633.20
6/01/2006	2,135.00	2.00000%	497.58	2,632.58
9/01/2006	2,146.00	2.00000%	486.90	2,632.90
12/01/2006	2,157.00	2.00000%	476.17	2,633.17
3/01/2007	2,167.00	2.00000%	465.39	2,632.39
6/01/2007	2,178.00	2.00000%	454.55	2,632.55
9/01/2007	2,189.00	2.00000%	443.66	2,632.66
12/01/2007	2,200.00	2.00000%	432.72	2,632.72
3/01/2008	2,211.00	2.00000%	421.72	2,632.72
6/01/2008	2,222.00	2.00000%	410.66	2,632.66
9/01/2008	2,233.00	2.00000%	399.55	2,632.55
12/01/2008	2,244.00	2.00000%	388.39	2,632.39

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57TH STREET SE
CHARLESTON, WV 25304-2345

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

NPDES PERMIT NO.: WV0020621
SUBJECT: Sewage

ISSUE DATE: March 29, 2006
EFFECTIVE DATE : April 28, 2006
EXPIRATION DATE: March 28, 2011
SUPERSEDES: Permit No. WV0020621 dated February 26, 2001

LOCATION: MONTGOMERY - KANAWH	Kanawha	Upper Kanawha River
(City)	**(County)**	**(Drainage Basin)**

See the next page for a list of Outlets.

TO WHOM IT MAY CONCERN:

This is to certify that: MONTGOMERY, CITY OF
706 3RD AVE
MONTGOMERY, WV 25136

is hereby granted a West Virginia NPDES Water Pollution Control Permit to:
operate and maintain an existing wastewater collection system and an existing 0.50 MGD oxidation ditch wastewater treatment plant which are further described as follows.

A wastewater collection system comprised of approximately 59,900 linear feet of gravity sewer lines ranging from six (6) inches in diameter to 36 inches in diameter, 273 manholes, four (4) lift stations, five (5) cleanouts, 1,800 linear feet of four (4), six (6) and eight (8) inch diameter force mains, and all requisite appurtenances.

A wastewater treatment plant comprised of grit removal facilities, a mechanically cleaned bar screen, a 500,000 gallon per day oxidation ditch, an intra-channel clarifier with a settling rate of 1,600 gallons per day per square foot, two (2) chlorine contact chambers with a total volume of 20,833 gallons, dechlorination facilities, a 37,500 gallon sludge decant tank, two (2) vacuum sludge dewatering beds with a surface area of 528 square feet each, and all requisite appurtenances.

The facilities are designed to serve a population equivalent of approximately 5,000 persons in the City of Montgomery, the Town of Handley, and environs, and discharge treated wastewater to the Kanawha River at Mile Point 84.5.

This permit is subject to the following terms and conditions :
The information submitted on, and with, Permit Application No. WV0020621, dated the 16th day of August, 2005, additional information, received on the 18th day of January, 2006, and additional information, received on the 26th day of January, 2006, are all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, D, E, and F, and Appendix A.

*** AMENDED ***

WATER OR WASTE SYSTEM GRANT AGREEMENT

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL UTILITIES SERVICE

THIS AGREEMENT dated September 10, 2009 between

Montgomery City of

a public corporation organized and operating under

Chapter 8, Article 19, West Virginia Code

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under jurisdiction at an estimated cost of **$ 2,950,300** and has duly authorized the undertaking of such project.

Grantee is able to finance not more than **$ 1,809,000** of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of **$ 1,809,000** has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed **$ 1,141,300** or **38.68%** percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act the purpose only of defraying a part not to exceed **38.68%** percent of the development costs, as defined by applicable Rural Utilities Service Instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, ~~whether for one or more classes~~ *as approved by the West Virgina Public Service Commission, ~~of service adopted by resolution dated xxxxxxxxxxxxxxxxxxxxxxxx~~ as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

All that real property associated with the City of Montgomery's wastewater collection and treatment system.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than $5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of $5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds, for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated an fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment (use continuation sheets as necessary).

N/A

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland ``Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:
[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/97]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term ``facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed **$1,141,300.00**. which it will advance to Grantee to meet not to exceed **38.68%** percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Mayor _____

and attested and its corporate seal affixed by its duly authorized

Recorder _____

Attest:

_____

By: _____
Gregory S. Ingram

(Title) Recorder _____

By: _____
James Higgins, Jr.

(Title) **Mayor** _____

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By: _____ Rural Development Specialist
TERESA A. MILLER (Title)

State of West Virginia
Joe Manchin III
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, E.
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: 1-888-438-2731
FAX: (304) 342-7025
www.wvgov.org

November 1, 2006

The Honorable Melba Lou White
Mayor
City of Montgomery
706 3rd Avenue
Montgomery, West Virginia 25136-2229

Dear Mayor White:

On October 22, 2004, the City if Montgomery received a commitment of $1,500,000 in Small Cities Block Grant funds to enable you to make necessary improvements to the city's wastewater system.

The Small Cities Block Grant award was based upon your immediate need for funds. Therefore, only $600,000 was made available from the FY2004 and FY2005 allocations, with a commitment to evaluate your progress and provide the remaining funding from future allocations.

Based upon the City of Montgomery's ability to proceed with this worthwhile project, I am committing the remaining $900,000 from the FY2006 Small Cities allocation. Your existing Small Cities Block Grant contract will be amended to include the additional funds.

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. Please be advised that a letter of intent is contingent upon the availability of federal funds.

I am pleased to assist with these improvements for the citizens of the City of Montgomery.

With warmest regards,

Joe Manchin III
Governor

JM:trs

State of West Virginia
Joe Manchin III
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, E.
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: 1-888-438-2731
FAX: (304) 342-7025
www.wvgov.org

February 10, 2006

The Honorable Melba White
Mayor
City of Montgomery
706 Third Avenue
Montgomery, West Virginia 25136

Dear Mayor White:

Thank you for your application to the Small Cities Block Grant Program (SCBG). Your request has been approved. These funds will enable the City of Montgomery to rehabilitate and upgrade the sanitary sewer system.

To effectively use the limited dollars available, I hereby commit $400,000 from our state administered fiscal year 2005 SCBG allocation that will immediately be available to you. The remaining $900,000 necessary to complete the project will be evaluated in the coming year. Be advised that the balance of $900,000 is contingent upon the project's readiness to proceed and continued funding from the United States Department of Housing and Urban Development. I encourage you to expedite this project and reach its completion as quickly as possible with this funding strategy in mind.

Please contact Mr. Michael Browning of the West Virginia Development Office, at (304) 558-4010, extension 723, 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 the City of Montgomery.

With warmest regards,

Joe Manchin III
Governor

JM:mbs

STATE OF WEST VIRGINIA

SMALL CITIES BLOCK GRANT AWARD

THIS IS TO CERTIFY THAT A GRANT OF $1,300,000 HAS BEEN AWARDED TO THE *CITY OF MONTGOMERY* TO REHABILITATE THE EXISTING SEWER TREATMENT AND COLLECTION SYSTEM

JOE MANCHIN III
GOVERNOR

© 2004 GOES 441
All Rights Reserved

LITHO. IN U.S.A.

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

October 22, 2004

The Honorable Melba Lou White
Mayor
City of Montgomery
706 Third Avenue
Montgomery, West Virginia 25136

Dear Mayor White:

Thank you for your application to the Small Cities Block Grant program.

Your request has been approved in the amount of $200,000. These funds will enable you to start work on the sanitary wastewater treatment facility and collection system improvements in order to come into compliance with your NPDES Discharge Permit.

In order to effectively use the limited dollars available, any additional funds necessary to complete this project will be evaluated and committed in a future year's allocation, based on your ability or inability to secure USDA funds. I encourage you to expedite this project and reach its completion as quickly as possible with this funding strategy in mind.

Please contact Mr. Michael P. Browning 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 the City of Montgomery.

Very truly yours,

Bob Wise
Governor

BW:mbm

GCU 326-C

WEST VIRGINIA DEVELOPMENT OFFICE
GRANT AWARD

	Grant Number: 05-453
CFDA Number: 14.228	**State Acct. No.:** 8746-2005-0307-096-128
Fiscal Year: 2005	**Program Name:** SCBG

Grantee Name & Address:

City of Montgomery
706 Third Street
Montgomery, WV 25136

F.E.I.N. 556-000-213

Grant Period:
From: October 22, 2004
To: October 22, 2007

Project Name: Wastewater

Grant ID: B04DC540001

Project Number: 04SCBG0060

Project Description

Shall do, perform and carry out, in a satisfactory and proper manner all duties, tasks, and functions necessary to start work on the sanitary wastewater treatment facility and collection system improvements.

Change Orders

Number:	Date:	Purpose:

TERMS AND CONDITIONS ARE ON FILE IN THE WEST VIRGINIA DEVELOPMENT OFFICE AND AVAILABLE FOR INSPECTION. A COPY OF THE ORIGINAL AGREEMENT IS ATTACHED TO TRANSMITTAL _____, PROCESSED ON OR ABOUT _____. PAYMENT NUMBER_____.

TOTAL AMOUNT OF THIS GRANT $200,000.00

Authorized Signature: _____

Title: Executive Director

Submitted By: Mike Browning

Date: 1/26/2005

ACORD CERTIFICATE OF LIABILITY INSURANCE

INSURED COPY | DATE (MM/DD/YY) 09/02/09

PRODUCER
WV BOARD OF RISK & INSURANCE MGT.
90 MACCORKLE AVE. SW, SUITE 203
SOUTH CHARLESTON, WV 25303

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
City of Montgomery
706 Third Avenue
Montgomery, WV 25136

INSURER A: NATIONAL UNION FIRE CO OF PITTSBURGH, PA
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	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 [X] WRONGFUL ACT [X] PROFESSIONAL GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC	L900000442	07/01/2009	07/01/2010	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 0 $ INCLUDED $ N/A $ N/A
A	AUTOMOBILE LIABILITY [ ] ANY AUTO [X] ALL OWNED AUTOS [X] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	L900000442	07/01/2009	07/01/2010	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
	EXCESS LIABILITY [ ] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [ ] RETENTION $				EACH OCCURRENCE AGGREGATE	$ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY STOPGAP	L900000442	07/01/2009	07/01/2010	WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
B	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

SUBJECT TO THE PROVISIONS, CONDITIONS AND EXCLUSIONS OF THE POLICIES LISTED ABOVE, IT IS AGREED THAT THE CERTIFICATE HOLDER IS AN "ADDITIONAL INSURED" WITH RESPECTS TO:

City of Montgomery sewer project.

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER: ____

United States Department of Agriculture
Rural Utilities Service Regional Office
481 Ragland Road
Beckley, WV 25802

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 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 Joyce Gladwell
Cassi McClung

© ACORD CORPORATION 1988

ACORD CERTIFICATE OF LIABILITY INSURANCE

INSURED COPY | DATE (MM/DD/YY) 09/02/09

PRODUCER
WV BOARD OF RISK & INSURANCE MGT.
90 MACCORKLE AVE. SW, SUITE 203
SOUTH CHARLESTON, WV 25303

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
City of Montgomery
706 Third Avenue
Montgomery, WV 25136

INSURER A: NATIONAL UNION FIRE CO OF PITTSBURGH, PA
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	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 X WRONGFUL ACT X PROFESSIONAL GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	L900000442	07/01/2009	07/01/2010	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 0 $ INCLUDED $ N/A $ N/A
A	AUTOMOBILE LIABILITY ANY AUTO X ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	L900000442	07/01/2009	07/01/2010	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
	EXCESS LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY STOPGAP	L900000442	07/01/2009	07/01/2010	WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
B	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

SUBJECT TO THE PROVISIONS, CONDITIONS AND EXCLUSIONS OF THE POLICIES LISTED ABOVE, IT IS AGREED THAT THE CERTIFICATE HOLDER IS AN "ADDITIONAL INSURED" WITH RESPECTS TO:

City of Montgomery sewer project.

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER:

United States Department of Agriculture
Rural Utilities Service State Office
1550 Earl Core Road, Suite 101
Morgantown, WV 26505

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 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

Joyce Gladwell
Cassi McClung

ACORD 25-S (7/97)
C:\FMPRO\CERTPROS.WEB

© ACORD CORPORATION 1988

ARTICLE 13

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS

Section

16–13–1. Acquisition, operation, etc., of works; acquisition of property; issua bonds.
16–13–2. Sanitary board to supervise and control construction, etc., of appointment of board; definitions.
16–13–3. Powers of sanitary board; contracts; employees; compensation tl extensions and improvements; replacement of damaged public
16–13–4. Payment of preliminary expenses of surveys, etc.
16–13–5. Ordinance necessary before acquisition or construction of works.
16–13–6. Publication and hearing upon ordinance.
16–13–7. Acquisition by condemnation or purchase.
16–13–8. Cost of works.
16–13–9. Contracts and obligations incurred to be paid for solely by revenue
16–13–10. Interest on and redemption of bonds; form; statement on face of negotiability; exemption from taxation; registration; execution; disposition of surplus proceeds; additional and temporary bonds.
16–13–11. Additional bonds to extend or improve works.
16–13–12. Additional bonds for extension, etc., of works to have equal priorit original bonds.
16–13–13. Application of revenue from bonds; lien.
16–13–14. Securing bonds by trust indenture.
16–13–15. Sinking fund; transfer of balance of net revenues.
16–13–16. Rates for service; deposit required for new customers; forfeit deposit; reconnecting deposit; tenant's deposit; change or re ment; hearing; lien and recovery; discontinuance of services.
16–13–17. Government units subject to established rates.
16–13–18. Supervision of works by sanitary board; organization of board; qu tions, terms and compensation of members.
16–13–18a. Publication of financial statement.
16–13–19. Contract with other municipalities for service of works; powers of le to rates; intercepting sewers.
16–13–20. Discharge of lien on property acquired.
16–13–21. Action on certificates or attached coupons; receivers.
16–13–22. Powers conferred in addition to existing powers; jurisdiction outsi porate limits.
16–13–22a. Grants, loans and advances.
16–13–22b. Contracts for abatement of pollution.
16–13–22c. Refunding bonds.
16–13–22d. Subordination of bonds.
16–13–22e. Operating contract.
16–13–22f. Exemption of bonds from taxation.
16–13–22g. Covenants with bondholders.
16–13–23. Article deemed full authority for construction, etc., of works and is bonds; alternative method; powers of state department of health fected.
16–13–23a. Additional powers of municipality upon receipt of order to cease pol
16–13–24. Article to be construed liberally.

§ 16–13–1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds

(a) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation:

(1) A sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined system pursuant to section one-b, article twenty, chapter eight of this code; and

(2) A stormwater collection system and control system, including all lines, pumping stations and all other facilities and appurtenances necessary or useful and convenient for the collection and control of stormwater, and an associated stormwater management program.

(b) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property.

(c) Any municipality may serve and supply the facilities of such sewerage system and a stormwater system and associated stormwater management program within the corporate limits of the municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, however, That the municipality may not serve or supply the facilities of such sewerage system or stormwater system within the corporate limits of any other municipality without the consent of the governing body thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

(e) No municipal corporation or sanitary district may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed,

owned and/or operated by the West Virginia Division of Highways witho express agreement of the commissioner of highways.

Acts 1933, Ex. Sess., c. 25, § 1; Acts 1955, c. 132; Acts 1986, c. 118; Acts 2001, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⇐270, 708, 711, 950. Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 153 to 1709.

Notes of Decisions

Construction and application 1
Jurisdiction 7
Police power 3
Power to incur indebtedness and expenditures 6
Public improvements 5
Regulation of public utilities 2
Revenue bonds for construction 4

1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ⇐ 223.2(21)

Statutes relating to supervision and regulation of public utilities by Public Service Commission and statute dealing with municipally owned sewer systems relate to the same subject and should be read and construed together. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Statutes ⇐ 223.2(27)

2. Regulation of public utilities

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16–13–16, 16–13–18, 16–13–32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇐ 369

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to si and regulate sewer system was not wit or impaired by statutes authorizing m corporation to own, construct and r sewer system under control of a Sanitar and authorizing Board to operate and such systems and to order and comp extensions that Board might deem ex Code, 16–13–1 et seq., 16–13–2, 16–13–5, 16–13–16, 16–13–18, 1(24–1–1, 24–2–1, 24–3–1. State ex rel. Wheeling v. Renick, 1960, 116 S.E.2d W.Va. 640. Public Utilities ⇐ 113

Public Service Commission has power and authority to control f charges and services of all public utili to hear complaints of persons entitlec vices which such utilities afford, subjec limitation that the requirements shall contrary to law and that they be just just and reasonable, and just and prope 16–13–1 et seq., 24–1–1 et seq. Stat City of Wheeling v. Renick, 1960, 11(763, 145 W.Va. 640. Public Utilities Public Utilities ⇐ 119.1

3. Police power

Statute delegating to municipal cor power by ordinance to create sanitar and authorizing such sanitary boards into contracts for construction of sewe tems is a valid exercise of police power Code, 16–13–1 et seq. West Virgini Service Co. v. Cunningham, 1957, 9 891, 143 W.Va. 1. Constitutional Law Health ⇐ 358

Legislature may delegate police pow ies or counties, as it sees fit. Brewer Point Pleasant, 1934, 172 S.E. 717, 1 572. Constitutional Law ⇐ 2437; tional Law ⇐ 2438

4. Revenue bonds for construction

Plan of preparation expense in cor of municipal sewage treatment and dis tem constituted one of first items of incurred and constituted a liability, acc agreements between municipality an Works Agency which advanced mone such expense, from moment constru

gan, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

In action to cancel certain sewer revenue bonds issued by West Virginia City and to enjoin collection of sewerage service charges assessed for the purpose of liquidating such bonds, District Court was bound by decisions of Supreme Court of Appeals of West Virginia upholding the constitutionality of statute permitting municipalities to issue bonds for self-liquidating municipal projects. Laws W.Va.1933, 1st Ex.Sess., c. 25, as amended by Laws W.Va. 1933, 2nd Ex.Sess., c. 48. Stevenson v. City of Bluefield, 1941, 39 F.Supp. 462. Federal Courts ⇐ 433

City located on or near state boundary and confronted with necessity of purchasing property and erecting sewage disposal plant in adjoining state held authorized under statute to issue revenue bonds payable solely from revenues of such plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⇐ 919

5. Public improvements

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16–13–1 et seq., 16–13–17, 16–13–24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇐ 400

6. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 864(3)

7. Jurisdiction

Taxpayers of a city seeking to enjoin collection by city of sewerage service charges assessed for purpose of liquidating bonds issued for construction of sewerage system could not invoke jurisdiction of federal court on ground that by reason of prior decisions of state court upholding validity of statute, under which bonds were issued and rates assessed, plaintiffs did not have a plain, speedy and efficient remedy in state court within meaning of Judicial Code. Laws W.Va.1933, 1st Ex.Sess., c. 25, as amended by Laws W.Va.1933, 2nd Ex.Sess., c. 48; Jud.Code, § 24(1), 28 U.S.C.A. § 1312. Stevenson v. City of Bluefield, 1941, 39 F.Supp. 462. Federal Courts ⇐ 7; Federal Courts ⇐ 26.1

§ 16–13–2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions

(a) The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen of this article.

(b) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Board" means the sanitary board as set up in section eighteen of this article.

(2) "Governing body" means the mayor and council or other legally constituted governing body of any municipality.

(3) "Municipality" means any municipal corporation, incorporatec town, village or sanitary district in the state of West Virginia.

(4) "Sewage works" means a works for the collection and/or trea purification and disposal of sewage, in its entirety or any integral part tl

(5) "Stormwater system" or "stormwater works" means a stormwat tem in its entirety or any integral part thereof used to collect and disp stormwater and an associated stormwater management program. It inclu facilities, structures and natural water courses used for collecting and co ing stormwater to, through and from drainage areas to the points of final including, but not limited to, any and all of the following: Inlets, co corals, outlets, channels, ponds, drainage easements, water quality fac catch basins, ditches, streams, gulches, flumes, culverts, syphons, retent detention basins, dams, floodwalls, levies, pipes, flood control syster pumping stations, and associated stormwater management program. Th "stormwater system" and " stormwater works" shall not include hig road and drainage easements, and/or stormwater facilities constructed, and/or operated by the West Virginia Division of Highways.

(6) "Stormwater management program" means those activities ass with the management, operation, maintenance and control of stormwat stormwater works, including, but not limited to, public education, storn and surface runoff water quality improvement, mapping, planning, floo trol, inspection, enforcement and any other activities required by sta federal law: Provided, That, as used in this article, "stormwater manag program" shall not include those activities associated with the manag operation, maintenance and control of highways, road and drainage ease and/or stormwater facilities constructed, owned and/or operated by th Virginia Division of Highways without the express agreement of the cc sioner of highways.

(7) "Works" means sewage works and stormwater works either separa collectively.

Acts 1933, Ex. Sess., c. 25, § 2; Acts 2001, c. 212, eff. 90 days after April 14, 200

Library References

Health ⇐369.
Municipal Corporations ⇐711.
Westlaw Topic Nos. 198H, 268.

C.J.S. Health and Environment §§ 7 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 153

Notes of Decisions

Construction and application 1
Construction of sewer systems 3
Public utilities 2

1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 1 776. Statutes ⇐223.2(21)

2. Public utilities

All contracts made by a utility relati public service must be deemed to be into in contemplation of the exercis state of its regulatory power whenever lic interest may make it necessary. County Public Service Sewer Dist. v. 1

ginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Public Utilities ⇐ 115

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16–13–1 et seq., 16–13–2, 16–13–3, 16–13–5, 16–13–16, 16–13–18, 16–13–23, 24–1–1, 24–2–1, 24–3–1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇐ 113

3. Construction of sewer systems

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 864(3)

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

§ 16–13–3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids.

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be

available or are made available as provided in this article, and shall est rules and regulations for the use and operation of the works, and of sewers, stormwater conduits, and drains connected therewith so far a may affect the operation of such works, and do all things necessa expedient for the successful operation thereof, including, but not limit those activities necessary to comply with all federal and state require including stormwater and surface runoff water quality improvement act

The sanitary board may declare an emergency situation in the ev collector line breaks or vital treatment plant equipment failure and sh exempted from competitive bidding requirements and enter into direc chase agreements or contracts for the expenses. All public ways or public damaged or destroyed by the board in carrying out its authority unde article shall be restored or repaired by the board and placed in their o condition, as nearly as practicable, if requested so to do by proper aut out of the funds provided by this article.

Acts 1933, Ex. Sess., c. 25, § 3; Acts 1989, c. 133; Acts 2001, c. 143, eff. 90 da April 11, 2001; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Historical and Statutory Notes

Acts 2001, c. 143, also amended this section to read:

"The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall b without advertising for bids, which bids publicly opened and award made to bidder, with power in the board to rejec all bids. After the construction, installat completion of the works, or the ac thereof, the board shall operate, man control the same and may order and c any extensions, betterments and impro of and to the works that the board m expedient, if funds therefor be availabl made available as provided in this art shall establish rules and regulations fo and operation of the works, and of othe and drains connected therewith so far may affect the operation of such works all things necessary or expedient for cessful operation thereof. The sanita may declare an emergency situation in of collector line breaks or vital treatm equipment failure and shall be exemp competitive bidding requirements a into direct purchase agreements or con such expenses. All public ways or publ damaged or destroyed by the board in out its authority under this article sha stored or repaired by the board and p their original condition, as nearly as ble, if requested so to do by proper a out of the funds provided by this article

Library References

Health ⇐369.
Westlaw Topic No. 198H.

C.J.S. Health and Environment §§ 7 to 17, 26 to 27, 44 to 45, 98 to 100.

Notes of Decisions

Independent contractor 3
Police power of local authorities 1
Validity of municipal contracts 2

1. Police power of local authorities

Under the police power of the State, the Legislature has the power to provide for the protection of the safety, health, morals and general welfare of the public, and may delegate such powers to municipalities created by it. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ⇐ 2437; Constitutional Law ⇐ 1066

Under statute delegating to municipal corporations power by ordinance to create sanitary boards and authorizing such boards to enter into contracts for construction of sewerage systems, ordinance creating sanitary board and authorizing such board to enter into contract for construction of sewerage system was valid exercise of police power of state delegated to city by statute. Code, 16–13–1 et seq. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Health ⇐ 358; Health ⇐ 369

2. Validity of municipal contracts

Contract between municipal sanitary board and contractor providing for construction of sanitary sewerage system in furtherance of exercise of police power of state and provisions of city ordinance was valid. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇐ 339(1)

3. Independent contractor

Where city had no right of control over contractor and sanitary board in construction of sanitary sewer system, contractor was "independent contractor". West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇐ 400

§ 16–13–4. Payment of preliminary expenses of surveys, etc.

All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of costs and of revenue, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this article, may be met and paid in the following manner. Said board may from time to time certify such items of expense to the clerk or recorder of said municipality, directing him to pay the several amounts thereof, and thereupon said clerk or recorder shall at once draw a warrant or warrants upon the treasurer of said municipality, which warrant or warrants shall be paid out of the general funds of said municipality not otherwise appropriated, without a special appropriation being made therefor by the governing body; or, in case there are no general funds of such municipality not otherwise appropriated, the clerk or recorder shall recommend to the governing body the temporary transfer from other funds of such municipality of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such governing body shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such municipality: Provided, however, That the fund or funds of such municipality from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses, shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided.

Acts 1933, Ex. Sess., c. 25, § 4.

Library References

Municipal Corporations ⇐288.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 969.

Notes of Decisions

Construction planning expenses 2
Power to incur indebtedness and expenditures 1

---

1. Power to incur indebtedness and expenditures

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 864(3)

2. Construction planning expenses

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money
preliminary engineering work prior to
beginning of construction of sewage
system is not required to be handled by
board, but board is merely required to
and control the construction and main
of the project. Code W.Va. 16
16–13–18, 16–13–32. U.S. v. City of
ton, 1957, 149 F.Supp. 866. Health

United States, which was entitled
bursement for advances made to West
city by Federal Works Agency for pur
plan preparation for construction of
sewage treatment and disposal system
not be entitled to general judgment aga
but would be entitled to an order
repayment from existing or future reven
proceeds and to four percent interest.
bilization and Reconversion Act of 194
et seq., 58 Stat. 785; Code W.Va. 38-4-5
53-1-1. U.S. v. City of Charleston, 19
F.Supp. 866. Municipal Corporations

In agreement between West Virginia
Federal Works Administrator for advan
used for purpose of plan preparation
struction of proposed sewage treatment
posal system, parties would be pres
know extent of city's authority to make
ing contract in such respect, and,
limitation imposed by West Virginia la
would be read into the agreement. Wa
zation and Reconversion Act of 1944,
seq., 501, 58 Stat. 785, 791; Cod
11-8-26(1-4); 16-13-15, 16-13-16,
16-13-19, 16-13-22, 16-13-27, 16-13-3
W.Va. art. 10, § 8. U.S. v. City of Ch
1957, 149 F.Supp. 866. Municipal
tions ⇐ 250

§ 16–13–5. Ordinance necessary before acquisition or construct works

Before any municipality shall construct or acquire any works und article, the governing body shall upon petition of the board, enact an orc or ordinances which shall: (a) Set forth a brief and general descriptior works and, if the same are to be constructed, a reference to the preli report which shall heretofore have been prepared and filed by an e chosen by the board as aforesaid; (b) set forth the cost thereof estimatec engineer chosen as aforesaid; (c) order the construction or acquisition works; (d) direct that revenue bonds of the municipality shall be pursuant to this article in such an amount as may be found necessary to

cost of the works; and (e) contain such other provisions as may be necessary in the premises.

Acts 1933, Ex. Sess., c. 25, § 5.

Library References

Municipal Corporations ⇐293.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 977 to 978.

Notes of Decisions

Power to incur indebtedness and expenditures
1

---

1. Power to incur indebtedness and expenditures

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 864(3)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

§ 16–13–6. Publication and hearing upon ordinance

After such ordinance shall have been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the first date of publication of such abstract and notice which shall not be prior to the last date of publication of such abstract and notice, and present protests. 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: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto.

Acts 1933, Ex. Sess., c. 25, § 6; Acts 1967, c. 105; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Municipal Corporations ⇐294 to 300.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 979 to 988 to 1001.

§ 16–13–7. Acquisition by condemnation or purchase

Every such municipality shall have power to condemn any such works t acquired and any land, rights, easements, franchises and other property, re personal, deemed necessary or convenient for the construction of any works, or for extensions, improvements, or additions thereto, and in connec therewith may have and exercise all the rights, powers and privilege eminent domain granted to municipal corporations under the laws rel thereto. Title to property condemned shall be taken in the name of municipality. Proceedings for such appropriation of property shall be u and pursuant to the provisions of chapter fifty-four, of the Code of Virginia, one thousand nine hundred thirty-one, and acts amendatory supplemental thereto: Provided, That the municipality shall be unde obligation to accept and pay for any property condemned, and shall in no pay for any property condemned or purchased, except from the funds pro pursuant to this article; and in any proceedings to condemn, such orders be made as may be just to the municipality and to the owners of the prope be condemned, and an undertaking or other security may be required sec such owners against any loss or damage to be sustained by reason of the fa of the municipality to accept and pay for the property, but such undertaki security shall impose no liability upon the municipality except such as m paid from the funds provided under the authority of this article. In event acquisition by purchase the board may obtain and exercise an option fro owner or owners of said property for the purchase thereof, or may enter i contract for the purchase thereof, and such purchase may be made upon terms and conditions, and in such manner as the board may deem prope event of the acquisition of any works already constructed by purcha condemnation, the board at or before the time of the adoption of the ordi described in section five hereof, shall cause to be determined what re replacements, additions, and betterments will be necessary in order tha works may be effective for their purpose, and an estimate of the cost of improvements shall be included in the estimate of the cost required by s five hereof, and such improvement shall be made upon the acquisition works and as a part of the cost thereof.

Acts 1933, Ex. Sess., c. 25, § 7.

Library References

Municipal Corporations ⇐287.
Westlaw Topic No. 268.

§ 16–13–8. Cost of works

The cost of the works shall be deemed to include the cost of acquisit construction thereof, the cost of all property, rights, easements, and frar deemed necessary or convenient therefor and for the improvements deter

upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

Acts 1933, Ex. Sess., c. 25, § 8.

Library References

Municipal Corporations ⇐288.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 969.

Notes of Decisions

Monetary advances 2
Preliminary expenditures 1

1. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16–13–16, 16–13–18, 16–13–32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇐ 369

2. Monetary advances

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 1037

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

§ 16–13–9. Contracts and obligations incurred to be paid for solely by revenue bonds

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be

payable solely from the fund herein provided for the payment, and the may not, in any respect, be a corporate indebtedness of the municipality, the meaning of any statutory or constitutional limitations thereon. details of the bonds shall be determined by ordinance or ordinances municipality.

Acts 1933, Ex. Sess., c. 25, § 9; Acts 1949, c. 93; Acts 2001, c. 212, eff. 90 da April 14, 2001.

Library References

Municipal Corporations ⇐870, 911, 950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1579, 1581, 1647 to 1649, 1708

Notes of Decisions

Power of municipal corporations to contract 2
Power to incur indebtedness and expenditures 3
Preliminary expenditures 4
Preliminary proceedings and ordinances 5
Validity 1

1. Validity

Statute authorizing municipalities to construct and finance self-liquidating sewer systems held constitutional (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⇐ 266

2. Power of municipal corporations to contract

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16–13–9, 16–13–19, 16–13–23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ⇐ 277

3. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a mu ty to incur debts. Code W.Va. 11-8 16-13-15, 16-13-16, 16-13-18, 16-13-22, 16-13-27, 16-13-32; Const. art U.S. v. City of Charleston, 1957, 149 866. Municipal Corporations ⇐ 864(3

West Virginia municipalities are auth incur obligations for purpose of defra liminary expenses of sewer projects, repayment of such obligations is to solely from proceeds of revenue bonds, tax levies. Code W.Va. 11-8-26(1-4); 16-13-16, 16-13-18, 16-13-19, 16-13-27, 16-13-32; Const. art. 10, § 8 City of Charleston, 1957, 149 F.Supp. 8 nicipal Corporations ⇐ 864(3)

If sewer project is undertaken by m ty, whatever loans may have been mad of the revenue bonds as authorized un Virginia law would or should be inc cost of the works and repaid out of pr the bonds. Code W.Va. 11-8-26(1-4); 16-13-16, 16-13-18, 16-13-19, 16-13-27, 16-13-32; Const. art. 10, § 8 City of Charleston, 1957, 149 F.Supp. nicipal Corporations ⇐ 950(15)

Where statute authorizing municip issue bonds for self-liquidating munic ject, provided that bonds should not rate indebtedness, bonds held not "debts" within constitutional inhibit 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, Brewer v. City of Point Pleasant, 1934 717, 114 W.Va. 572. Municipal Cor ⇐ 907

Provisions of statute relating to is municipal bonds constitute integral bonds regardless of whether include (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 1 Brewer v. City of Point Pleasant, 1934 717, 114 W.Va. 572. Municipal Co ⇐ 923

Statute permitting municipalities bonds for self-liquidating municipa held legitimate delegation of legislati

Acts 1933, 1st Ex.Sess., c. 25. Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law ⇐ 2437; Municipal Corporations ⇐ 907

4. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16–13–16, 16–13–18, 16–13–32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇐ 369

5. Preliminary proceedings and ordinances

Provision of sewer ordinance declaring that statutory mortgage lien should exist in favor of bondholders violated statute permitting municipalities to construct self-liquidating sewer systems, but declaration could be regarded as surplusage and did not affect validity of remainder of ordinance (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⇐ 303(4)

§ 16–13–10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, either coupon or registered, shall set forth any registration and conversion privileges, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the State. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State. Said bonds shall be exempt from all taxation, state, county and municipal. Such bonds shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers, before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor, and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation

or otherwise, shall be less than the cost of the works, additional bonds n like manner be issued to provide the amount of such deficit and, i otherwise provided in said ordinance authorizing the issuance of the bond issued or in the trust indenture hereinafter authorized, shall be deemed tc the same issue and shall be entitled to payment without preference or p of the bonds first issued. Prior to the preparation of the definitive b temporary bonds may under like restrictions be issued with or withou pons, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 10; Acts 1970, c. 11; Acts 1980, c. 33; Acts 1981, Sess., c. 2.

Library References

Municipal Corporations ⇐922, 950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1686, 1697, 1708 to 1709.

§ 16–13–11. Additional bonds to extend or improve works

The governing body may provide by said ordinance authorizing the is of the bonds or in the trust indenture hereinafter referred to, that add bonds may thereafter be authorized and issued, at one time or from t time under such limitations and restrictions as may be set forth i ordinance and/or trust indenture, for the purpose of extending, impro bettering the works when deemed necessary in the public interest, sucl tional bonds to be secured and be payable from the revenues of the equally with all other bonds issued pursuant to said ordinance without ence or distinction between any one bond and any other definite bond the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 11.

Library References

Municipal Corporations ⇐911, 950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1649, 1708 to 1709.

§ 16–13–12. Additional bonds for extension, etc., of works to hav priority with original bonds

The governing body may provide by said ordinance authorizing the i of the bonds or in the trust indenture hereinafter referred to, that ad bonds may thereafter be authorized and issued, at one time or from time, under such limitations and restrictions as may be set forth ordinance and/or trust indenture, for the purpose of extending, impro bettering the works when deemed necessary in the public interest, suc tional bonds to be secured and be payable from the revenues of th equally with all other bonds issued pursuant to said ordinance without ence or distinction between any one bond and any other bond by re priority of issuance or otherwise.

Acts 1933, Ex. Sess., c. 25, § 12.

Library References

Municipal Corporations ⇐911, 950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

§ 16–13–13. Application of revenue from bonds; lien

All moneys received from any bonds issued pursuant to this article, after reimbursements and repayment to said municipality of all amounts advanced for preliminary expenses as provided in section four of this article, shall be applied solely to the payment of the cost of the work, extensions, improvements or betterments, or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

Acts 1933, Ex. Sess., c. 25, § 13.

Library References

Municipal Corporations ⇐911, 950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

Notes of Decisions

Preliminary expenditures 1
Repayment of loans 2

1. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16–13–16, 16–13–18, 16–13–32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇐ 369

2. Repayment of loans

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 1037

§ 16–13–14. Securing bonds by trust indenture

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement,

operation, repair, maintenance and insurance thereof, and the custody, guarding and application of all moneys, and may provide that the works be contracted for, constructed and paid for under the supervision and app of consulting engineers employed or designated by the board and satisfact the original bond purchasers, successors, assigns or nominees, who ma given the right to require the security given by contractors and by depository of the proceeds of bonds or revenues of the works or other m pertaining thereto be satisfactory to such purchasers, successors, assig nominees. Such indenture may set forth the rights and remedies o bondholders and/or such trustee, restricting the individual right of acti bondholders as is customary in trust indentures securing bonds and debe of corporations. Except as in this article otherwise provided, the gove body may provide by ordinance or in such trust indenture for the payme the proceeds of the sale of the bonds and the revenues of the works to officer, board or depository as it may determine for the custody thereof, ar the method of disbursement thereof, with such safeguards and restriction may determine.

Acts 1933, Ex. Sess., c. 25, § 14.

Library References

Municipal Corporations ⇐911, 950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1 1649, 1708 to 1709.

United States Code Annotated

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

§ 16–13–15. Sinking fund; transfer of balance of net revenues

At or before the issuance of any such bonds the governing body shall b ordinance create a sinking fund, to be remitted to and administered by the Virginia municipal bond commission, for the payment of the bonds an interest thereon and the payment of the charges of banks or trust compani making payment of such bonds or interest, and shall set aside and ple sufficient amount of the net revenues of the works, hereby defined to mea revenues of the works remaining after the payment of the reasonable expe operation, repair and maintenance, such amount to be paid by the boar said sinking fund at intervals to be determined by ordinance prior to iss of the bonds, for: (a) The interest upon such bonds as such interest sha due; (b) the necessary fiscal agency charges for paying bonds and interes the payment of the bonds as they fall due, or, if all bonds mature at one the proper maintenance of a sinking fund in such amounts as are necessar sufficient for the payment thereof at such time; (d) a margin for safety a the payment of premiums upon bonds retired by call or purchase as l provided, which margin, together with any unused surplus of such m carried forward from the preceding year, shall equal ten percent of all amounts so required to be paid into the sinking fund. Such required pay shall constitute a first charge upon all the net revenue of the works. Pr the issuance of the bonds the board may by ordinance be given the right

or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto.

Acts 1933, Ex. Sess., c. 25, § 15; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1986, c. 118.

Library References

Municipal Corporations ⇐951.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1704 to 1705.

§ 16–13–16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works.

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or storm-

water facilities constructed, owned and/or operated by the West Virgi division of highways.

(d) All new applicants for service shall indicate to the governing b whether they are an owner or tenant with respect to the service locati

(e) The governing body may collect from all new applicants for servic deposit of fifty dollars or two twelfths of the average annual usage of applicant's specific customer class, whichever is greater, to secure the paym of service rates, fees and charges in the event they become delinquent provided in this section. In any case where a deposit is forfeited to pay ser rates, fees and charges which were delinquent at the time of disconnectio termination of service, no reconnecting or reinstatement of service may made by the governing body until another deposit equal to fifty dollars or a equal to two twelfths of the average usage for the applicant's specific custo class, whichever is greater, is remitted to the governing body. After tw months of prompt payment history, the governing body shall return the dep to the customer or credit the customer's account with interest at a rate as public service commission may prescribe: *Provided,* That where the custom a tenant, the governing body is not required to return the deposit until the t the tenant discontinues service with the governing body. Whenever any r fees, rentals or charges for services or facilities furnished remain unpaid f period of twenty days after the same become due and payable, the user o services and facilities provided is delinquent and the user is liable at law all rates, fees and charges are fully paid. The governing body may, u reasonable rules promulgated by the public service commission, shut off discontinue water services to a delinquent user of sewer facilities ten days the sewer services become delinquent regardless of whether the governing b utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the pay of the proper and reasonable expense of operation, repair, replacements maintenance of the works and for the payment of the sums herein requir be paid into the sinking fund. Revenues collected pursuant to this section be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a p hearing, at which all the users of the works and owners of property served be served thereby and others interested shall have an opportunity to be h concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges before the same is finally enacted, notice of such hearing, setting fortl proposed schedule of such rates, fees or charges, shall be given by public as a Class II–0 legal advertisement in compliance with the provisions of a three, chapter fifty-nine of this code, and the publication area for such pul tion shall be the municipality. The first publication shall be made at lea days before the date fixed in such notice for the hearing.

(i) After such hearing, which may be adjourned from time to time ordinance establishing rates, fees or charges, either as originally introduc

as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided: *Provided,* That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within twenty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: *Provided,* That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(*l*) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty 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 rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

Library References

Municipal Corporations ⇐712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

Construction and application 1
Public utilities 3
Rates and charges for service 2
Summary judgment 5
Water service termination 4

1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ⇐ 223.2(21)

2. Rates and charges for service

If rates and charges set forth in ordinance and established by public service commission by its order should be considered improper for any valid reason, they may be challenged by any user of sewer services by complaint in proper proceeding before public service commission. Code, 8–4–20, 16–13–1, 16–13–2, 16–13–16, 24–1–1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Municipal Corporations ⇐ 712(8)

Where charges for use of sewer by sanitary board of city of Beckley were assessed to property owners according to quantity of water supplied subject to deduction of amount of water retained on premises to be determined by a meter installed by consumers and allowing deduction of costs thereof from amounts due on bills, such charges were not discriminatory, notwithstanding some users were financially unable to install meters. Code 16–13–30. Houchins v. City of Beckley, 1944, 32 S.E.2d 286, 127 W.Va. 306. Municipal Corporations ⇐ 712(7)

Party aggrieved by rates established for use of sewer could not resort to courts for relief, where he failed to exercise statutory remedy of appearing before governing body of municipality at public hearing (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⇐ 712(8)

3. Public utilities

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system hear proceeding seeking extension of sev vices, and power of Commission to su and regulate sewer system was not witl or impaired by statutes authorizing mu corporation to own, construct and m sewer system under control of a Sanitary and authorizing Board to operate and such systems and to order and compl extensions that Board might deem exp Code, 16–13–1 et seq., 16–13–2, 1 16–13–5, 16–13–16, 16–13–18, 16 24–1–1, 24–2–1, 24–3–1. State ex rel. Wheeling v. Renick, 1960, 116 S.E.2d 7 W.Va. 640. Public Utilities ⇐ 113

4. Water service termination

Any impairment of sewer revenue bo sued by cities providing for imposition against property for unpaid sewer cha statutory amendment precluding cities f taching lien to landlord's property for failure to pay sewer charges, was not "s tial impairment" and, thus, amendment violate constitutional prohibition agai pairment of contracts, where bond c acknowledged that parties' rights were to legislative regulation, contracts were modified, abridged right was not centra ties' undertaking, and prior legislation p utilities with far more effective remedy service termination for unpaid sewer U.S.C.A. Const. Art. 1, § 10, cl. 1; W.V §§ 8–18–23, 16–13–16. City of Charl Public Service Com'n of West Virginia, F.3d 385, certiorari denied 116 S.Ct. 4 U.S. 974, 133 L.Ed.2d 404. Constitutio ⇐ 2704; Municipal Corporations ⇐

5. Summary judgment

Allegation, in city's notice of motion f ment, that claim was for services of city system and penalty for nonpayment to board for a specified period of time defendant was owner of property serve specified sum was due by reason of a ordinance, when read in connection w fied itemized statement accompanying was insufficient to state a claim bas contract in absence of showing of rela of sanitary board to sewage system, m service and right of sanitary board to cl service, and demurrer to notice was sustained. Code 1937, 16–13–15 et seq. Beckley v. Craighead, 1943, 24 S.E.2d W.Va. 484. Judgment ⇐ 184

§ 16–13–17. Government units subject to established rates

The municipality and any county government, state government and government served by the services of the works shall be subject to th

fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 17; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⇐712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

In general 1

---

1. In general

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16–13–1 et seq., 16–13–17, 16–13–24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇐ 400

§ 16–13–18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided.

Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board.

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term,

an appointment of a successor shall be made in like manner for a term o years. Vacancies shall be filled for an unexpired term in the same man the original appointment. Each member shall give such bond, if any, as r required by ordinance. The mayor or city manager shall act as chairman sanitary board, which shall elect a vice chairman from its members an designate a secretary and treasurer (but the secretary and the treasurer r one and the same), who need not be a member or members of the sa board. The vice chairman, secretary and treasurer shall hold office as s the will of the sanitary board.

The members of the sanitary board shall receive compensation fo services, either as a salary or as payments for meetings attended, governing body may determine, and shall be entitled to payment fo reasonable expenses incurred in the performance of their duties. The gov body shall fix the reasonable compensation of the secretary and treasure discretion, and shall fix the amounts of bond to be given by the treasur compensation, together with the expenses in this section referred to, sh paid solely from funds provided under the authority of this article. The sa board shall have power to establish bylaws, rules and regulations for it government.

Acts 1933, Ex. Sess., c. 25, § 18; Acts 1939, c. 96; Acts 1953, c. 146; Acts 1957, Acts 1992, c. 95; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Health ⇐369.
Municipal Corporations ⇐711.
Westlaw Topic Nos. 198H, 268.

C.J.S. Health and Environment §§ 7 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

Funds 4
Membership of sanitary boards 2
Powers and duties of sanitary boards 1
Public utilities 3

1. Powers and duties of sanitary boards

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16–13–16, 16–13–18, 16–13–32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇐ 369

City which created sanitary board for purpose of erecting sewage disposal plant held authorized to incorporate such sanitary board as a nonstock corporation for purpose of being domesticated in Virginia as a sewage purification company under Virginia law, where no other way was pointed out by which city or sanitary board could under law of Virginia acqui erty in that state and carry out conte plan of erecting sewage disposal plan 1933, 1st Ex.Sess., c. 25, as amended 1933, 2d Ex.Sess., c. 48. Bernard v. Bluefield, 1936, 186 S.E. 298, 117 W.V Municipal Corporations ⇐ 277

2. Membership of sanitary boards

Where sanitary board created by mun optional for either mayor or city manag not both) to be appointed to board. 5 Op.Atty.Gen. 217 (February 9, 1967) 1 93382.

3. Public utilities

Under statute declaring that words utility" shall include any person or per association of persons including munici engaged in any business which is a pul vice, sewer system owned and operated was a "public utility" and Public Servic mission was vested with jurisdiction tc vise or regulate municipal sewer system hear proceeding seeking extension of se vices, and power of Commission to su

and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16–13–1 et seq., 16–13–2, 16–13–3, 16–13–5, 16–13–16, 16–13–18, 16–13–23, 24–1–1, 24–2–1, 24–3–1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇐ 113

4. Funds

Charleston Sanitary Board treasurer must deliver funds collected from sewer system users to Charleston city treasurer. 52 W.Va. Op.Atty. Gen. 497 (October 6, 1967) 1967 WL 93425.

§ 16–13–18a. Publication of financial statement

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this Code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense.

Acts 1957, c. 138; Acts 1967, c. 105.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the code of West Virginia mean "magistrate." See § 50–1–17.

Library References

Health ⇐369.
Municipal Corporations ⇐885.
Westlaw Topic Nos. 198H, 268.
C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 1628.

§ 16–13–19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which

as herein provided has ordered the construction or acquisition of such w (in this section called the owner), is hereby authorized to contract with on more other municipal corporations or political subdivisions within the stat this section called the lessee), and such lessees are hereby authorized to e into contracts with the owners, for the service of such works to such les and their inhabitants, but only to the extent of the capacity of the works wit impairing the usefulness thereof to the owners, upon such terms and condit as may be fixed by the boards and approved by ordinances of the respe contracting parties: Provided, That no contract shall be made for a perio more than forty years or in violation of the provisions of said ordin authorizing bonds hereunder or in violation of the provisions of said indenture.

The lessee shall by ordinance have power to establish, change and a rates, fees and charges for the service rendered therein by the works agains owners of the premises served, in the manner hereinbefore provided establishing, changing and adjusting rates, fees and charges for the se rendered in the municipality where the works are owned and operated, such rates, fees or charges shall be collectible and shall be a lien as h provided for rates, fees and charges made by the owner.

The necessary intercepting sewers and appurtenant works for connectin works of the owner with the sewerage system of the lessee shall be constr by the owner and/or the lessee upon such terms and conditions as may b forth in said contract, and the cost or that part of the cost thereof which is borne by the owner may be paid as a part of the cost of the works fro proceeds of bonds issued under this article unless otherwise provided by ordinance or trust indenture prior to the issuance of the bonds. The inc received by the owner under any contract shall, if so provided in said ordin or trust indenture, be considered to be a part of the revenues of the works this article defined and be applied as herein provided for the application o revenues.

Acts 1933, Ex. Sess., c. 25, § 19; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, e days after April 14, 2001.

Library References

Municipal Corporations ⇐328.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 10 1029.

Notes of Decisions

In general 1

---

1. In general

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, ar that town was unable to sell revenue because it was not allowed to have part c ship in the plant or in the interceptor sew not mean that town was not liable for pay agreed to under the contracts, where c fered to buy the revenue bonds issued town. Code, 16–13–9, 16–13–19, 16–1 City of Morgantown v. Town of Star City, 195 S.E.2d 166, 156 W.Va. 529. Mu Corporations ⇐ 277

§ 16–13–20. Discharge of lien on property acquired

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

Acts 1933, Ex. Sess., c. 25, § 20.

Library References

Municipal Corporations ⇐288(2).
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 969.

§ 16–13–21. Action on certificates or attached coupons; receivers

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture.

Acts 1933, Ex. Sess., c. 25, § 21.

Library References

Municipal Corporations ⇐937, 955.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 1707, 1711.

§ 16–13–22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the

municipality may serve and supply shall be those areas from which stormw affects or drains into the municipality.

The jurisdiction and authority provided by this section does not exten highways, road and drainage easements, and/or stormwater facilities constr ed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 22; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⇐711.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

§ 16–13–22a. Grants, loans and advances

Any municipality is authorized and empowered to accept loans or grants procure loans or temporary advances evidenced by notes or other negoti instruments issued in the manner, and subject to the privileges and limitati set forth with respect to bonds authorized to be issued under the provisior this article, for the purpose of paying part or all of the cost of acquisitio construction of said sewage works and the construction of betterments improvements thereto, and for the other purposes herein authorized, from authorized agency of the state or from the United States of America or federal or public agency or department of the United States or any pri agency, corporation or individual, which loans or temporary advances, in ing the interest thereon, may be repaid out of the proceeds of bonds autho to be issued under the provisions of this article, the revenues of the said se works or grants to the municipality from any agency of the state or fron United States of America or any federal or public agency or department c United States or any private agency, corporation or individual or from combination of such sources of payment, and to enter into the nece contracts and agreements to carry out the purposes hereof with any agen the state, the United States of America or any federal or public agen department of the United States, or with any private agency, corporatic individual. Any other provisions of this article to the contrary notwithstan interest on any such loans or temporary advances may be paid fron proceeds thereof until the maturity of such notes or other negotiable ir ment.

In no event shall any such loan or temporary advance be a general oblig of the municipality and such loans or temporary advances, includin interest thereon, shall be paid solely from the sources specified in this se

Acts 1949, c. 93; Acts 1961, c. 107; Acts 1980, c. 59; Acts 1981, 1st Ex. Sess., c. 2 1986, c. 118.

Library References

Municipal Corporations ⇐864(3).
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 1 1585, 1587.

Notes of Decisions

Power to incur indebtedness and expenditures 1
Repayment of loans and advances 2

1. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 864(3)

2. Repayment of loans and advances

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇐ 950(15)

Under agreement between West Virginia city and Federal Works Administrator, in accordance with the War Mobilization and Reconversion Act of 1944, West Virginia city incurred obligation to repay advances made for purpose of plan preparation for construction of proposed sewage treatment and disposal system if and when construction of the sewage treatment plant should be started and would not be obligated to repay the advances if the construction were not undertaken. War Mobilization and Reconversion Act of 1944, §§ 101 et seq., 501, 58 Stat. 785, 791. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. United States ⇐ 82(1)

§ 16–13–22b. Contracts for abatement of pollution

When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment.

Acts 1949, c. 93.

Library References

Municipal Corporations ⇐328.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027 to 1029.

§ 16–13–22c. Refunding bonds

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable

in the authorization and issuance of refunding revenue bonds, including terms and security, the ordinance, the trust indenture, rates, or other aspec the bonds.

Acts 1949, c. 93.

Library References

Municipal Corporations ⇐913. Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 16 1648, 1651.

§ 16–13–22d. Subordination of bonds

Notwithstanding any other provisions to the contrary in this article, municipality authorizing the issuance of bonds under this article in an effc aid in the abatement or reduction of the pollution of any waters or streams provide in the ordinance authorizing the issuance of the bonds and in any indenture pertaining thereto that such bonds, or any additional bonds that thereafter be issued to extend or improve the works, shall, to the extent a the manner prescribed, be subordinated and be junior in standing, with re to the payment of principal and interest and the security thereof, to such bonds as are designated in the ordinance.

Acts 1949, c. 93.

Library References

Municipal Corporations ⇐950(15). Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 17 1709.

§ 16–13–22e. Operating contract

Any such municipality may enter into contracts or agreements with persons, firms or corporations for the operation and management o facilities and properties of said sewerage system, or any part thereof, for period of time and under such terms and conditions as shall be agreed between such municipality and such persons, firms or corporations. municipality shall have power to provide in the resolution authorizin issuance of bonds hereunder, or in any trust indenture, securing such b that such contracts or agreements shall be valid and binding upon the m pality as long as any of said bonds, or interest thereon, are outstandin unpaid.

Acts 1955, c. 132.

Library References

Municipal Corporations ⇐328. Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1(1029.

§ 16–13–22f. Exemption of bonds from taxation

Said bonds and the interest thereon, together with all properties and fac of said municipality owned or used in connection with the works, and a moneys, revenues and other income of such municipality derived from

works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof.

Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Taxation ⇐2316, 3519.
Westlaw Topic No. 371.

§ 16–13–22g. Covenants with bondholders

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company within or without the state, for the security of the bonds, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds, or the revenues derived from the sewerage system or stormwater system, may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depositary for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, operation or control of such sewerage systems or stormwater system, including any part thereof heretofore or hereafter constructed or acquired or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system or stormwater system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system or stormwater system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system or stormwater system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system or stormwater system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such sewerage system or stormwater system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system or stormwater system, and the rank or priority, as to lien and source and security for payment from the revenues of the sewerage system or stormwater system, between bonds payable from the revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening

of a default in the payment of the principal of or interest thereon, or in performance of any covenant or agreement with bondholders, and the man and terms upon which defaults may be declared cured and the acceleratio the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual operation, maintenance and repair of such sev age system or stormwater system and restrictions and limitations upon expe tures for such purposes, and the manner of adoption, modification, repea amendment thereof, including the approval of such budgets by consul engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such sewerage sys or stormwater system, or any part thereof, and the use and disposition of proceeds of any insurance;

(i) The keeping of books of account, relating to such undertakings and audit and inspection thereof, and the furnishing to the holders of bonds iss hereunder or their representatives, reports prepared, certified, or approvec accountants designated or approved by the holders of bonds issued hereun

(j) Such other additional covenants as shall be considered necessary desirable for the security of the holders of bonds issued hereunder, notw standing that other covenants are not expressly enumerated hereunder, it b the intention hereof to grant to the municipalities the power to make any all covenants or agreements necessary in order to secure greater marketab for bonds issued hereunder as fully and to the same extent as such covenant agreements could be made by a private corporation rendering similar serv and facilities and to grant such municipalities full and complete power to e into any contracts, covenants or agreements with holder of bonds iss hereunder not inconsistent with the constitution of the state of West Virgi

Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⇐922.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 168 1686, 1697.

§ 16–13–23. Article deemed full authority for construction, etc., of w and issue of bonds; alternative method; powers of department of health unaffected

This article, shall, without reference to any other statute, be deemed authority for the construction, acquisition, improvement, equipment, mai nance, operation and repair of the works herein provided for and for issuance and sale of the bonds by this article authorized, and shall be const as an additional and alternative method therefor and for the financing the and no petition or election or other or further proceeding in respect to construction or acquisition of the works or to the issuance or sale of b under this article and no publication of any resolution, ordinance, notic proceeding relating to such construction or acquisition or to the issuanc sale of such bonds shall be required except such as are prescribed by

article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

Acts 1933, Ex. Sess., c. 25, § 23.

Library References

Municipal Corporations ⇐270, 906. Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1645 to 1646, 1702.

Notes of Decisions

Public utilities 1

1. Public utilities

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16–13–1 et seq., 16–13–2, 16–13–3, 16–13–5, 16–13–16, 16–13–18, 16–13–23, 24–1–1, 24–2–1, 24–3–1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇐ 113

§ 16–13–23a. Additional powers of municipality upon receipt of order to cease pollution

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing sewer system and/or stormwater system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

Such rates, fees or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage or stormwater, and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system.

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until

completion of the construction, to be remitted to and administered by municipal bond commission by expending and paying the costs and expens construction and operation in the manner as provided by said ordina

After the completion of the construction such rates, fees or charges shal sufficient in each year for the payment of the proper and reasonable costs expenses of operation, maintenance, repair, replacement and extension f time to time, of the entire sewer and works or entire stormwater wc

No such rates, fees or charges shall be established until after a pu hearing, at which all the potential users of the works and owners of prop served or to be served thereby and others shall have had an opportunity t heard concerning the proposed rates or charges.

After introduction of the ordinance fixing rates, fees or charges, and be the same is finally enacted, notice of such hearing, setting forth the prop schedule of rates, fees or charges, shall be given by publication of notice Class II-O legal advertisement in compliance with the provisions of ar three, chapter fifty-nine of this code, and the publication area for such pub tion is the municipality. The first publication shall be made at least ten (before the date fixed therein for the hearing.

After such hearing, which may be adjourned from time to time, the ordina establishing the rates, fees or charges, either as originally introduced o modified and amended, may be passed and put into effect. A copy of schedule of the rates, fees and charges so established shall be kept on file ir office of the sanitary board having charge of the construction and operatio such works, and also in the office of the clerk of the municipality, and sha open to inspection by all parties interested. The rates, fees or charge established for any class of users or property served shall be extended to c any additional premises thereafter served which fall within the same c without the necessity of any hearing or notice.

Any change or readjustment of rates, fees or charges may be made in same manner as rates, fees or charges were originally established as herei fore provided: Provided, That if such change or readjustment be made sub tially pro rata, as to all classes of service, no hearing or notice is requ

If any rate, fees or charge so established is not paid within thirty days the same is due, the amount thereof, together with a penalty of ten percent, a reasonable attorney's fee, may be recovered by the sanitary board of municipal corporation in a civil action in the name of the municipa

Any municipal corporation exercising the powers given herein has auth to construct, acquire, improve, equip, operate, repair and maintain any pl machinery, or works necessary to comply with the order of the director o division of environmental protection or the environmental quality board, the authority provided herein to establish, maintain and collect rates, fe charges is an additional and alternative method of financing such works matters, and is independent of any other provision of this article insofar a article provides for or requires the issuance of revenue bonds or the impos of rates, fees and charges in connection with the bonds: Provided, That e

for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, however, That the jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⇐712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

In general 1

---

1. In general

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16–13–9, 16–13–19, 16–13–23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ⇐ 277

§ 16–13–24. Article to be construed liberally

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof.

Acts 1933, Ex. Sess., c. 25, § 24.

Library References

Statutes ⇐235.
Westlaw Topic No. 361.
C.J.S. Statutes § 376.

Notes of Decisions

In general 1

---

1. In general

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system.

Note 1

Code, 16–13–1 et seq., 16–13–17, 16–13–24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇐ 400

s to the dependent parents of the deceased member during their joint lifetimes a to the amount which a surviving spouse, without children, would have received: 'hat when there is only one dependent parent surviving, that parent is entitled to ing his or her lifetime one-half the amount which both parents, if living, would entitled to receive: *Provided, however,* That if there is no surviving spouse, child or dependent parent of the deceased member, the accumulated contributions id to a named beneficiary or beneficiaries: *Provided further,* That if there is no pouse, dependent child or dependent parent of the deceased member, or any eficiary or beneficiaries, then the accumulated contributions shall be paid to the e deceased member.

person qualifying as a dependent child under this section, in addition to any other e under this or other sections of this article, is entitled to receive a scholarship to to the career development education of that person. This sum, up to but not six thousand dollars per year, shall be paid from the fund to any university or his state or to any trade or vocational school or other entity in this State approved rd to offset the expenses of tuition, room and board, books, fees or other costs a course of study at any of these institutions so long as the recipient makes to the board on an approved form and under rules provided by the board and scholastic eligibility as defined by the institution or the board. The board may gislative rules for promulgation in accordance with article three, chapter twenty- this code which define age requirements, physical and mental requirements, eligibility, disbursement methods, institutional qualifications and other require- ecessary and not inconsistent with this section.

. 119, eff. June 7, 2007; Acts 2008, c. 190, eff. June 7, 2008.

-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits

provisions of this article become effective the first day of January, two thousand vided, That no payout of any benefits may be made to any person prior to the first nuary, two thousand eleven: *Provided, however,* That emergency medical services ho retire due to a duty disability pursuant to this article may begin receiving the t the rate and in the amount specified in this article from this fund after the lay of June, two thousand eight: *Provided further,* That until the thirtieth day of thousand eight, those emergency medical services officers who retire due to a duty pursuant to this article may draw benefits from this fund at the rate and in the et forth in section twenty-five, article ten, chapter five of this code.

ring the 36–month period before the payout of benefits begins, the Joint Committee nment and Finance shall cause an interim study or studies to be conducted on the effects of the implementation of this retirement system, including, but not limited to, funding mechanisms to provide health insurance coverage for retirees in the fifty to age group: *Provided,* That after the effective date of this provision, the Director of ic Employees Insurance Agency shall propose a rule for legislative approval in ce with the provisions of article three, chapter twenty-nine-a of this code governing ing of health insurance coverage for retirees under the plan provided in this article in the fifty to fifty-five year age group, which rule may be filed as an emergency rule: , *however,* That any rule filed as an emergency rule pursuant to this subsection shall d at the earliest opportunity as a legislative rule for review and promulgation in ce with the provisions of article three, chapter twenty-nine-a of this code.

, c. 119, eff. June 7, 2007; Acts 2008, c. 190, eff. June 7, 2008.

ARTICLE 13

SEWAGE WORKS AND STORMWATER WORKS

Section

. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjust-

Section
ment; hearing; lien and recovery; discontinuance of services.
Section
16–13–23a. Additional powers of municipality to cease pollution.

§ 16–13–16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services

A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: *Provided,* That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication as a Class II–0 legal advertisement in

with the provisions of article three, chapter fifty-nine of this code and the area for such publication shall be the municipality. The first publication shall be ıst ten days before the date fixed in the notice for the hearing.

the hearing, which may be adjourned, from time to time, the ordinance establish- ees or charges, either as originally introduced or as modified and amended, shall and put into effect. A copy of the schedule of the rates, fees and charges shall be in the office of the board having charge of the operation of such works, and also in of the clerk of the municipality, and shall be open to inspection by all parties The rates, fees or charges established for any class of users or property served tended to cover any additional premises thereafter served which fall within the , without the necessity of any hearing or notice.

change or readjustment of such rates, fees or charges may be made in the same the rates, fees or charges were originally established as hereinbefore provided: That if a change or readjustment be made substantially pro rata, as to all classes of hearing or notice shall be required. The aggregate of the rates, fees or charges ys be sufficient for the expense of operation, repair and maintenance and for the ıd payments.

ates, fees or charges, if not paid when due, shall constitute a lien upon the premises such works. If any service rate, fees or charge is not paid within twenty days after the amount thereof, together with a penalty of ten percent and a reasonable fee, may be recovered by the board in a civil action in the name of the municipality. ıay be foreclosed against such lot, parcel of land or building in accordance with the ng thereto. Where both water and sewer services are furnished by any municipali- premises, the schedule of charges may be billed as a single amount or individually nd billed for the aggregate thereof.

ınever any rates, rentals, fees or charges for services or facilities furnished shall paid for a period of twenty days after they become due, the property and the owner ı well as the user of the services and facilities shall be delinquent until such time as fees and charges are fully paid. When any payment for rates, rentals, fees or ecomes delinquent, the governing body may use the security deposit to satisfy the t payment.

ı board collecting the rates, fees or charges shall be obligated under reasonable hut off and discontinue both water and sewer services to all delinquent users of wer or stormwater facilities and shall not restore either water facilities or sewer o any delinquent user of any such facilities until all delinquent rates, fees or charges sewer and stormwater facilities, including reasonable interest and penalty charges, ı paid in full, as long as such actions are not contrary to any rules or orders of the rvice Commission.

Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004; c. 202, eff. March 8, 2008.

-23a. Additional powers of municipality to cease pollution

withstanding any other provision contained in this article, and in addition thereto, ning body of any municipality which has received or which hereafter receives an ıued by the Secretary of the Department of Environmental Protection or the ıental Quality Board requiring the municipality to cease the pollution of any stream ı is hereby authorized to establish and maintain, by ordinance, just and equitable s or charges for the use of the services and facilities of the existing municipal sewer nd/or stormwater system, or for the use of the services and facilities to be rendered ıpletion of any works and system necessary by virtue of said order, to be paid by the ınant or occupant of each and every lot or parcel of real estate or building that is d with and uses any part of such sewer system or stormwater system, or that in any or is served thereby, and may change and readjust such rates, fees or charges from me.

(b) The rates, fees or charges shall be sufficient to all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection, treatment, purification and disposal of sewage or stormwater and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board, and for the operation, maintenance and repair of the entire works and system.

(c) The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the Municipal Bond Commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

(d) After the completion of the construction, the rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension, from time to time, of the entire sewer and works or entire stormwater works.

(e) No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

(f) After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing setting forth the proposed schedule of rates, fees or charges shall be given by publication of notice as a Class II–0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

(g) After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works and in the office of the clerk of the municipality. The schedule of rates, fees and charges shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(h) Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: *Provided*, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

(i) If any rate, fee or charge is not paid within thirty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney's fee, may be recovered by the sanitary board of the municipality in a civil action in the name of the municipality.

(j) Any municipality exercising the powers given herein has the authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery or works necessary to comply with the order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: *Provided*, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the rights, powers and duties of the municipality and

e officers and departments thereof, including the sanitary board, are governed ions of this article.

risdiction and authority provided by this section does not extend to highways, inage easements and stormwater facilities constructed, owned or operated by the a Division of Highways and no rates, fees or charges for stormwater services or pliance may be assessed against highways, road and drainage easements and/or acilities constructed, owned and/or operated by the West Virginia Division of

icipality which has been designated by the Environmental Protection Agency as serve a West Virginia Separate Storm Sewer System community, as defined in 40 22.26, has the authority to enact ordinances or regulations which allow for the rders, the right to enter properties and the right to impose reasonable fines and garding correction of violations of municipal stormwater ordinances or regulations unicipal watershed served by the municipal stormwater system, as long as such tions, fines or actions are not contrary to any rules or orders of the Public mission.

e of a violation of a municipal stormwater ordinance or regulation shall be served the alleged violator or by certified mail return receipt requested. The notice ne nature of the violation, the potential penalty, the action required to correct the d the time limit for making the correction. Should a person, after receipt of e, fail to correct the violation of the municipal stormwater ordinance or regula- unicipality may make or have made the corrections of the violation and bring the ompliance with the applicable stormwater ordinance or regulation. The munici- collect the costs of correcting the violation from the person by instituting a civil ng as such actions are not contrary to any rules or orders of the Public Service

nicipality which has been designated by the Environmental Protection Agency as serve a West Virginia Separate Storm Sewer System community shall prepare an rt detailing the collection and expenditure of rates, fees or charges and make it r public review at the place of business of the governing body and the stormwater office.

135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001; 202, eff. March 8, 2008.

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

Section

Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees

ne board may make, enact and enforce all needful rules in connection with the , construction, improvement, extension, management, maintenance, operation, care, and the use of any public service properties owned or controlled by the district. shall establish rates, fees and charges for the services and facilities it furnishes, l be sufficient at all times, notwithstanding the provisions of any other law or laws, cost of maintenance, operation and depreciation of the public service properties and f and interest on all bonds issued, other obligations incurred under the provisions ticle and all reserve or other payments provided for in the proceedings which l the issuance of any bonds under this article. The schedule of the rates, fees and ay be based upon:

consumption of water or gas on premises connected with the facilities, taking into ion domestic, commercial, industrial and public use of water and gas;