City of New Martinsville
Waterworks and Sewerage System
Revenue Bonds, Series 1997 A, Series 1997 B
and Series 1997 C

March 13, 1997

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

Closing: March 13, 1997

TRANSCRIPT OF PROCEEDINGS

I. Authorizing Documents

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The closing of the sale of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, Series 1997 B and Series 1997 C (the "Bonds"), will take place at the office of the West Virginia Water Development Authority at 11:00 a.m. prevailing time on March 13, 1997. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless or until all transactions are complete and all documents delivered.

N26397

State of West Virginia

Certificate

I, Ken Hechler, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 8 , ARTICLE 20 OF THE WEST VIRGINIA CODE AND CHAPTER 8, ARTICLE 20 OF THE 1996 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on this

Twelfth *day of*

March *19* 97

Secretary of State

ARTICLE 20.

COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

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Revision of chapter. — See note under the same catchline at the beginning of this chapter.

Legislative intent. — It appears clear that the legislature recognized the need for municipal utility systems; however, it did not wish the municipality to become generally obligated for the building or acquisition of the system. Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. Op. Att'y Gen., April 3, 1979.

Part I. Combined Waterworks and Sewerage Systems Authorized; Definitions.

§ 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.

Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants, 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; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination. (1939, c. 98, §§ 1, 2; 1947, c. 112; 1955, c. 131; 1969, c. 86.)

Plant expansion or repair. — Considering the general grant of authority provided by § 8-12-5(32) there is no language in this article that would prevent a municipality from granting funds to its combined waterworks and sewerage system to be used for plant expansion or repair. What this section does say, however, is that if the municipality wishes to finance any of the activities governed by the article, it must do so by revenue bonds or by loans or advances under § 8-20-16. Op. Att'y Gen., April 3, 1979.

Power of eminent domain. — Municipalities that operate sewer systems may exercise the power of eminent domain. When such a municipality is obliged to exercise that power in furtherance of its public responsibility, but refuses to do so, the public service commission may require the exercise of the power by appropriate order. Broadmoor/Timberline Apts. v. Public Serv. Comm'n, 376 S.E.2d 593 (W. Va. 1988).

§ 8-20-1a. Cooperation with other governmental units.

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the State of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with the United States of America or any agency or department thereof. (1976, c. 83.)

§ 8-20-1b. Severance of combined system.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined waterworks and sewerage system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined waterworks and sewerage system into a separate waterworks system and a separate sewerage system.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined waterworks and sewerage system, or any part thereof, are outstanding, then the municipality must provide in said ordinance (i) that the severance of the combined waterworks and sewerage system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and (ii) the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

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(1) Depositing moneys and funds with the West Virginia municipal bond commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined waterworks and sewerage system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of such committee, board or commission, and the creation of such other committees, boards or commissions as may be required by law. (1986, c. 118.)

Part II. Right of Eminent Domain.

§ 8-20-2. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any waterworks system or any sewerage system, or a combined waterworks and sewerage system, or for the purpose of constructing any additions, betterments or improvements to any such waterworks or sewerage system, or a combined waterworks and sewerage system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or sewerage system, or combined waterworks and sewerage system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four [§ 54-1-1 et seq.] of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks system or a combined waterworks and sewerage system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined waterworks and sewerage system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission. (1947, c. 112; 1969, c. 86.)

PART III. REVENUE BOND FINANCING.

§ 8-20-3. Ordinance describing project; contents.

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined waterworks and sewerage system any existing waterworks system or any existing sewerage system, or both, such ordinance shall provide that it or they be so included in such combined system and shall describe in a general way such existing waterworks or sewerage system or both to be included in the combined waterworks and sewerage system. Such ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both. Such ordinance shall determine the period of usefulness of the contemplated project. If it is intended to acquire, construct, establish and equip a combined waterworks and sewerage system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed. Such ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with such bonds deemed advisable. Such ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1939, c. 98, § 4; 1947, c. 112; 1949, c. 91; 1969, c. 86.)

§ 8-20-4. Publication of abstract of ordinance and notice; hearing.

After the ordinance for any project under the provisions of this article has 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 [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, 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 date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication of such abstract and notice, and present protests and that a certified copy of the ordinance is on file

with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto. (1939, c. 98, § 5; 1947, c. 112; 1967, c. 105; 1969, c. 86; 1971, c. 103; 1981, 1st Ex. Sess., c. 2.)

§ 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any such waterworks or sewerage system, or a combined waterworks and sewerage system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage system, or both, any such municipality may issue revenue bonds under the provisions of this article. All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. Such bonds may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all such bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with said combined waterworks or sewerage system, and all the moneys, revenues and other income of such municipality derived from such combined waterworks and sewerage system shall be exempt from all taxation by this State or any county, municipality, political subdivision or agency thereof. Such bonds may be sold in such manner as the governing body shall determine. If any such bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the

interest cost of such municipality of the proceeds of such bonds shall not exceed thirteen percent per annum computed to maturity according to the standard table of bond values. If the governing body of the municipality determines to sell any revenue bonds of such combined waterworks and sewerage system for refunding purposes, the proceeds of such bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby. In case any officer whose signature appears on such bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Such bonds shall have all the qualities of negotiable instruments under the laws of this State.

Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of such waterworks or such sewerage system or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article. Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system included in a combined waterworks and sewerage system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined waterworks and sewerage system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined waterworks and sewerage system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier. Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged: but each such bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article. (1939, c. 98, § 3; 1947, c. 112; 1957, c. 123; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

§ 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined waterworks and sewerage system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory provision or limitation. The ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued. (1939, c. 98, § 6; 1969, c. 86.)

§ 8-20-7. Lien of bondholders.

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined waterworks and sewerage system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined waterworks and sewerage system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five [§ 8-20-5] hereof. Any revenue bonds so issued in payment for such an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages. (1939, c. 98, § 8; 1947, c. 112; 1969, c. 86.)

§ 8-20-8. Covenants with bondholders.

Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company, within or without the State, for the security of said bonds, which any such municipality is hereby empowered and authorized to enter into and execute, 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 said combined waterworks and sewerage system may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined waterworks and sewerage system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved 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 deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the combined waterworks and sewerage system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such combined waterworks and sewerage system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined waterworks and sewerage 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 the combined waterworks and sewerage 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 combined waterworks and sewerage system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such combined waterworks and sewerage system, and the rank or priority, as to lien and source and security for payment from the revenues of such combined waterworks and sewerage system, between bonds payable from such 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 the performance of any covenant or agreement with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such combined waterworks and sewerage system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such combined waterworks and sewerage system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertaking and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance or trust indenture may also contain such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the Constitution of this State. (1955, c. 131; 1969, c. 86.)

§ 8-20-9. Operating contract.

Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said combined waterworks and sewerage system, or any part thereof, or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, is outstanding and unpaid. (1955, c. 131; 1969, c. 86.)

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; notice of delinquency; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such

municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That in the event the user is a tenant, the property owner shall be given notice of any said delinquency by certified mail, return receipt requested, and the user shall be given such notice by first-class mail: Provided, however, That failure of the user to cure the delinquency within a thirty-day period after receipt of such notice shall constitute grounds to terminate user's lease of the premises concerned.

(c) All rates or charges for water service and sewer service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality shall have exhausted all remedies available in magistrate courts against such delinquent users before it may proceed in a civil action against the owner.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies

prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1939, c. 98, § 7; 1947, c. 112; 1969, c. 86; 1989, c. 133.)

Effect of amendment of 1989. — The amendment designated the former first and second paragraphs as (a) and (c), respectively; added (b), (d) and (e); and rewrote (c).

§ 8-20-11. Discontinuance of water service for nonpayment of rates or charges.

Any such municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of said combined waterworks and sewerage system for the nonpayment of the rates or charges for said water service or sewer service, or both. (1955, c. 133; 1969, c. 86.)

§ 8-20-12. Use of revenues; sinking fund.

All revenues derived from the operation of any combined waterworks and sewerage system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the combined waterworks and sewerage system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements 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 the ordinance pursuant to which such bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof. (1939, c. 98, § 9; 1969, c. 86; 1986, c. 118.)

§ 8-20-13. System of accounts; audit.

Any municipality operating a combined waterworks and sewerage system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such combined waterworks and sewerage system and the application of the same. At least once each year such municipality shall cause such accounts to be properly audited,

and a report of such audit shall be open to the public for inspection at all reasonable times. (1939, c. 98, § 10; 1969, c. 86.)

§ 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court [county commission] of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system. (1957, c. 127; 1969, c. 86.)

Editor's notes. — The bracketed words were inserted by the editor. See W. Va. Const., art. IX, § 9.

§ 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven [§ 8-20-7] of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the combined waterworks and sewerage system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined waterworks and sewerage system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which such bonds have been issued or trust indenture, or both. (1939, c. 98, § 8; 1947, c. 112; 1969, c. 86.)

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§ 8-20-16. Grants, loans and advances.

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined waterworks and sewerage systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined waterworks and sewerage system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section. (1961, c. 106; 1969, c. 86; 1981, 1st Ex. Sess., c. 2; 1986, c. 118.)

§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to

the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health and the division of water resources of the department of natural resources shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86.)

PART V. OPERATION BY BOARD; CONSTRUCTION.

§ 8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.

(a) As an alternative to the procedure hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined waterworks and sewerage system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [§ 8-16-1 et seq.] of this chapter.

(b) In the event that the waterworks or sewerage system or both are in existence prior to the creation of the combined waterworks and sewerage system, and the waterworks or sewerage system or both are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this section is to be followed with respect to the supervision and control of the combined waterworks and sewerage system, the governing body may by ordinance, after the creation of the combined waterworks and sewerage system, provide (1) the manner of and procedure for transferring such supervision and control from each such separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined waterworks and sewerage system, or (2) the manner of and procedure for combining each such separate committee, board or commission into one committee, board or commission and transferring thereto such supervision and control as aforesaid. (1961, c. 104; 1969, c. 86.)

§ 8-20-19. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes. (1933, Ex. Sess., c. 26, § 14; 1969, c. 86.)

ARTICLE 20A.

NEIGHBORHOOD REHABILITATION.

Sec.
8-20A-1. Legislative findings and purpose.
8-20A-2. Definitions.
8-20A-3. Neighborhood rehabilitation fund.
8-20A-4. Inspection and technical assistance.
8-20A-5. Deferral of repayment.

§ 8-20A-1. Legislative findings and purpose.

(a) The legislature hereby finds and declares that the lack of safe, decent, sanitary and affordable owner-occupied and rental dwellings is one of the most serious problems facing this State and that a major contributing factor to this problem is the deterioration of the State's existing housing stock; that these deteriorating dwellings exist in both the urban and rural areas of the State; that a disproportionate number of owners of these deteriorating dwellings are older, less affluent and otherwise less able to afford the expense of the remodeling, repairing and rehabilitating of their residences necessary to maintain such residences in a sanitary, safe and decent condition; that because of the lack of acceptable loan collateral, the age of their residences and the location and age of the neighborhoods in which their residences are located, many of such owners have not been able to borrow funds necessary to effect such remodeling, repair and rehabilitation; and that some of such homeowners who have been able to obtain funds for such purposes have been able to do so only upon rates of interest and upon other terms and conditions which are particularly onerous and disadvantageous to such owners.

(b) The legislature further finds and declares that the assistance authorized in this article will provide, and will encourage private lenders to provide, to such owners, more readily and at rates of interest and upon other terms and conditions significantly more favorable to such owners, the loans necessary to finance the cost of such remodeling, repair and rehabilitation.

(c) The legislature further finds and declares that the powers granted to municipalities and counties in this article will enable them to maximize the use of federal programs for housing rehabilitation.

(d) The legislature further finds and declares that it is manifestly in the public interest to foster the pride, self-respect and esteem incident to home ownership and to encourage and assist in the maintenance of residences, both owner occupied and rental, in a safe, decent and sanitary condition; that without the assistance authorized in this article, there will be continued deterioration of housing with the resultant proliferation of slums, higher crime rates and general decline in civic pride, public spirit and the quality of life,

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DEBORAH S. TUSSEY
PETER R. ROANE
RUTH P. KNIGHT
LYNN SEUFFERT

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ARTICLE 20.

COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

Part III. Revenue Bond Financing.

Sec.
8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

Part IV. Grants, Loans and Advances; Cumulative Authority.

8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

PART III. REVENUE BOND FINANCING.

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(c) All rates or charges for water service and sewer service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1939, c. 98, § 7; 1947, c. 112; 1969, c. 86; 1989, c. 133; 1990, c. 140.)

Effect of amendment of 1990. — The amendment, in (b), deleted "property and the owner thereof, as well as the" preceding "user of," substituted "the user shall" for "the owner, user and property shall," and deleted the former two provisos at the end; and in (c), rewrote the proviso.

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86; 1994, c. 61.)

Effect of amendment of 1994. — The amendment, in the first paragraph, substituted "bureau of public health" for "department of health" and "division of environmental protection" for "division of water resources"; and made other stylistic changes.

ARTICLE 21.

BOARD OF PARK AND RECREATION COMMISSIONERS.

PART II. POWERS.

§ 8-21-9. Authority to take title to real and personal property; conveyances of real property to board by public bodies; sales and conveyances of real property by board; execution of deeds.

W. Va. Law Review. — Lorensen, "Rethinking the West Virginia Municipal Code of 1969," 97 W. Va. L. Rev. 653 (1995).

ARTICLE 22.

RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

Part II. General Retirement Systems for Class I, II and III Cities.

Sec.
8-22-11. Investment of funds.
8-22-11a. Restrictions on investment.
8-22-13. Reports by board of trustees.

Part III. Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund.

8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.
8-22-16a. Legislative findings.

Sec.
8-22-20. Minimum standards for actuarial soundness.
8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.
8-22-22a. Restrictions on investments.
8-22-24. Disability pensions.
8-22-26. Death benefits.
8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.
8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I, II AND III CITIES.

§ 8-22-11. Investment of funds.

The board shall keep as an available sum for the purpose of making retirement, disability and death payments and administration expense an amount estimated to meet such payments for a period not to exceed ninety days. The board in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund shall exercise judgment and care which persons of experience, prudence, discretion and intelligence exercise in the management of financial affairs, considering the probable income as well as the probable security of the investment and with regard to the permanent disposition of the fund. Within the limitations of the foregoing standard, the board is authorized in its sole discretion to invest and reinvest any funds received by it in the following:

(1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government national mortgage association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for coop-

State of West Virginia

Certificate

I, Ken Hechler, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 22C , ARTICLE 2 OF THE WEST VIRGINIA CODE AND CHAPTER 22C, ARTICLE 2 OF THE 1996 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on this

Twelfth *day of*

March *19* 97

Secretary of State

§ 22C-1-25. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed. (1994, c. 61.)

§ 22C-1-26. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents. (1994, c. 61.)

§ 22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed two hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any such refunding bonds or notes, shall be excluded. (1994, c. 61.)

ARTICLE 2.

WATER POLLUTION CONTROL REVOLVING FUND ACT.

Sec.
22C-2-1. Definitions.
22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
22C-2-4. Annual audit.
22C-2-5. Collection of money due to the fund.
22C-2-6. State construction grants program established; special fund.
22C-2-7. Environmental review of funded projects.
22C-2-8. Conflicting provisions.

Editor's notes. — The Water Pollution Control Revolving Fund Act was formerly compiled in c. 20, art. 5I.

§ 22C-2-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local government that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating thereto.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local government" means any county, city, town, municipal corporation, authority, district, public service district, commission or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local government and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law. (1994, c. 61.)

§ 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws. (1994, c. 61.)

§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to said fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local governments, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local governments to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local governments and establish the interest rates and repayment terms of such loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and

consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of such depository to which moneys of the fund are paid shall act as trustee of such moneys and shall hold and apply them solely for the purposes for which said moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61.)

§ 22C-2-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three [§ 22C-2-3(a)] of this article. (1994, c. 61.)

§ 22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local government, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local government under such a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local government pursuant to this article, and may proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local government, all of the rights, powers and remedies of the local government with respect to the project or which may be conferred upon the local government by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local government pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local government of all of

the terms and conditions of the loan agreement between the state and that local government including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local government of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61.)

§ 22C-2-6. State construction grants program established; special fund.

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three [§ 22C-2-3(b)] of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section. (1994, c. 61.)

§ 22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code to implement the environmental review of funded projects: Provided, That said rules shall be consistent with the rules and regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local government, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse

impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of such projects under the federal clean water act, as amended. (1994, c. 61.)

§ 22C-2-8. Conflicting provisions.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling. (1994, c. 61.)

ARTICLE 3.

SOLID WASTE MANAGEMENT BOARD.

Sec.
22C-3-1. Short title.
22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.
22C-3-3. Definitions.
22C-3-4. Solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.
22C-3-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.
22C-3-6. Powers, duties and responsibilities of board generally.
22C-3-7. Development of state solid waste management plan.
22C-3-8. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
22C-3-9. Development and designation of solid waste disposal sheds by board.
22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
22C-3-11. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.
Sec.
22C-3-12. Legal remedies of bondholders.
22C-3-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
22C-3-14. Use of funds, properties, etc., by board; restrictions thereon.
22C-3-15. Audit of funds disbursed by the board and recipients thereof.
22C-3-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.
22C-3-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.
22C-3-18. Solid waste disposal revenue bonds lawful investments.
22C-3-19. Exemption from taxation.
22C-3-20. Governmental agencies authorized to convey property.
22C-3-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.
22C-3-22. Conduct of proceedings of board.
22C-3-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.
22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned house-

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DEBORAH S. TUSSEY
PETER R. ROANE
RUTH P. KNIGHT
LYNN SEUFFERT

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(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project. (1994, c. 61; 1995, c. 252.)

Effect of amendment of 1995. — The amendment, in the first sentence of the introductory paragraph, substituted "the financing" for "a loan" preceding "for a new water development project," inserted "regardless of the source of the financing for the new project" preceding the proviso, substituted "the aggregate amount of the refinancing of an existing project and the financing of a new project" for "the loan to the governmental agency"; and made stylistic changes throughout.

Quoted in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 464 S.E.2d 777 (W. Va. 1995).

§ 22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

Authority. — This section authorizes the water development authority to directly impose on a public service district "in its own name and for its own benefit service charges determined by it to be necessary" when the public service district defaults on a loan made by the water development authority to the public service district; however, the water development authority's power to impose such service charges upon the public service district which operates a public utility is subject to the regulatory review and approval of the public service commission pursuant to § 24-2-1. State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 464 S.E.2d 777 (W. Va. 1995).

§ 22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 464 S.E.2d 777 (W. Va. 1995).

§ 22C-1-12. Legal remedies of bondholders and trustees.

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 464 S.E.2d 777 (W. Va. 1995).

§ 22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed three hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded. (1994, c. 61; 1995, c. 252.)

Effect of amendment of 1995. — The amendment substituted "three hundred million dollars" for "two hundred million dollars"; and deleted "such" preceding "refunding bonds."

ARTICLE 2.

WATER POLLUTION CONTROL REVOLVING FUND ACT.

Sec.
22C-2-1. Definitions.
22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
22C-2-5. Collection of money due to the fund.
22C-2-7. Environmental review of funded projects.

§ 22C-2-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water

act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment substituted "entity" for "government" throughout the section; in (b)(3), substituted "on the land or buildings" for "thereon" and "the land" for "such land"; in (c), substituted "to the acts" for "thereto"; and, in (e), inserted "banking institution" following "commission."

§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment substituted "entities" for "governments" throughout the section; in (b) and (d), inserted "legislative" preceding "rules" and "article three" preceding "chapter twenty-nine-a"; and made stylistic changes.

§ 22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment substituted "government" for "entity" throughout; and made minor stylistic changes.

§ 22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended. (1994, c. 61; 1996, c. 257.)

Effect of amendment of 1996. — The amendment, in (a), inserted "legislative" preceding "rules in accordance" and "article three" preceding "chapter twenty-nine-a," substituted "the rules" for "said rules," and deleted "rules and" preceding "regulations promulgated"; and, in (b), substituted "entity" for "government" and "the projects" for "such projects."

ARTICLE 4.

COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§ 22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

Cited in Wetzel County Solid Waste Auth. v. West Virginia Div. of Natural Resources, 462 S.E.2d 349 (W. Va. 1995).

§ 22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

Quoted in Wetzel County Solid Waste Auth. v. West Virginia Div. of Natural Resources, 462 S.E.2d 349 (W. Va. 1995).

§ 22C-4-23. Powers, duties and responsibilities of authority generally.

Quoted in Wetzel County Solid Waste Auth. v. West Virginia Div. of Natural Resources, 462 S.E.2d 349 (W. Va. 1995).

ARTICLE 7.

OIL AND GAS INSPECTORS' EXAMINING BOARD.

W. Va. Law Review. — Flannery, Beckett and McThomas, "Consolidated Environmental Regulation in West Virginia," 97 W. Va. L. Rev. 401 (1995).

ARTICLE 8.

SHALLOW GAS WELL REVIEW BOARD.

W. Va. Law Review. — Lane, "Fire in the Hole to Longwall Shears: Old Law Applied to New Technology and Other Longwall Mining Issues," 96 W. Va. L. Rev. 577 (1994).

§ 22C-8-1. Declaration of public policy; legislative findings.

Cited in Croston v. Emax Oil Co., 464 S.E.2d 728 (W. Va. 1995).

§ 22C-8-2. Definitions.

Quoted in Croston v. Emax Oil Co., 464 S.E.2d 728 (W. Va. 1995).

State of West Virginia

Certificate

I, Ken Hechler, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 31, ARTICLE 15A OF THE WEST VIRGINIA CODE , AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on this

Twelfth *day of*

March *19* **97**

Secretary of State

between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary. (1989, c. 54.)

§ 31-15-29. Audits.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects. (1989, c. 54.)

§ 31-15-30. Projects not to be considered public improvements.

No project, enterprise or business facility which conducts as its primary activity a manufacturing process or other nongovernmental or nonpublic activity may be deemed to be a "public improvement" within the meaning of the provisions of article five-a [§ 21-5A-1 et seq.], chapter twenty-one of this code. (1989, c. 54.)

§ 31-15-31. Foreign trade zones; authority approval.

Any public corporation located in the state is hereby authorized to apply for, develop, maintain and operate a foreign trade zone in the state pursuant to and in accordance with all applicable provisions of federal law: Provided, That any public corporation desiring to apply for or develop a foreign trade zone must first receive the approval of the authority. (1989, c. 54.)

§ 31-15-32. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable. (1989, c. 54.)

§ 31-15-33. Construction.

The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section three [§ 31-15-3] of this article. (1989, c. 54.)

ARTICLE 15A.

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

Sec.
31-15A-1. Short title.
31-15A-2. Definitions.
31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.
31-15A-4. Development of guidelines and preliminary application for funding assistance.
31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
31-15A-7. Current and prospective planning; roads and highways; report to division of highways.
31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-12. Additional powers of water development authority.
31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
31-15A-14. Termination or dissolution.
31-15A-15. Projects not to be considered public improvements; competitive bid requirements.
31-15A-16. Dedication of severance tax proceeds.

§ 31-15A-1. Short title.

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act." (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-2. Definitions.

For purposes of this article:

(a) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(b) "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any

buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(c) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3] of this article;

(d) "Division of environmental protection" means the division of environmental protection established under article one [§ 22-1-1 et seq.], chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(e) "Division of health" means the division of health created in article one [§ 16-1-1 et seq.], chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Economic development authority" means the economic development authority established under article fifteen [§ 31-15-1 et seq.], chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(g) "Emergency project" means a project which the council has determined (i) is essential to the immediate economic development of an area of the state and (ii) will not likely be developed in that area if construction of the project is not commenced immediately;

(h) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or waste water facilities or infrastructure projects;

(i) "Housing development fund" means the West Virginia housing development fund established under article eighteen [§ 31-18-1 et seq.] of this chapter, or any successor to all or any substantial part of its powers and duties;

(j) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine [§ 31-15A-9] of this article;

(k) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(*l*) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(m) "Project" means any waste water facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(n) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(o) "Public service commission" means the public service commission of West Virginia created and established under section three [§ 24-1-3], article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(p) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(q) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a waste water facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four [§ 24-1-1 et seq.] of this code or which is required to file its tariff with the public service commission;

(r) "State development office" means the West Virginia development office established under article two [§ 5B-2-1 et seq.], chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(s) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commis-

sion, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(t) "Waste water facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(u) "Water development authority" means the West Virginia water development authority established under article five-c [§ 20-5C-1 et seq., repealed], chapter twenty of this code, or any successor to all or any substantial part of its powers and duties; and

(v) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use. (1994, 1st Ex. Sess., c. 26.)

Editor's notes. — Former § 20-5C-1 et seq., referred to in (u), was repealed by Acts 1994, c. 61. For provisions similar to former § 20-5C-1 et seq., see § 22C-1-1 et seq.

§ 31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided, further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) No member of the council who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council.

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen [§ 31-15-1 et seq.], chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

(f) The water development authority shall provide office space for the council, and each governmental agency represented on the council shall provide staff support for the council in the manner determined by the council from time to time.

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The amendment, effective March 10, 1995, in (a), rewrote the first sentence and substituted "is" for "shall be" in the second sentence; in (b), substituted "eleven members" for "nine members" following "shall consist of," substituted

"four members" for "two members" preceding "representing the general public", added the provisos at the end of the first sentence, and made minor punctuation changes; substituted "six members" for "five members" in the second sentence in (c); and rewrote (d), (e), and (g).

§ 31-15A-4. Development of guidelines and preliminary application for funding assistance.

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six [§ 31-15A-6], of this article; (5) the cost effectiveness of the project or infrastructure project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or

project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council's recommendations in any application to a state infrastructure agency.

(c) The council shall provide a copy of its recommendation with respect to each preliminary application, together with a copy of the preliminary application, to all appropriate state infrastructure agencies, which shall take into account the council's recommendations with respect to a project or infrastructure project before taking any action with respect to the project. No state infrastructure agency shall take any action inconsistent with the recommendation of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

(3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

(4) To make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three year period after the initial assessment and inventory is completed.

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not

only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-7. Current and prospective planning; roads and highways; report to division of highways.

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the division of highways for the development and building of new roads. Upon completion an environmental impact study, the commissioner of highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the commissioner of the division of highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the division of highways from the region where the new road is being built; a designee of the division of highways from the central state office; a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines.

After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or waste water facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven [§ 24-2-11], article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant

to section eleven, article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five, article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (k), section two [§ 31-15A-2(k)] of this article and to include a water facility project as defined in subsection (m), section two [§ 31-15A-2(m)] of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subdivision (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues

received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four [§ 31-15B-4] of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b [§ 31-15B-1 et seq.] of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b.

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen [§ 31-18-1 et seq.], chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b of this chapter, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development

authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the water development authority approving loan, loan guarantee, grant or other assistance shall include a finding and determination that the requirements of this section have been met.

(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration [office abolished], where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Editor's notes. — The bracketed words were inserted by the editor. The office of the commissioner of finance and administration was abolished, and the duties of that office were transferred to the secretary of administration. See § 5A-1-2.

Effect of amendment of 1995. — The amendment, effective March 10, 1995, rewrote (a); in (b), substituted "shall" for "may" after "infrastructure fund" and added the proviso in the first sentence, and inserted the present second sentence; inserted "and article fifteen-b

of this chapter" in the first sentence of (c); substituted "the" for "such" preceding "loan guarantee" in (d)(2); and added (f) and (g).

§ 31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine [§ 31-15A-9] of this article, upon receipt of one or more recommendations from the council pursuant to section five [§ 31-15A-5] of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four [§ 31-15A-4] of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall

adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code.

(c) The council shall affix a mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. The mandatory minimum utility rate shall be established by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The rule shall provide that the mandatory minimum utility rate be based upon a uniform statewide percentage of the median household income in a particular geographic area which is rationally related to the geographic area of the project to be served.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the pre-application would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the pre-application process from moneys available in the infrastructure fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total pre-application cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the pre-application process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The amendment, effective March 10, 1995, in (a), divided the former first sentence into the present first two sentences, added the language beginning "any moneys disbursed" at the end of the first sentence, substituted "project sponsor" for "profit sponsor" in the proviso in the present second sentence, substituted "on preliminary application forms" for "or projects from time to time, and shall be submitted in the manner and on the preliminary application form" in the third sentence, and added the last sentence; added the proviso and made minor punctuation changes in the first sentence in (b); and added (c), (d), and (e).

Editor's notes. — Section 501 of the Internal Revenue Code of 1986, referred to in (a), is codified at 26 U.S.C. § 501.

§ 31-15A-11. Reservation of funds for projects and infrastructure projects.

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (m), section two [§ 31-15A-2(m)] of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (k), section two [§ 31-15A-2(k)] of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-12. Additional powers of water development authority.

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.

No part of the infrastructure fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-14. Termination or dissolution.

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

(a) No project or infrastructure project acquired, constructed, maintained or financed in whole or in part by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a [§ 21-5A-1 et seq.], chapter twenty-one of this code, as a result of such financing.

(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor

without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-16. Dedication of severance tax proceeds.

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a [§ 11-13A-1 et seq.], chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three [§ 31-15B-3], article fifteen-b of this chapter: Provided, That none of the collections from the tax imposed pursuant to section six [§ 11-13A-6], article thirteen-a, chapter eleven of this code shall be so dedicated or deposited: Provided, however, That the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a of said article thirteen-a [§ 11-13A-20a] shall remain dedicated for the purposes set forth in said section twenty-a.

(c) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Effect of amendment of 1995. — The amendment, effective March 10, 1995, in (b), inserted "general obligation debt service" prior to "fund created pursuant to" and substituted "section three, article fifteen-b of this chapter" for "section nine of this article"; and added (c).

ARTICLE 15B.

INFRASTRUCTURE BONDS.

Sec.
31-15B-1. Definitions.
31-15B-2. Infrastructure general obligation bonds; amount; when may issue.
31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.
31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.
31-15B-5. Covenants of state.
31-15B-6. Sale by governor; minimum price.
31-15B-7. Prohibition on funds inuring to the benefit of or being distributable to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions.
31-15B-8. Infrastructure bonds lawful investments.
31-15B-9. Refunding bonds.
31-15B-10. Termination or dissolution.
31-15B-11. Treasurer to determine financial advisor.
31-15B-12. Governor to determine bond counsel.
31-15B-13. Approval and payment of all necessary expenses.

§ 31-15B-1. Definitions.

For purposes of this article and article fifteen-a [§ 31-15A-1 et seq.] of this chapter:

(a) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3], article fifteen-a of this chapter;

(b) "Infrastructure amendment" means the amendment to the constitution of this state entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;

(c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two [§ 31-15B-2] of this article;

(d) "Water development authority" means the West Virginia water development authority established under article one [§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties. (1995, c. 130.)

§ 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which sixteen million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county,

PART I.

THE CHARTER.

Editor's note.--The present City of New Martinsville, West Virginia, was originally chartered by the Virginia General Assembly in 1838 as "Martinsville." The name was changed to "New Martinsville" in 1847, when it was discovered that there existed another Virginia town named Martinsville. In 1863, notice was taken by the West Virginia Legislature of the corporate status of New Martinsville as a West Virginia municipality. The Charter contained herein is based in part on the results of the city's last effort toward codification, in 1950. The Charter was revised in part by the common council as part of the 1982 codification and was adopted pursuant to W. Va. Code, § 8-4-8. If an objection is filed subsequent to the publication of this codification, the changes will be submitted to the voters of the city pursuant to such section. In editing the Charter, a uniform system of capitalization and spelling has been employed and catchlines and a frontal analysis have been added.

§ 1. Incorporation; powers and duties generally.
§ 2. Corporate limits.
§ 3. Wards.
§ 4. Municipal authorities to consist of mayor and common council; compensation of mayor and common council.
§ 5. Common council to exercise corporate powers.
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§ 31. Collection of taxes, fines and assessments.
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§ 34. Licenses generally.
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§ 36. Eminent domain; fire companies; relief of taxpayers.
§ 37. Powers and duties of chief of police.
§ 38. Powers of street commissioner.
§ 39. Inconsistent acts repealed.
§ 40. Transitional provisions.

Sec. 1. Incorporation; powers and duties generally.

The inhabitants of so much of the County of Wetzel as is within the bounds prescribed by section two of this act and their successors, shall be and remain, and they are hereby made a body politic, incorporated by the name of the City of New Martinsville and as such shall have perpetual succession and a common seal, and by that name may sue and be sued, plead and be impleaded, purchase, lease and hold real estate and personal property necessary for the use and purpose of said incorporation.

Sec. 2. Corporate limits.

The corporate limits of said city shall, until otherwise modified or extended as hereinafter provided, be as follows:

Beginning at the intersection of Big Fishing Creek with the Ohio River at the low water mark, thence up said Ohio River with the meanders thereof at low water mark,

5800 feet to a stake at the low water mark of said river, thence with the Ohio River,

N 5° E, 4620 feet to the intersection of Williams Run with the Ohio River, thence up the Ohio River for seven (7) lines,

N 24° 45' W, 1225 feet to a stake on the Ohio River bank, thence,

N 10° 00' W, 1030 feet to a stake in the Ohio River bank, thence,

N 3° 45' W, 1365 feet to a stake in the Ohio River bank, thence,

North, 1790 feet to a stake in the Ohio River bank, thence,

N 7° 15' E, 3180 feet to a stake in the Ohio River bank, thence,

N 22° 15' E, 740 feet to a stake in the Ohio River bank, thence,

N 61° 30' E, 2445 feet to a stake on the Ohio River bank, thence,

S 3° 09' W, 106.82 feet to a stake in the railroad right-of-way, thence,

S 11° 30' 30" W, 303.28 feet to a concrete marker, thence,

S 78° 30' E, 1810 feet to a stake, thence,

S 1° 30' W, 2210 feet to a concrete marker, thence,

N 89° 20' E, 725 feet to a concrete marker, thence,

S 35° 50' E, 400 feet to a concrete marker, thence,

S 18° 50' E, 268 feet to a concrete marker, thence,

S 18° 20' E, 653 feet to a concrete marker, thence,

S 36° 15' W, 200 feet to a concrete marker, thence,

S 10° 45' W, 189 feet to a concrete marker, thence,

S 66° 15' W, 664 feet to a concrete marker, thence,

S 20° 45' W, 1727.8 feet, more or less, to a hub and tack in the common line of Greenbriar Subdivision No. 2 and the south line of the Lewis Wetzel Park and located S 66° 05' 10" E, 19.38 feet from the common corner to lots 8 and 9 of said subdivision, thence with the south line of said Lewis Wetzel Park,

S 66° 05' 10" E and at 121.12 feet a concrete monument in said line and then continuing the same course and at 390.00 feet more another concrete monument in said line and continuing the same course 73.50 feet more a hub and tack in the tract line at a total of 584.62 feet from the beginning hub and tack, thence with the cast line of the Greenbriar Subdivision No. 2,

S 25° 14' W, 667.49 feet to a nail in a stump in the south line of the tract of which the said subdivision is a part, thence with said tract line,

N 64° 30' W and at 281.00 feet a concrete monument in said line and continuing the same course 363.75 feet more, a total of 644.75 feet to a concrete monument, thence,

S 33° 00' W, 1772.2 feet, more or less, to a walnut, thence,

S 31° 00' W, 640 feet to an elm, thence,

S 20° 00' W, 1125 feet to a stake, thence,

N 84° 00' W, 34.08 feet to a stake, thence,

S 7° 30' W, 280 feet to an elm tree, thence,

N 80° 00' W, 23.40 feet to a stake, thence,

S 10° 00' W, 469.62 feet to an iron pin on the edge of Williams Run, thence,

S 7° 10' W, 1080 feet, thence,

S 21° 00' E, 3000 feet, thence,

S 30° 00' E, 400 feet, thence,

South, 470 feet to a stake, thence,

S 8° 00' W, 4300 feet to a stake, thence,

S 50° 00' W, 1550 feet, more or less, to a point in the easterly right-of-way line of State Route No. 2, said point being 40 feet left of center line station 45 + 32.40, more or less, thence with said easterly right-of-way line of said Route No. 2 in a southerly direction,

200 feet, more or less, to a point, thence southerly with said right-of-way line and a curve to the right with a radius of 1185.92 feet, more or less, parallel to and 40 feet left of Route No. 2 center line a distance of,

604.14 feet, more or less, to a point, said point being 40 feet left of center line Station P. T. 53 + 36.54; thence with said right-of-way line,

S 26° 31' W, 310.82 feet, more or less, to Fishing Creek, then with Fishing Creek for eleven (11) lines as shown on the recorded plat of the Town of Brooklyn,

S 75° 15' E, 546.7 feet, more or less, thence,

S 79° 45' E, 952.05 feet, thence,

S 82° 30' E, 221.1 feet, thence,

S 80° 30' E, 330 feet, thence,

S 70° 15' E, 282.15 feet, thence,

S 54° 00' E, 306.9 feet, thence,

S 30° 45' E, 292.97 feet, thence,

S 3° 15' E, 792 feet, thence,

S 24° 30' W, 181.5 feet, thence,

S 52° 00' W, 346.5 feet, thence,

S 62° 15' W, 816.75 feet to a point near a private road, thence with the private road (now Kapple Street) for nine (9) lines as shown on the said recorded plat,

N 40° 30' W, 78.37 feet, thence,

N 57° 30' W, 165 feet, thence,

N 60° 30' W, 99 feet, thence,

N 69° 00' W, 177.37 feet, thence,

N 24° 00' E, 105.6 feet, thence,

N 17° 45' W, 765.6 feet, thence,

N 10° 00' W, 206.25 feet, thence,

N 29° 00' W, 174.07 feet, thence,

N 46° 30' W, 108.07 feet, thence leaving the said private road and with eight (8) other lines as shown on the said recorded plat,

S 43° 00' W, 480.15 feet, thence,

N 47° 00' W, 676.5 feet, thence,

S 38° 30' W, 37.12 feet, thence,

N 70° 45' W, 30.52 feet, thence,

S 41° 00' W, 330 feet, thence,

S 34° 00' W, 206.25 feet, thence,

S 29° 00' W, 635.25 feet, thence,

N 65° 00' W, 2225.85 feet to the Ohio River, thence with the Ohio River for two (2) lines as shown on the said recorded plat,

N 7° 00' E, 702.9 feet, thence,

N 12° 45' E, 877.8 feet to the beginning, containing 1930 acres, more or less.

> *Editor's note.--The description of the corporate limits contained in this section is a result of the 1981 Charter revision. A surveyor's note attached to the original description and dated September 23, 1981, reads as follows: "This description was made from six (6) different surveys and therefore the variation between the north base line merridian and the bearings used will vary."*

Sec. 3. Wards.

As soon as convenient after the passage of this act the common council in being of said city shall divide the territory of said city into wards, the number of which shall be determined by the common council, but there shall not be less than three wards, which said wards shall be as nearly equal in population as possible, and each shall consist of compact territory and have a population of not less than five hundred people; the number and limits of which said wards shall remain until otherwise changed by the common council of said city, and a record and map of said wards shall be entered upon the journal of the common council of the said city and preserved. No change shall be made in the number or the limits of the said wards within six months previous to any regular election to be held for the election of city officers; provided, however, that should

additional territory be taken into the corporate limits of said city within said six months, such additional territory may by the common council be added to existing and contiguous ward or wards or made a separate ward or wards.

Sec. 4. Municipal authorities to consist of mayor and common council; compensation of mayor and common council.

The municipal authorities of said city shall consist of a mayor, and one councilman from each of six wards, who together shall form a common council, and shall receive such compensation as the common council shall from time to time determine, which shall not be increased nor diminished during their term of office.

Sec. 5. Common council to exercise corporate powers.

All the corporate powers of said corporation shall be exercised by said common council or under their authority except when otherwise provided.

Sec. 6. Election and qualifications of mayor, councilmen and recorder generally.

There shall be elected by the qualified voters of said city, as hereinafter provided, a mayor, six councilmen and a recorder, who at the time of their election shall be residents in said city and be entitled to vote for the members of the common council of said city as residents and legal voters therein.

Sec. 7. Chief of police and street commissioner.

There shall be a chief of police and street comissioner, each of whom at the time of his election shall be entitled to vote for the members of the common council, each of which officials shall be elected by the qualified voters of said city of New Martinsville and shall hold office for the period of four (4) years from the date fixed in section 9-(a), and until his successor is elected and qualified. (3-10-83.)

Sec. 8. Term of office of mayor and recorder.

The mayor and recorder of said city shall be elected for a period of four (4) years, and each shall hold office until his successor has been elected and qualified.

Sec. 9. Term of office of council members; council members to be residents and legal voters of respective wards.

The members of the common council shall be elected for a period of four (4) years, and each shall hold office until his successor is elected and qualified, and each shall be a resident and legal voter in his or her respective ward.

Sec. 9-(a). Elections of 1945, 1946 and 1947; biennial elections generally.

On the second Tuesday in June, in the year One Thousand, Nine Hundred and Forty-five (1945), there shall be elected by the qualified voters of said city, a mayor, three (3) members of the common council, each councilman from separate wards, a chief of police and street commissioner, who shall hold office for the respective periods of time hereinbefore set forth. The mayor and three (3) members of the common council who were elected at the regular municipal election held on the second Tuesday in January, One Thousand, Nine Hundred and Forty-three (1943) and the chief of police and street commissioner who were elected at the regular municipal election held on the second Tuesday in January, in the year One Thousand, Nine Hundred and Forty-four (1944), shall hold over in their respective offices until their successors are elected at the general municipal election to be held on the second Tuesday in June, One Thousand Nine Hundred and Forty-five (1945), and duly qualified.

In order to effectuate the purposes of this section and of sections seven (7), eight (8), nine (9), and twelve (12), all as amended, an extra or intervening municipal election shall be held on the second Tuesday in June of the year One Thousand, Nine Hundred and Forty-six (1946), at which election there shall be elected by the qualified voters of said city a recorder and three (3) members of the common council, each of said councilmen from separate wards, all of whom shall hold office until their successors are elected at the regular municipal election to be held on the second Tuesday in June of the year One Thousand, Nine Hundred and Forty-seven (1947), as provided in the next paragraph hereof, and duly qualified. The recorder and three (3) members of the common council who were elected at the regular municipal election held on the second Tuesday in January of the year One Thousand, Nine Hundred and Forty-four (1944), shall hold over in their respective offices until their successors are so elected and qualified.

On the second Tuesday in June of the year One Thousand Nine Hundred and Forty-seven (1947), there shall be elected by the qualified voters of said city a recorder and three (3) members of the common council, each of said councilmen from separate wards, as well also as a chief of police and street commissioner as hereinbefore provided, who shall hold office for the respective full periods of time as provided in sections seven (7), eight (8), and nine (9) as amended.

And thereafter said officials and councilmen shall be elected at biennial elections in the same alternate manner. Notwithstanding any other provision herein to the contrary, beginning in the year 1983, and biennially thereafter, the municipal election shall be held on the first Tuesday in May. All elected officers hereinbefore mentioned shall assume office on the first day of July, immediately following such election. (3-10-83.)

Sec. 9-(b). Notice of election; publication requirement.

No sooner than the first day of January of any year in which a municipal election shall be held as hereinbefore provided, nor later than the fifteenth day of February in any such year, it shall be the duty and responsibility of the recorder to prepare and cause to be published as a class 1 legal advertisement a notice of election in which notice the date of the municipal election and the offices to be filled at such election shall be specified.

On the first regular meeting of the common council next succeeding the publication of notice of election the recorder shall certify to the governing body that the publication requirement was observed in accordance with the provisions of this section. (3-10-83.)

Sec. 10. Elections to be by wards; precincts and voting places generally.

Each ward shall constitute an election precinct and the common council shall establish a voting place in each, and the election of councilmen shall be by wards. No voter shall be entitled to vote at any city election except in the ward in which he resides, and if any voter shall vote for any person for council who is not a resident of the ward in which he voted, such vote or votes shall not be counted for such person or persons.

Sec. 11. Qualifications of voters.

Only persons who are bona fide residents of the city and are registered to vote as provided by law shall be entitled to vote in any municipal election, and the provisions of the "Permanent Registration Law," being section 8-5-13 of the West Virginia Code of 1931, as last amended, so far as applicable to municipalities, is hereby adopted to govern any election in the City of New Martinsville.

The municipal registration records for the Wetzel County precincts which are within the city, as they are kept and maintained by the county commission of Wetzel County, shall be the official registration of voters for any municipal election, and only those persons so registered shall be eligible to vote.

Sec. 12. Amended by ordinance adopted 6-9-81.

Editor's note.--This section, which concerned conduct of regular municipal elections, was amended by an ordinance submitted to the voters of the city and adopted by them on June 9, 1981. Such ordinance created Charter sections 12-(a) through 12-(e), which cover the same subject matter as former section 12.

Sec. 12-(a). Certificate of announcement declaring candidacy for elective office.

Any person who is a resident of the city and who is otherwise eligible to hold the office of mayor, recorder, councilman, chief of police and/or street commissioner and who seeks to be elected to any such office during the municipal election to be held on the first Tuesday in May in the year 1983, and biennially thereafter, shall, if such person desires his or her name to appear on the ballot, file a certificate of announcement with the recorder of said city declaring himself or herself a candidate for election to such office. Such certificate shall be substantially in the form:

"I, _____, hereby certify that I am a candidate for the office of _____, and desire my name printed on the ballot to be voted at the regular municipal election to be held on the _____ day of _____, 19 _____; that I am a qualified voter of the City of New Martinsville; that the address of my residence in the City of New Martinsville is _____ _____; that I am eligible to hold the office; and that I am a candidate therefor in good faith.

_____
Candidate

"Signed and acknowledged before me this _____ day of _____ _____, 19____.

_____
Signature and Official Title of
Certifying Officer"

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

In the year One Thousand, Nine Hundred Eighty-three, and biennially thereafter, such certificate shall be filed with the recorder not earlier than the second Monday in January next preceding the regular municipal election and not later than the first Saturday in February next preceding the regular municipal election and must be received by the recorder before midnight, eastern standard time, of that day, or, if mailed, shall be postmarked before that hour. (6-9-81; 1-9-90.)

Sec. 12-(b). 1983 election and subsequent biennial elections to be held on nonpartisan ballots; persons declared to be elected to take office.

The regular municipal election to be held in the year 1983, and biennially thereafter, shall be held on the first Tuesday in May, but upon a nonpartisan ballot printed for the purpose. In the regular municipal election to be held on the first Tuesday in May, 1983, and biennially thereafter, the candidate for any municipal elective office who has filed his candidacy therefor in accordance with section 12-(a) hereof, and who shall have received the highest number of votes cast for such office, shall be declared to be elected to such office.

It is declared to be the intent of this section that any person declared to be elected shall take office, even though he or she or they may not have received a majority or plurality of all votes cast for such office at such election. (6-9-81; 1-9-90.)

Sec. 12-(c). Filing fee for candidates for elective office.

The common council, by ordinance, shall require that every person who becomes a candidate for municipal office in any such regular municipal election shall, at the time of filing his certificate of announcement, pay a filing fee, to be fixed by the said ordinance, provided, however, that such filing fee shall not exceed the sum of twenty ($20.00) dollars for the offices of mayor and recorder, and shall not exceed the sum of five ($5.00) dollars for all other elective offices. (6-9-81.)

Sec. 12-(d). Conduct of regular municipal elections generally.

Regular municipal elections shall be held on the first Tuesday in May of alternate years commencing as hereinabove provided and conducted in all respects as provided by law for conducting general nonpartisan elections in the State of West Virginia. The common council shall perform all of the duties in regard to the election which are imposed upon a county commission in conducting a general election in the state, and the recorder shall perform all of the duties which are imposed upon the clerks of the circuit court and county commission. The common council, in selecting officers to conduct the election and in choosing ballot commissioners, shall be bound by all of the laws obligating a county commission to select commissioners and clerks. (6-9-81; 1-9-90)

Sec. 12-(e). Receiving, casting, tabulation, canvassing, etc., of ballots generally.

The ballots at regular municipal elections shall be received, cast, counted, tabulated and returns made and canvassed in all respects as provided by law for conducting general nonpartisan elections in the State of West Virginia, except that the duties devolving upon the county commission and the clerk there of under the general laws for conducting elections in the state shall be discharged by the common council and the recorder. (6-9-81.)

Sec. 13. Tie votes in elections.

When two or more persons shall receive an equal number of votes for councilman or other city officer, such tie shall be decided by a runoff election, held between the persons receiving such equal number of votes.

Sec. 14. Contested elections.

All contested elections shall be heard and determined by the common council for the time being, and the contest shall be made and conducted in the same manner as provided for in contests for county and district officers, and the common council shall conduct their proceedings in such case as nearly as practicable in conformity with the proceedings of the county commission in such cases.

Sec. 15. Vacancies in offices of mayor, councilman, recorder, chief of police and street commissioner.

Whenever a vacancy shall occur from any cause in the office of mayor, councilman, or recorder, chief of police and street commissioner, the common council shall immediately fill such vacancy by vote of the majority of the council, all elective officials' offices to be filled until the next general election and the appointive offices for the remainder of the term.

Sec. 16. Duties of tax collector or recorder generally; other officers generally.

The tax collector or recorder shall have power to collect all taxes levied and assessed by the common council of said city and all other assessments and money due the said city, and for that purpose shall have the power to distrain and sell property for the enforcement of such payment. The common council shall also have authority to provide by ordinance for the appointment of such officers as shall be necessary and proper to carry into full force any authority, power or jurisdiction which is or shall be vested in the said city or in the common council or mayor or any officer or body of officers thereof, and to grant to such officers so appointed the power necessary or proper for the purpose above mentioned.

Sec. 17. Oath of officers.

All officers elected and appointed under this chapter shall each, before entering upon the duties of their office, and within one week from the date of their election or appointment, give the bond required for any officers of this state, and shall make oath that they will truly, faithfully and impartially to the best of their ability, discharge the duties of their respective offices so long as they continue therein. Said oath may be taken before any person authorized to administer oaths or before the mayor of said city.

Sec. 18. Reserved.

Sec. 19. Repealed pursuant to election of 6-18-44.

Sec. 20. Failure of officers to qualify.

If any person elected or appointed to office shall be found ineligible to such office, or shall fail to qualify, the said common council shall declare the office vacant and it shall be filled in the manner prescribed in this Charter.

Sec. 21. Powers and duties of mayor generally.

The mayor shall be the chief executive officer of the said city, and shall take care that the provisions of this Charter, the ordinances and resolutions of the council thereof are faithfully executed.

Sec. 21-(a). Municipal court.

There shall be a municipal court and a municipal judge thereof, who shall be appointed by and serve at the will of the common council and be compensated as the common council may, from time to time, decide.

Sec. 22. Powers and duties of recorder generally.

The recorder shall keep a journal of the proceedings of the common council and have charge of and preserve the records of the city. In the absence, or in case of sickness or inability, of the mayor, or during any vacancy in the office of the mayor, the recorder shall perform the duties of the mayor which pertain to him as the chief executive officer of said city and be vested with all the powers necessary for the performance of such duties. In the absence of both the mayor and recorder, there shall be an acting mayor, who shall be elected by a majority of the common council.

It shall be the duty of the recorder to collect all town taxes, licenses, levies, assessments and such other claims as are placed in his hands for collection by the common council, and he may distrain and sell for taxes and assessments, and he shall have in all other respects the same power as a sheriff of the county to enforce the payment and collection thereof.

Sec. 23. Quorum of common council.

The presence of a majority of the common council shall be necessary to make a quorum for the transaction of business.

Sec. 24. Records of ordinances, bonds, etc.

The common council shall cause to be kept by the recorder in a well bound book, to be called the journal, an accurate record of all the proceedings, ordinances, acts, orders and resolutions, and in another book to be called the book of ordinances, accurate copies of all general ordinances adopted by the common council, both of which shall be fully indexed and opened to the inspection of any citizen of the State of West Virginia. All oaths and bonds of officers, and all papers of the common council shall be indorsed, filed and securely kept by the recorder. The bonds of officers shall be recorded in a well bound book, to be called the record of bonds. Said recorder shall perform all such other duties as may by ordinance of the common council be prescribed. Said council may bind and print in pamphlet form all the general ordinances of the said city and transcripts of such ordinances, acts, orders and resolutions, certified by the recorder under the seal of the city, shall be deemed prima facie correct when sought to be used before any court or before any justice or magistrate.

Sec. 25. Reading of common council minutes; taking of ayes and noes.

At each meeting of the common council the proceedings of the last meeting shall be read and corrected if erroneous, signed by the presiding officer for the time being, and countersigned by the recorder. Upon the call of any member, the ayes and noes upon any question shall be taken and recorded in the journal, and the roll for that purpose shall be called alphabetically.

Sec. 26. Mayor to vote only in case of tie.

The mayor shall have a vote only in case of tie.

Sec. 27. Common council meetings generally.

The regular meetings of the common council shall be on the first Monday night in each month, and at such times as may be deemed necessary for the transaction of the business of said city, and shall be held at such place in said city as the common council shall from time to time ordain and appoint; and said common council shall meet in special session upon the call of said mayor or upon the call of any two of the councilmen. And the common council shall by ordinance prescribe the mode in which notice of special meetings shall be given; and no business shall be transacted at such special meetings unless a majority of all the members of the common council shall be present, except that a less number may compel the attendance of absent members under such reasonable penalties as they may think proper to impose; and all questions put, except in such matters as are hereinafter provided for, shall be decided by a majority of the members present.

Sec. 28. City money to be paid over to recorder; disbursements generally.

The monies belonging to the city shall be paid over to the recorder, and no money shall be paid out by him except as the same shall have been appropriated by the common council, and upon an order signed by the mayor and himself.

Sec. 29. Recorder designated ex officio treasurer; recorder to give bond.

The recorder of said city shall be ex officio treasurer of the same, and shall give bond in such penalty and with such sureties as the common council shall prescribe conditioned for the faithful performance of his duties.

Sec. 30. Powers of common council enumerated.

The common council of said city shall have the following general powers enumerated in the subdivisions of this section, as follows:

(1) To lay off, open, close, vacate or maintain public grounds, parks, and public places, and name and rename the same, to have control and super-

vision thereover, to protect the same from damages or other injury by persons or property, to fix fines and punishments for any injury thereto in violation of any of the orders of said common council, and to maintain good order and prevent violation of the ordinances of said city therein or thereon.

(2) To acquire, either by purchase, condemnation or other modes provided by general law, ground within said city for such streets and alleys as the common council may deem proper; to locate, lay off, vacate, close, alter, grade, straighten, widen or narrow, pave or repave, construct and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, viaducts and gutters therein, and such bridges as may be owned or built by the said city, for the use of the public or of any of the citizens thereof, and to improve and light the same and to keep the same clean and free from obstruction of every kind: provided, that the municipality shall not be liable for or responsible in damages for injuries to persons or property caused by or from any defect or obstruction in or on any street or alley within said city that has been or may be taken over by the state road commission, under and by virtue of the laws of the state; nor shall said municipality be liable in damages for injuries to persons or property caused by or from a defect or obstruction in or on the plat of ground between the gutter or curb of any street and the sidewalks extending there along or between any such sidewalks and the property lying next adjacent thereto, unless the municipality had actual notice of such defect or obstruction prior to the time of the injury complained of; and provided further, that where said city shall be required to respond in damages by reason of injury to persons or property occasioned by the failure of any abutting owner to so provide or keep in repair any sidewalk along said property, after being notified by the common council to do so, that such property owner shall be liable to the city for any sum of money, costs and counsel fees which it has been required to pay by reason thereof.

(3) To regulate the width of sidewalks and the streets and the width and care of the public grounds or grass plats abutting thereon, and to order the sidewalks, footways, crossways, drains, and gutters to be curbed, paved or repaved and kept in good order, free and clean, and to provide for the removal of snow and ice therefrom, and for sprinkling the same by the owner or occupants of the real property next adjacent thereto, and to provide and enforce punishments for obstruction, injuring or preventing the free and proper use thereof, and to provide and enforce fines and penalties for throwing therein or thereon any paper, glass, rubbish, decaying substances or other things that would make said streets, sidewalks, grass plots, crosswalks, drains or gutters unsightly and unhealthy.

(4) To regulate the use of the walks, highways, bridges, streets, alleys and gutters and the rate of speed or travel thereon, and to prevent and punish for operating vehicles of whatever kind at excessive rates of speed, and to prevent injury to such streets, alleys, roads and highways from overloaded

or improperly loaded vehicles, and from dragging logs or other matter therein, and to regulate the speed of engines or trains or streetcars upon or across any of such streets, alleys, highways, bridges, public places or any other place that the common council deems the public safety requires such regulation; and otherwise regulate the use and manner of operation of said vehicles.

(5) To regulate the planting, trimming and preservation of shade trees, by persons and by corporations, in streets, alleys, roads, public grounds and places, and shall require the owner of adjacent property to trim or remove any shade tree or ornamental shrubbery or other tree that in the opinion of the common council is an obstruction to the streets, alleys, or sidewalks, or a menace to public safety.

(6) The common council shall have the right to require the owner or occupier of any property in the city to keep his premises clean and free from all matters that would endanger the health and welfare of the citizens of the city, and may require the removal of any waste paper or waste material of any kind or character upon the private property of any citizen or property owner that would cause the spread of fire or when the common council deems the same should be removed; and may require the removal or straightening of any fence, wire, paling, or other material enclosing any lot, when, in the opinion of the common council, the same is dangerous or obstructs or encroaches upon the streets, alleys or sidewalks; provided, that in all such cases, if the owner or occupier of such property fails to do any of the things enumerated in this section required by the common council, the common council may take such action as may be necessary to perform such acts and the expense thereof shall be charged against the property owner and collected as taxes are collected.

(7) To regulate the making of division fences of an unsightly nature and party walls by the owners of adjoining and adjacent premises and lots, insofar as the same shall not be in conflict with general law.

(8) To regulate or require drainage by the owner or occupier of any lot or other real estate, by proper drains, ditches, and sewers, and to require the owner or occupier of any lot to fill the same, at his own expense, so that water will not collect in a body thereon, or so that the same will not become a menace to public health.

(9) To regulate or prohibit street carnivals, or street fairs or street parades, advertising exhibition, or other exhibitions thereon, or the exhibition of goods, wares, merchandise, material, material or artificial curiosities upon any street, sidewalk, alley or public place of said city.

(10) To regulate or prohibit the ringing of bells, blowing of steam whistles, or use of hand organs, or other instruments of an annoying character, or other music of itinerant performers in the streets, or public speaking and preaching in the streets, roads, parks or public places of the municipality.

(11) To license, regulate or prohibit auctioneering.

(12) To license, regulate or prohibit the sale of goods, wares, merchandise, drugs, or medicine on the streets or other public places.

(13) To prevent the illegal sale, offering or exposing for sale, or advertising of spirituous liquors, wine, porter, ale, beer, or drinks of a like nature.

(14) To prevent the illegal sale of tobacco, cigars, snuff, or cigarettes, within said municipality.

(15) To regulate, assess and collect a license fee for the said city for the doing of anything or the carrying on of any business for which a state license is required; provided, however, that when anything for which a state license is required is to be done within the limits of said city, the common council may decide whether such license may be granted or not, and if granted, it shall be assessed and collected the same as if granted by the County Court of Wetzel County.

(16) To establish, when the common council may deem proper, locate and keep in repair, market places, market houses, and regulate markets, prescribe the time for holding the same, to authorize the seizure thereof and destruction of any and all such foods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for cost and value.

(17) To regulate the keeping, handling and transportation of explosives and dangerous combustibles within the municipality; and to regulate or prohibit the use of fireworks or gunpowder, toy pistols, air rifles, or guns, within the said municipality.

(18) To define by ordinance what shall constitute a nuisance, and to abate all nuisances whether defined or not, and to require the removal or abatement, at the expense of the owner thereof, of any obnoxious business, building, sign board, signs or other thing, which in the opinion of the common council is a nuisance.

(19) To regulate or prohibit the distribution of handbills, circulars and other advertisements of like kind, on the streets, roads, alleys and public places, or the placing of same in private yards, buildings or other structures, without first having procured the consent of the owner or occupier of such property.

(20) To prohibit the keeping and/or prevent the running at large in the city of dogs, hogs, cattle, sheep, horses and other animals, and/or fowls and domesticated birds of all kinds; and to establish and maintain places for their detention, make regulations respecting the same, to appoint a dog warden and define his duties and provide for the sale or disposition of such animals and fowls impounded.

(21) To arrest, convict and punish any person for importing, printing, publishing, selling, giving away, exhibiting, or distributing any book, picture or device, or other thing containing any obscene picture or language, or making any indecent representation.

(22) To prevent and prohibit any tumult or riotous assembly.

(23) To prevent and prohibit trespass upon private property or the doing of anything which would annoy the owner, or occupier of any premises and to fix and provide fines and punishments therefor.

(24) To provide against danger or damages by fire, and to that end, to require, when the common council may think necessary, an inspection of all the properties within the said city, to require the owner or occupier of any property in which a defective or dangerous chimney, wires, flue or other dangerous condition is found, to immediately repair the same, and to prevent the use thereof until repaired as required.

(25) To prohibit and prevent intoxication or drunkenness, and the drinking of intoxicants in any public place, store, street or alley, and to fix fines and penalties therefor.

(26) To protect the public schools in said city, and to prohibit and prevent any disturbance thereof in and about the buildings or upon the grounds, and to prevent injury, destruction, or defacement of any school property or building.

(27) To arrest, convict and punish any person for cruelty, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading, or overdriving, or wilfully depriving of necessary sustenance, any horse or other domestic animal.

(28) To prohibit, prevent and punish for the pollution of any stream of water running into or through the said municipality; and to prohibit and prevent the throwing into any such stream of any trash, dirt, filth, offal, decayed substances or matters, or anything that would make said water unhealthy or unfit for domestic use.

(29) To restrain, prevent and punish fraudulent practices of any kind within the municipality.

(30) To regulate the erection, construction, alteration and repair of dwelling houses, buildings and other structures, within the municipality, to issue permits therefor and to compel the numbering of such houses and buildings by the owners and occupiers thereof; and to prescribe by ordinance the distance which dwelling houses, and other structures in resident districts shall be set back from the sidewalk.

(31) To require any building that, in the opinion of the common council is dangerous, to be repaired, altered or removed by the owners thereof or put in a safe condition, such as the common council may approve, at the expense of such owner or occupier, and to provide punishment for failure to comply with any order of the common council concerning same.

(32) To provide for the prevention and extinguishing of fires, and for this purpose, the common council may equip and govern fire companies, prescribe the powers and duties of such companies and departments, and of the several officers thereof, or may authorize volunteer fire companies, under such rules and regulations as the common council may prescribe and impose on those who fail to obey any lawful command of the officer in charge of any such company, or volunteer company, any penalty which the common council is authorized to impose for violation of an ordinance, and to give authority to any such fire officer to direct the pulling down or destruction of any building, fence, wall or other thing, if such officer deems it necessary to prevent the spreading of any fire which is being extinguished under the direction of such officer, and without any liability on the municipality for damages therefor.

(33) To protect the persons and property within the corporate limits and preserve the peace and good order therein, and for this purpose, to appoint, when necessary, a police force and such other officers as may be deemed necessary; and to provide a lock-up, jail or other suitable place to confine persons sentenced to imprisonment for violation of the ordinances of said city; provided, however, that the jail of Wetzel County may be used for that purpose, if authorized by the county court of said county.

(34) To prescribe the powers, define the duties of the officers appointed under the corporate authority, fix their terms of service and compensation, if not otherwise prescribed by this chapter, and to require and take from them bonds, when deemed necessary payable to the State of West Virginia, or the City of New Martinsville with the sureties, and in such penalties as may be prescribed, conditioned for the faithful discharge of their respective duties; provided, that the compensation of any officer, elected or appointed, shall not be increased nor diminished during the time for which he is elected or appointed.

(35) To make regulations with respect to, and have supervision and control over the erection, removal and relocation of all telephone, telegraph, electric light or other poles within said city, and the extension of wires, lines or poles by any individuals or corporations.

(36) To acquire, erect, operate and manage or authorize or prohibit the erection of gas works, electric light works or waterworks within the city limits; to prevent injury to such works or the pollution of any gas or water used or intended to be used by the public or by individuals; and to do all things necessary to adequately supply said city and the inhabitants thereof with pure, healthful and wholesome water; and to require any company furnishing

gas or electricity for sale or distribution in said city to furnish an adequate supply thereof; to require gas fixtures, electric light wires, telephone wires and all apparatus used in connection with any of these, to be kept in repair and suitable for use, and free from danger, so far as practicable; to use, generate, distribute, sell and control electricity, water and gas for heat, light and power and to furnish light for the streets, highways, buildings, stores and other places in and about the city.

(37) To acquire, erect, provide, manage and operate an incinerator or incinerators, machinery and equipment for disposal of garbage and other waste material; to provide, furnish, maintain and operate and/or contract for a system of garbage removal for the said city, including the power to fully regulate the service charges and service in connection therewith, and to promulgate such rules and regulations concerning the use thereof as may be necessary for the safe and efficient handling of such business.

(38) The common council shall have the right to own, maintain, operate and control any electric light plant within said city, or to provide for, or purchase electric power and to use, generate, distribute, sell and control electricity and gas for heat, light, and power, and to furnish light for the streets, houses, buildings, stores and other places in and about said city, and for such electricity other than that furnished for the municipality in lighting its streets, or public places, it may charge reasonable rates, but such rates in all cases shall be uniform; and such electric light plant shall be under the supervision and control of the common council, and its wires, poles, distributing system and machinery shall be kept in such repair so that as little danger as possible shall arise therefrom, and so that same will furnish an adequate supply of electricity to all persons in said city desiring to use same.

(39) The common council shall have the right to provide a sewerage system for said city, and may require the owner of any property abutting upon any street or alley in which a sewer has been laid or placed, to connect a sewer leading from his or her property or lot into any public sewer which is located in such street or alley adjoining the same, and if the owner or occupier of said lot or property fails or refuses to do so, after having been given reasonable notice, the common council may enter upon such lot and construct such sewers, and may levy the actual cost thereof against the lot upon which the same is built and collect such costs from the owner of such lot in the same manner as city or state taxes are collected; in addition thereto, the common council may punish by fine, or fine and imprisonment, any person who permits any drainage from his residence or lot to enter upon any property after a sewer has been placed in the street or alley adjacent to his property, to which he should connect, after notice has been given to him by the common council to make such connection. The common council may provide by ordinance for the inspection of all sewer connections by some person appointed by the common council and provide for the assessment of the cost of such inspection upon the property owner, which cost may be collected the same as taxes or as otherwise provided by the common council.

(40) The common council shall have the right to impose fines and penalties for any interference with or destruction of the sewer system or any part thereof in said city, or for the destruction or damages to any street, alley or sidewalk in said city or any improper use thereof.

(41) The common council shall have the right to regulate or prevent the use of the sidewalk for bicycles, pushcarts, sleds, tricycles, roller skates and other things of like character and to fix fines and penalties for violation of the ordinances respecting same.

(42) To grant by ordinance or resolution permits for the temporary use of such parts of its streets, roads, alleys and public places as the common council may deem proper and right to be used in construction, alteration or repair of buildings located thereon, or for such other purposes as the common council may deem proper and right, and under such regulations and for such time as the common council may prescribe.

(43) The common council may buy, lease and operate either within or without the municipality, stone quarries, crushers and land for said purposes or for the purpose of furnishing a supply of stone or other material suitable for macadamizing or paving the streets, sidewalks and alleys, and improving public property.

(44) To operate by ordinance such committees or boards, and delegate such authority thereto as may be deemed necessary or advisable by the common council; and to employ such legal counsel on behalf of the city, from time to time, as the common council may deem necessary to protect the interests of the city.

(45) The common council shall keep all roads, streets and alleys within its limits passable and in good repair.

(46) In the enforcement of the ordinances, orders, rules, and regulations of the said city, no fine shall be imposed exceeding five hundred dollars, and no person shall be imprisoned or compelled to labor on the streets of said city; provided, violations of the road laws or automobile laws, may be punished by fines and penalties prescribed by general law, unless different fines and penalties are expressly prescribed by the ordinances of said city.

(47) It shall be the express duty of the common council to present charges against any of its members, or any officer of the city, who fails to perform, or who does not promptly and diligently perform any duty prescribed by this act, or by any ordinance or resolution of the common council, and upon hearing thereof before the common council, after notice to such officer, he shall be removed from office by the common council, if the charges be found correct.

(48) To provide for the payment of all appointive officers and employees.

(49) To exercise all of the legislative functions of the city government, and shall have the right to demand of any city official, or employee, information, explanation, facts, details, correspondence, or other papers affecting the city's interests; and it shall be deemed misfeasance and neglect of duty for such official or employee to fail or refuse to comply with such demands.

(50) The common council shall have the power, under this section, to require the acting head official of any municipal gas, water, electric, garbage and/or sewerage department to prepare or cause to be prepared a chart or map of any or all municipal water lines, gas lines, electric lines, sewerage lines and/or garbage routes; and if such be not furnished within a reasonable and fixed time after notice thereof, to the common council, the defaulting official or officials may be removed or fined in the discretion of the common council.

(51) The common council shall have the power and authority to levy, assess and collect taxes upon the real and personal property within said city, including the taxation of dogs kept in said city; provided, that such levy and assessment of taxes shall be uniform with respect to persons and property within the jurisdiction of said city; and provided further, that such levy, assessment and collection of taxes shall be made in accordance with the acts of the legislature of West Virginia now existing or hereafter enacted, and in accordance with the provisions of the constitution of the State of West Virginia and amendments thereto.

To provide a revenue for the city for municipal purposes and to appropriate such revenue to its expenses.

(52) The common council shall have the power to grant franchises, but shall not grant any such franchise to any person, or corporation, within said city limits which shall be either exclusive or perpetual, but all such grants shall have annexed to them the power to rescind, revoke, alter, modify or regulate the exercises of any such franchise; and said common council shall have power on ten days' notice, and for cause, to revoke, rescind, alter or modify, the exercise of any such franchise; and no franchise involving the use of any of the public property, streets, alleys, sidewalks, crosswalks or involving the use or occupancy of the same, shall be granted except by an ordinance to that effect.

(53) The common council shall have the right, power and authority to require the owner of any real property abutting upon any sidewalk or footway in the city to curb, recurb, pave, repave, or keep the same clean; and if the occupant and/or owner shall fail or refuse to keep the same clean, or if the owner shall fail or refuse to curb, recurb, pave or repave any such sidewalk or footway in the manner or within the time required by the common council, it shall be the right and duty of the common council to cause the same to be done at the expense of the municipality and to assess the amount of such expense upon such owner or occupant, as the case may be; and such expenses may be collected by the city in the manner herein provided by the collection of municipal taxes.

(54) The common council shall have the power and authority to restrain, prevent and punish the stealing of any gas, water or electric energy, or the tampering with any mains, pipes, meters, or any other device or appliance used in connection with the aforesaid, conducting, supplying, or being used in somewise in connection therewith, of gas, water or electric energy; provided, that any enactment of this section shall be consistent with the general laws of the state.

(55) The common council shall have authority and power to pass such ordinances as may be deemed necessary or advisable to carry out the provisions of this Charter and to protect all property, public or private, within said city; to preserve and maintain peace, quiet and good order therein; and to preserve and promote the health, safety and well being of the inhabitants of said city.

(56) Except as herein otherwise provided, the powers of the common council of said city shall also be co-extensive with the powers of the town and common council generally as provided by the general laws and statutes of the State of West Virginia.

(57) Said common council shall have power, also, to appoint policemen whenever the necessities of public safety of the people of said city in their judgment shall require it, who shall be under the direction and supervision of the chief of police and of the said common council; and the said common council shall by ordinance define the duties of all officers so elected or appointed as aforesaid and allow them a reasonable compensation, which shall be by monthly salaries, and not otherwise, except as to the collection of taxes, and which compensation shall not be increased or diminished during their term of office; and shall require and take from all those whose duty it is to receive its funds, assets or property, or have charge of the same, such bonds, obligations and other writings, as they shall deem necessary or proper to insure the faithful performance of their said duties. All officers appointed or elected by the common council shall hold their office or appointment during the will and pleasure of the said common council, but no appointee shall hold beyond the current year for which he shall have been appointed without a new election by said common council.

(58) All officers appointed by the common council must be residents of the said city at the time of their appointment, and a removal from the city shall vacate their said offices.

(59) All acts or parts of acts inconsistent with this act are hereby repealed, but this act shall not be construed to repeal, change or modify any previous act, not inconsistent with this act, authorizing the City of New Martinsville to contract debts or to borrow money, or to take away any of the powers conveyed by general law upon said city, or upon the mayor or common council or any officers, except so far as the same may be inconsistent with the powers hereby conferred.

Sec. 30-(a). Petitions for street, sidewalk and sewer improvements; improvement assessments, liens, etc.

(a) Powers of city. The city is hereby authorized and empowered, in addition to any other rights or powers conferred upon it, upon the terms, conditions and in the manner hereinafter set forth, to grade, regrade, pave or repave, surface or resurface, curb or recurb, streets and alleys, and to build or renew sidewalks, and to construct, provide or renew any of such improvements or other permanent public improvements in any streets, alleys, public ways or easements, or portions thereof, in the city, and, if deemed advisable, to construct storm and sanitary sewers, or all or a part of a sewer system in any streets, easements, public ways, or alleys, or portions thereof, independently or in conjunction with other of such improvements, and to assess the costs of any or all of such improvements on abutting property.

(b) Petition of abutting property owners; action of common council without petition. Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon both sides of any portion of a street, public way, alley, or easement, for any permanent improvement or reimprovement authorized in subsection (a) hereof the common council, by a lawful majority thereof, may, after giving notice to abutting property owners as in this section is provided, by resolution or ordinance declare the necessity or convenience of such improvement and order and cause such portions of such streets, alleys, public ways or easements to be graded, regraded, paved, repaved, surfaced, resurfaced, curbed, recurbed, sewered, resewered, permanently improved or reimproved with sidewalks or otherwise permanently improved or reimproved with suitable material, or any one or more of such improvements without the others, as may be determined by the common council, to be constructed therein or in such part or parts thereof as the common council may determine, and the common council may specially assess the entire cost of such improvements, or any part thereof, upon the property abutting on the portions of the streets, alleys, public ways or easements improved.

The common council may also adopt such resolution or ordinance of necessity or convenience and provide for such improvements and the assessing of the cost thereof upon abutting property without such a petition of property owners having first been received, when the resolution or ordinance providing for such improvement is adopted by the affirmative vote of at least three-fourths of the members of the common council by recorded vote, after having given notice to abutting property owners as hereinafter provided.

(c) Notice to abutting owners before authorizing improvement; form of notice; certificate of publication; notice to railroad or foreign corporation. Before the adoption of such resolution or ordinance of necessity or convenience, the common council shall cause notice to be given to owners of abutting property that such resolution or ordinance will be considered before adoption at a public meeting of the common council at a time and place named in the notice, and all

persons or corporations shall at that meeting, or an adjournment thereof, be given an opportunity to protest or be heard concerning the adoption or rejection of said resolution or ordinance. Such notice to owners of property abutting on the portion of the street, alley, public way or easement to be improved may be by personal service on owners at least ten days before said meeting. In lieu of personal service of such notice, the following described notice, or one in substantially the same form, may be given, and shall be deemed to have been served on all such owners of abutting property, by publication once a week for three successive weeks before said meeting in some newspaper of general circulation, but not necessarily published, in the city, as follows:

"NOTICE TO ALL PERSONS OR CORPORATIONS OWNING PROPERTY ABUTTING ON ..... (here describe the portion of the street, alley, public way or easement to be improved) IN THE CITY OF NEW MARTINSVILLE:

"Proposals have been made to the common council of the City of New Martinsville to permanently improve the portion of the street (alley, public way or easement) above described in the City of New Martinsville by..... ..... (grading, paving, constructing sanitary or storm sewers, constructing sidewalks, or other general description of the proposed improvements) as the common council may deem proper, and to assess the cost of such improvements on the property abutting said portion of said street (alley, public way or easement).

"The proposals to make such improvements, and the plans, specifications, profiles and estimates will be considered by the common council at a public meeting to be held on the ..... day of ....., 19...., at ...M. at ..... . Any abutting owner or interested party will be given an opportunity to protest or be heard at said meeting or an adjournment thereof. .....(name of the recorder) ..... (official position)."

A certificate of publication of the notice, made by the newspaper publisher, and a copy of the notice shall be made a part of the minutes of the common council and spread on its records of the meeting described in the notice. The service of said notice upon all persons, firms or corporations owning any interest in any property abutting upon any portion of said street, alley, public way or easement to be improved shall conclusively be deemed to have been given when such newspaper publication shall have been completed; provided, that where any foreign railroad or other foreign corporation is the owner of property abutting upon any street, alley, public way or easement sought to be improved under the provisions hereof, notice shall be given to such railroad or other foreign corporation as prescribed by section 1, article 10, chapter 8 of the Code of West Virginia of 1931, before the adoption of any ordinance or resolution relating to, and providing for, such improvements.

(d) Construction of sewers and sewer systems; assessments; corner lots, etc. The common council is authorized and empowered to order and cause to be constructed, in the city, or part within and part outside of the limits of the city, public, common, lateral, branch, trunk and combined sewers or public sewer systems, or both, by contract or direct by the city, for the benefit of the city or any part thereof, and to purchase lands or easements therein or to condemn lands or easements therein in the manner provided by law for such sewers or sewer systems. When the common council shall order and complete the construction of any such sewer or sewer system or any part thereof in the city, the property abutting on such sewer or abutting upon an avenue, street, alley, right-of-way or easement in which such sewer shall be constructed, or abutting on any avenue, street, alley, right-of-way or easement, in which any such sewer or part of a sewer is constructed and laid, may be charged with all or any part of the cost thereof, including the cost of such sewer or sewer system at and across intersections at avenues, streets, roads and alleys adjacent thereto.

A sewer system shall be deemed to include all the common sewers whether they be lateral, branch, trunk or combined sewers, which serve to drain a definite drainage area as specified in the order of the common council directing the work to be done.

In case of a corner lot, frontage which may be assessed is to be measured along the longest dimension thereof abutting on each street, alley, right-of-way or easement in which such sewer is laid, but if sewered on both sides then such corner lot is to be charged only with the side first sewered unless more than two hundred feet in depth. Any lot having a depth of two hundred feet or more and fronting on two streets, alleys, rights-of-way or easements, one in the front and one in the rear of said lot, shall be assessed on both of said streets, alleys, rights-of-way or easements, if a sewer is constructed on both such streets, alleys, rights-of-way or easements. Where a corner lot has been assessed on either or both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on the end.

In case of corner lots where the cost of sewering along one dimension is not assessed against the owner thereof, and in the case of lots less than two hundred feet deep abutting at each end on a street, alley, right-of-way or easement in which a sewer is laid, the cost of sewering along the dimension or end not assessed against the property owner shall in every case be apportioned and assessed against the other property abutting on the streets, alleys, easements and public ways being improved, in the manner of apportionment of the cost of improvements in intersections.

(e) What total cost to include. In ascertaining the total cost of the improvements in any project undertaken pursuant to this section, there shall be included the cost and expense of surveys, engineering and attorneys' fees, the printing and publishing in relation thereto, and the cost and expense of all labor, work, supervision, inspection, equipment leased, and materials furnished and used in completing said improvements.

(f) Apportionment and assessment of cost. The cost of the entire project, including the cost of all improvements at and within intersections, shall be apportioned to, and assessed against and borne by the properties abutting upon the streets, public ways, alleys or easements upon which the improvements involved in the project shall have been made. Each lot or parcel of land so abutting shall be assessed with that portion of the total cost of the entire project which is represented by the proportion which the abutting frontage in feet of such lot or parcel bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the streets, public ways, alleys or easements so improved; provided, however, that if the character of the improvements shall be substantially different upon different streets, public ways, easements or alleys, or portions thereof, the cost may be equitably apportioned to the respective streets, public ways, alleys, easements, or portions thereof, in proportion to the character and cost of the improvements respectively thereon; and as the part of the cost so apportioned to each respective street, public way, easement, or alley, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided; provided, further, that if any part of the street, alley, easement or public way improved is used by a railway then the cost of the portion of the improvements between the rails and for two feet outside said rails shall be assessed against and wholly borne by the owner of the railway; provided, further, that if there be any land or other property abutting on the portion or the street or alley so improved which it has been determined by the common council, and shown in the ordinance or resolution authorizing the improvement, not to be specially benefited by the improvement, or for other reasons would not be liable to assessment for any of the cost of improvement, then the cost of the improvements abutting such part of said street or alley, as is so determined to be nonassessable shall be apportioned among, assessed and borne by the remaining property abutting upon the portion of the street, alley, public way or easement improved in proportion to the frontage of such remaining abutting property as hereinabove provided; provided, further, that if there be any land or other property abutting on the portion of the street or alley so improved which it has been determined by the common council, and shown in the ordinance or resolution, not to be benefited to the extent of the cost of the improvement, then the cost of the improvements abutting such part of said street or alley shall be prorated. The property so benefited shall be assessed for only that part of the cost to the extent of which it has been benefited, and the remainder of the cost shall be apportioned among, assessed and borne by the remaining property abutting upon the portion of the street, alley, public way or easement improved in proportion to the frontage of such remaining abutting property as hereinabove provided; provided, further, that

if such improvement includes the construction or reconstruction of sidewalks on only one side of a street, alley, public way or easement, then the cost of such sidewalk shall be assessed only on the property abutting on that side where the sidewalks are so constructed; provided, further, that in apportioning and assessing the cost of sewers or sewer systems the provisions of subsection (d) hereof shall be observed; provided, further, that if there be land or other property abutting the street, alley, easement or public way so improved which is owned by the United States of America, and, for that reason, not legally subject to assessment, then the city shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned land or property.

(g) Ordinance or resolution authorizing improvement; approval of plans, specifications and estimates; provisions for payment and cost and assessment certificates; advertisement for bids. After hearing held pursuant to notice as provided in subsection (c) hereof the common council, by resolution or ordinance, may authorize such improvement and the assessing of the total cost or any part thereof on abutting property as herein provided. In the same or subsequent resolutions or ordinances, but before advertising for bids from contractors, the common council shall cause to be prepared plans, specifications and estimates of the cost of the proposed improvements under the supervision of the engineer for the city. Such plans, specifications and estimates shall show the proposed grade and sufficient data for any owner of abutting property to calculate approximately what proportionate part of the estimated cost thereof might be assessed against his property, and shall be filed with the recorder and open to the inspection of interested persons before advertisement for bids of contractors and before the meeting at which such bids may be accepted or rejected. Before advertising for bids of contractors the common council shall consider said plans, specifications and estimates and may amend or modify them, and before advertising for bids shall by resolution or ordinance approve such plans, specifications and estimates as so amended and modified. Such resolution or ordinance before advertisement for bids shall also provide for advertisement for bids, for letting of contract or contracts for the work to the lowest responsible bidder, with right reserved to the common council to reject any and all bids and shall provide for supervision of such work by the mayor, city engineer or other person or committee designated by the common council. Such resolution or ordinance shall also provide for payment of the cost of the work when completed. The common council shall provide in such resolution or ordinance for the payment by abutting property owners of the cost thereof in equal installments payable over a period of not less than five years nor more than ten years from the date of assessment, with interest at the rate of six percent per annum from the date of assessment, and in said resolution or ordinance the common council shall fix the number of installments in which the amounts assessed shall be payable; provided, that each of said assessments or the installments thereof then remaining unpaid shall be payable at any time after assessment without interest after the date of payment; provided, further, that on failure of the owner of the property assessed to pay any installment as and when due, and such default continuing for sixty days,

then at the option of the holder of the certificates evidencing such assessment, the entire balance due may be declared immediately due and payable and the holder of the certificates may forthwith proceed to enforce the collection thereof; provided, further, that if the amounts to be assessed against abutting property be less than two dollars for each abutting front foot of property, then the common council is authorized to make the same payable in one lump sum or in installments, with interest, over a period of less than five years from the date of assessment.

(h) Report on completion; notice to abutting owners of assessments; hearings; correcting and laying assessments. When the improvement of such street, alley, easement, or public way has been completed, the common council shall cause the engineer, or other person charged by the common council with the supervision of the work of improvement, to make a report showing the several frontages abutting thereon, and the total cost, and showing the respective amounts chargeable upon each lot or parcel of land assessed abutting thereon, and showing the proper amounts to be assessed against the respective abutting lots or parcels of land as provided herein, with a description of the abutting lots and lands as to ownership, frontage and location. The common council shall thereupon give notice to the owners of the property to be assessed that on or after a date named in said notice an assessment may be laid against the property so improved as embodied in said report. Said notice shall state that the owner or owners whose property is to be assessed, or other interested party, may on said date appear before the common council to move the revision or correction of such proposed assessment. Such notice shall be by publication once a week for two successive weeks in a newspaper of general circulation in the county, and said notice shall show the total cost of the improvement, the several frontages abutting thereon and the respective amounts to be assessed against the abutting property, with a description of the respective abutting lots and lands as to ownership, frontage and location. On or after the date so advertised, the common council may revise, amend, correct and verify the report and proceed by resolution or ordinance to lay the assessments as corrected and verified.

(i) Assessment certificates; issuance, sale and negotiation; recording assessing resolution or ordinance. Immediately on laying of the assessment against the abutting property, certificates shall be issued evidencing said assessments and each installment of principal and interest payable. Said certificates may be payable to the city or to the bearer and be signed by the mayor and recorder or other equivalent officers of the city, and shall refer to the ordinance or resolution laying the assessments; shall show the amount and date of the assessment and describe the property against which the assessment is laid, describe the same as to ownership, amount, frontage and briefly as to location. Said certificates shall also show the dates on which principal and interest payments are due, and shall contain a provision that in event of default in the payment of any one of such installments, and such default continuing for a period of sixty days, then all unpaid installments shall become due and payable at the election of the certificate holder and the holder may proceed to collect

all of the unpaid balances of installments, with interest until paid. Said certificates may be issued to the contractor making the improvements in payment therefor, upon the contractor's reimbursing the city for those items of the cost and expense advanced by the city and mentioned in subsection (e) hereof. Said certificates payable to the bearer shall be assignable by delivery of the certificates and be enforceable by the holder. The city shall not be held as guarantor or in any way liable for the payment of bearer certificates. A notice of the lien of said assessment, referring to the assessing ordinance or resolution, and setting forth a list of the property assessed, described respectively as to amounts of assessment, frontage, location and ownership of the property, shall be certified by the recorder of the city to the clerk of the county court. The county clerk shall record the same in a proper trust deed book and index the same in the name of each owner of abutting property assessed.

(j) Liens; suit for enforcement; priority; when service may be had by publication. The property abutting the portion of the street, alley, easement or public way improved shall be subject to a lien, from the date of the ordinance or resolution laying the assessment, for the payment of the costs of the improvements assessed against said property. From the date of the assessments the holder of the assessment certificates shall be the holder of said liens and entitled to enforce the same in his own name or the name of the city to the extent of the amount, principal and interest, provided in said certificates, and against the said property, as to any assessment not paid as and when due. Said assessment shall be and constitute liens in the hands of the holders of said certificates upon the respective lots and lands assessed and shall have priority over all other liens except those for land taxes due the state, county, and city, and except the liens for pre-existing special assessments. Said assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. The holder of any certificate may enforce the lien thereof in any proper suit, and when default in the payment, as and when due, of any certificate of principal or interest or installment certificate shall occur and such default may have continued for more than sixty days, the holder may at his option declare the whole unpaid balance due and payable and by proper suit in equity enforce the lien thereof, upon process issued and served according to law upon the owner or owners of the land subject to said lien at the time such suit may be brought as shown by the records of the clerk of the county court in which said land is located. Service by publication upon such owner may be had if, upon affidavit filed with the clerk of the court where each suit is brought, it appears that the owner of such land is a nonresident of the State of West Virginia. Service by publication may also be had upon such owner upon affidavit filed in said clerk's office that personal process issued to the sheriff of the county in which said land is located has been returned "not found" in said county and if said affidavit also states that the plaintiff in the suit does not know where the owner is resident.

(k) Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid. When any of the lots or lands abutting the portion of the streets, alley, easement or public way improved consist of property owned or controlled by the state, county, city, board of education or other public body, or consist of property owned by, or used for, a church, or religious, charitable, educational or eleemosynary institution for purposes not subject to taxation, such property shall nevertheless be assessed with its proper proportion of the cost of said improvement, and it shall be the duty of those persons having charge of the fiscal affairs of such owner or the management of any such property or institution to make proper arrangements for the payment of, and cause to be paid, such assessments as and when due and payable.

(l) Payment of assessments or installment certificates; release. Payments of any assessments or installment certificates may be made to the treasurer of the city or the holder of the assessment certificates. If payment is made to the treasurer, he shall require all interest to be paid which is owed up to the time of payment, and notify the holder of the certificate, if informed of the holder's address, that he has received such payments, and make payment to the holder on presentation for cancellation of the certificate representing such payment. If payment is made to the holder of the certificate, the holder shall deliver to the payor certificates marked "paid" representing the payments made of principal and interest. On presentation to the treasurer for cancellation of all certificates of principal and interest for the whole assessment made against a specific piece of property assessed, the treasurer shall on request execute and deliver a release of the lien of such assessment.

(m) Reassessment for void, irregular or omitted assessments. In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvement was made, or in case such assessment shall have been made against the wrong person or property, or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the common council within ten years after the completion of such improvement, or after any court shall have declared such assessment invalid, to cause notice to be given to any person against whom the cost of said improvement might properly be or have been assessed, of its intention to lay such assessment and fixing a time and place at which the owner may appear and show cause against the same. Said notice shall be served in the manner provided in this article in the giving of notices in assessment proceedings, or any other manner provided by law. At the time and place, under the notice aforesaid, or at any time thereafter, the common council shall proceed to lay and levy an assessment for the cost of such improvement as would have been lawful under proper proceedings at the time said improvement was completed, unless the owner so notified shall show good cause against the same. The reassessment so laid shall be a lien upon the property liable therefor in the manner hereinabove provided from the date of the completion of the improvement, with interest therefrom, and proper assessment certificates may

be issued, recordation had, and payment and the lien may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvement had the assessment therefor been then properly laid and levied.

(n) Liberal construction of section; validity and enforcement of assessments. This section shall be liberally construed to accomplish the purpose of providing reasonable, economical and expeditious means for the city to provide permanent improvements and assure to the contractors making such improvements, or persons directly or indirectly financing the same, security in the payment of the cost and expense of such improvement; and nothing in this section shall be construed as imposing a time limit on the certificate holder for the enforcement of his rights.

Moreover, the validity and enforcement of the assessments in this section provided shall not be impaired by the issuance and sale of bonds, as provided by chapter 13, article 1 (section 1053 et seq.) of the Code of West Virginia of 1931, as amended, for the same improvements, nor by the application, in whole or in part, of the proceeds of any such bond issue to the cost of any such improvements prior to collection of said assessments.

(o) Separability. If any provision or part of this section is declared unconstitutional or invalid, such declaration shall in no way affect any other part hereof.

Editor's note.--This section is derived from chapter 8, article 8 of the West Virginia Code of 1955, as amended in 1959.

Sec. 31. Collection of taxes, fines and assessments.

Unless otherwise provided, it shall be the duty of the treasurer of the city, or other individual who may be designated by general law, by this Charter or by the common council, to collect and promptly pay into the city treasury all taxes, fines, special assessments and other money due the city. All such taxes, fines, special assessments (except assessments for permanent or semi-permanent public improvements) and other money due the city are hereby declared to be debts owing to the city, for which the debtor shall be personally liable, and the treasurer, or other individual so designated, may enforce this liability by appropriate civil action in any court of competent jurisdiction, and is hereby vested with the same rights to distrain for the same as is vested in the sheriff for the collection of taxes. Such treasurer or other individual shall give bond, conditioned according to law, in such penalty and with such security as the common council may require.

Sec. 32. Remedies for failure to collect, account for or pay over money.

If the treasurer, or other individual designated, shall fail to collect, account for or pay over all or any of the money with which he may be chargeable,

belonging to the city, according to the conditions of his bond and the orders of the common council, it shall be lawful for the common council to recover the same, in the name of the city, by civil action in the circuit court of Wetzel County or, where the sum does not exceed three hundred dollars, by suit before a justice of the district in which the city or the major portion of the territory thereof is located, against the treasurer, or other designated individual, or his sureties, or any or either of them, or his or their executors or administrators.

Sec. 33. Assessment, levy and collection of taxes to be governed by state law.

The assessment, levy and collection of all city taxes shall be governed by the provisions of chapters 11 (section 11-1-1 et seq.) and 11A (section 11A-1-1 et seq.) of the Code of West Virginia.

Sec. 34. Licenses generally.

The common council shall prescribe by ordinance the manner and form in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon before delivery to the person applying therefor.

Sec. 35. Licenses to be issued pursuant to state law; terms and expiration of licenses generally.

All city licenses shall be issued pursuant to and shall be subject to all applicable provisions of the Code of West Virginia relating thereto. Licenses shall be issued for such terms and shall expire on such dates as may be determined by the common council pursuant to applicable state law.

Sec. 36. Eminent domain; fire companies; relief of taxpayers.

The common council shall have the right to institute proceedings in the name of the city for the condemnation of real estate for streets, alleys, drains, markets, market ground, city prison or other work or purposes of public utility; such provision shall conform to chapter forty-two of the Code of West Virginia. And said common council shall also have power to acquire by purchase, gift or condemnation one or more lots necessary for municipal buildings on which to place such buildings as they may deem necessary for the meeting of said common council and for the keeping of the offices of said common council, and for the keeping of the property of said city; and said common council shall also have the power to organize or authorize the organization of fire companies, hose companies or any other company or aggregation of persons for the purpose of protecting the property of the citizens of said city against de-

struction by fire, and authorize such companies to create and hold property necessary and ordinarily held and used by such fire companies. The common council shall not have power to release or relieve any taxpayer from payment of taxes levied on or assessed against him or them.

Sec. 37. Powers and duties of chief of police.

It shall be the duty of the chief of police to preserve order in the city, under the supervision of the common council.

The said chief of police shall have all powers, rights and privileges within the corporate limits of said city, and within one mile outside of the corporate limits thereof, in regard to the arrest of persons, the execution and return of process, that can be legally exercised by a constable of the district within the same, and he and his sureties shall be liable for all fines, penalties and forfeitures that a constable of a district is legally liable, for any failure or dereliction in his said office, to be recovered in the same manner and in the same courts that the same fines, penalties and forfeitures are now recoverable against such district constable.

Sec. 38. Powers of street commissioner.

The street commissioner, under direction of the common council, shall have charge of the opening, maintenance, construction and repair of the streets, alleys, ways, storm sewers and marinas of the city.

Sec. 39. Inconsistent acts repealed.

All acts or parts of acts inconsistent with this act are hereby repealed, but this act shall not be construed to repeal, change or modify any previous act, not inconsistent with this act, authorizing the City of New Martinsville to contract debts or to borrow money or to take away any of the power conferred by general law upon the said city, or upon the mayor or common council or any of the officers, except so far as the same may be inconsistent with the power hereby conferred.

Sec. 40. Transitional provisions.

The common council in being at the time this act shall take effect shall pass all proper orders, and ordinances, to give to this act full force and effect; and all officers of the city acting as such as the time this act takes effect, shall continue in office until the end of their respective terms, and until their successors are elected and qualified; to exercise the powers and perform the duties and receive the compensation heretofore conferred, prescribed and allowed by a former charter, general law, bylaw or ordinance of said city. Such ordinances in force at the time referred to shall continue to have full operation and effect as ordinances of the City of New Martinsville, until amended, repealed or superseded by the common council of said city.

and general laws of the state, as well as by this Code and other ordinances, resolutions and orders of the common council; and he shall, in general, perform for the common council such duties as are normally performed by recording and corresponding secretaries.

For charter provisions as to powers and duties of recorder generally, see Char., § 22.
For state law as to records required to be kept by municipal governing bodies; and requirement for reading, correcting and authenticating minutes of meetings, see W. Va. Code, § 8-9-3. As to duty of municipal recorders to keep the records of governing bodies, see W. Va. Code, § 8-10-3.

Sec. 2-10. Meetings generally.

(a) Regular meetings. There shall be a regular meeting of the common council on the first Monday of each month, at 7:30 P.M.; provided, that when the first Monday of any month falls upon a holiday, the common council may, by resolution or by motion duly put, carried and entered in the minutes, designate another day for such meeting.

(b) Special or adjourned meetings. There may be a special or adjourned meeting of the common council held at any time fixed by the common council.

(c) Special called meetings. There may be special called meetings of the common council at any time fixed by the mayor or by any two members of the common council; but there shall be a notice, in writing, of any such called meeting, served upon every member of the common council by the chief of police, at least two hours before the time at which such meeting is called; and in such notice it shall be clearly stated for what purpose the meeting is called; and at such meeting no other matter shall be considered, except by the unanimous consent of all the members present.

(d) Notice of special called meetings. It shall be a part of the public duty of the chief of police to serve the notice required by subsection (c) of

this section; but no notice shall be required to be given to any member of the common council of the time of holding any regular meeting or any meeting called by the common council or any adjourned meeting.

(e) Place of meetings. All meetings of the common council shall be held in the council chamber at city hall; provided, that the common council may designate another place, open to the public and within the city when, in the opinion of a majority of the members, the council chambers would not be adequate to accommodate the number of persons expected to be present for a meeting, or when, for other good reason, the council chamber is not deemed suitable.

(f) Open to public; exceptions. All meetings of the common council shall be open to orderly members of the public; provided, that the common council may, during any meeting, resolve itself into a committee of the whole and, thereupon, go into executive session, as provided by section 6-9A-4 of the Code of West Virginia; at which time, the committee may exclude from attendance all nonmembers of the committee whose presence is not necessary for the consideration of such subjects as have been referred to the committee; provided, further, that no final decision shall be made or vote or action taken upon any matter until the meeting has been reopened to the public and the committee of the whole has resumed its identity as the common council.

(g) City sunshine law regulations. Pursuant to section 6-9A-3 of the Code of West Virginia, the city council hereby adopts the following rules to make available, in advance, the time and place of all regularly scheduled meetings of the council and the time, place and purpose of all special meetings of the council to the public and news media:

(1) A notice shall be posted by the recorder at the front door of the city hall stating the time and place fixed and entered of record by the council for the holding of regularly scheduled meetings. If a particular regularly scheduled meeting is cancelled, a notice of such cancellation shall be posted at the front door of the city hall.

(2) A notice shall be posted by the recorder at the front door of the city hall at least two days before a special meeting is to be held, stating the time, place and purpose for which such special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the front door of the city hall. (11-3-86.)

For state law as to who presides at meetings of municipal governing bodies and what constitutes a quorum, see W. Va. Code, § 8-9-1. As to requirements for open meetings of governing bodies, with exceptions, see W. Va. Code, ch. 6, art. 9A.

Sec. 2-11. Rules.

(a) The common council may, by resolution, adopt such rules as may be deemed desirable for the conduct of its meetings, the transaction of its business and the official conduct of its members and may include therein reasonable penalties for the violation thereof; but no such rule shall be inconsistent with state law, the Charter or this Code. Such rules may include, among other subjects, the following:

(1) The appointment, jurisdiction and duties of standing and special committees of the common council.

(2) Attendance at meetings of the common council by members and by others.

(3) Investigations and hearings, the compulsory attendance thereat of witnesses and the production of books and papers thereat as evidence.

For state law as to authority of common council to investigate and inquire into all matters of concern to the city and its inhabitants, see W. Va. Code, § 8-12-5(48). As to power of common council to compel attendance of witnesses and production of books and papers, see W. Va. Code, § 8-12-2(c).

(4) Parliamentary procedure.

(5) The preservation of order at meetings.

(6) The manner and form of petitions, applications and other papers intended for presentation to the common council, and procedures relating thereto.

For state law as to authority of common council to make all needful bylaws and rules to carry into effect the authority granted to it by law, see W. Va. Code, §§ 8-11-1, 8-12-5(45), (55).

(b) Until such time as the common council shall adopt rules pursuant to the provisions of subsection (a) of this section, the rules of the common council in force immediately preceding the effective date of this Code and which are not codified herein or in conflict herewith shall continue in full force and effect.

Sec. 2-12. Chief of police to attend meetings and preserve order; arrest of persons for disobedience.

It shall be the duty of the chief of police, or of some one of his assistants to be designated by him, to attend all meetings of the common council and to preserve order both in the council chamber and in the vicinity thereof, and to enforce all orders of the presiding officer by arresting, without warrant, anyone who refuses to obey any order given by the presiding officer; and the person so arrested shall be held in custody until such time as he can be taken before a court having jurisdiction over the premises, to then be dealt with according to law.

As to police generally, see ch. 20 of this Code.

Sec. 2-13. Addressing common council.

(a) Privilege of citizens and taxpayers to be heard; limitation on time to speak. Any citizen or taxpayer of the city may be heard either in per-

OATH OF OFFICE

I, Richard P. Snyder,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed Richard P. Snyder

Date June 7, 1993

Elected to Office of: Mayor

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 6/12, 1993,
at 10:08 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: Mary Rogers Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, Faye R. Smith,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed Faye R. Smith

Date July 3, 1995

Elected to Office of: Recorder

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 8/10, 1995,
at 12:31 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, Chuck Grandstaff,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed Chuck Grandstaff

Date June 7, 1993

Elected to Office of: First Ward Council

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 6/12, 19 93,
at 10:09 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: Mary Rogalski Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, Larry J. Edgell,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed Larry J. Edgell

Date July 5, 1995

Elected to Office of: Second Ward Councilman

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY:
The foregoing paper writing was this day 8/10 19 95,
at 12:29 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: [illegible] Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, Steven A. Bohrer,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed Steven A. Bohrer

Date July 3, 1995

Elected to Office of: Third Ward Councilman

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 8/10, 1995,
at 10:28 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: [illegible] Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, Gene Berger,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed G. E. Berger

Date July 3, 1995

Elected to Office of: Fourth Ward Councilman

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 8/10, 1995,
at 12:27 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: Mary Aggerbeck Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, Bonnie S. Shannon,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed Bonnie S. Shannon

Date June 7, 1993

Elected to Office of: Fifth Ward Council

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 6/12, 19 93,
at 10:06 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: Mary Ryan Clerk,
County Commission of Wetzel County

OATH OF OFFICE

I, James E. Herrick, Jr.,

do solemnly swear to uphold the Constitution of the United States of America, the Constitution of the State of West Virginia, the Charter and Ordinances of the City of New Martinsville and to faithfully perform the duties of my office to the best of my skill and judgment, so help me God.

Signed James E. Herrick Jr.

Date June 7, 1993

Elected to Office of: Sixth Ward Council

STATE OF WEST VIRGINIA, COUNTY OF WETZEL, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION
OF WETZEL COUNTY.
The foregoing paper writing was this day 6/12, 19 93,
at 10:10 presented for record in my office,
and thereupon, together with the certificate thereto annexed,
is admitted to record.
Teste: Mary Riggenbach Clerk,
County Commission of Wetzel County

CITY OF NEW MARTINSVILLE

AN ORDINANCE ESTABLISHING AND FIXING RATES, CONNECTION CHARGES AND DELAYED PAYMENT PENALTY CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE FACILITIES OF THE CITY OF NEW MARTINSVILLE

THE CITY COUNCIL OF THE CITY OF NEW MARTINSVILLE HEREBY ORDAINS: The following schedule of rates, connection charges and delayed payment penalty charges are hereby fixed and determined as the rates, connection charges and delayed payment penalty charges to be charged to customers of the sewerage facilities of the City of New Martinsville throughout the territory served.

SECTION 1. SCHEDULE OF RATES

APPLICABILITY

Applicable to entire territory served.

AVAILABILITY OF SERVICE

Available for General Domestic, Commercial, Industrial and Public Authority Service.

METERED RATE (PER 1,000 GALLONS		RATES PER MONTH
First	3,000 gallons used per month	$ 3.68
Next	7,000 gallons used per month	$ 3.14
Next	10,000 gallons used per month	$ 2.87
All Over	20,000 gallons used per month	$ 2.34
MINIMUM CHARGE		$28.18

MULTIPLE SERVICE RATES:

When more than one unit of service is served through a single meter, the monthly combined bill will not be less than the minimum charge for the size meter installed times the number of separate units of space occupied during the month.

FLAT RATE:

Each Service Connection	$28.18
Each additional unit of space served through a single service connection	$28.18

DELAYED PAYMENT PENALTY CHARGE

A 10% penalty shall be added to all charges not paid within 20 days from the date of the billing. This delayed payment is not interest and is only to be collected once for each bill where it is appropriate.

If any bill is not paid within 60 days from the date of the billing, service to the customer will be discontinued and will not be restored until all past due bills have been paid in full, together with all penalty charges.

SEWER TAP FEE (NEW SERVICE ONLY):

Each	$250.00

RECONNECT FEES:

Whenever sewer service which has been previously disconnected or otherwise withheld for non-payment of sewer bills is reconnected, a fee of $10.00 shall be charged.

RETURNED CHECK CHARGE:

Returned check charge shall be that charge collected by the bank, not to exceed Fifteen Dollars ($15.00)

SECTION 2. EFFECTIVE DATE

The rates, connection charges and delayed payment penalty charges provided herein shall be effective on January 1, 1998.

SECTION 3. SEPARABILITY; REPEAL OF CONFLICTING ORDINANCES, ETC.

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not

touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION 4. STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder shall publish a notice of the proposed adoption of the proposed Ordinance once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in the Wetzel Chronicle, a qualified newspaper of general circulation in the City of New Martinsville, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council at the City Building, New Martinsville, West Virginia, on the 29th day of July, 1996, at 6:00 p.m. The notice shall set forth the information required by Chapter 8, Article 11, Section 4 of the West Virginia Code, 1931, as amended. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

The above Ordinance has been introduced at a meeting of Council held July 1, 1996. Any person interested may appear before Council at the City Building on July 29, 1996, at 6:00 p.m., and present protests.

Passed on First Reading: July 1, 1996

Passed on Second Reading
Following Public Hearing: July 29, 1996

Richard P. Snyder
Mayor

CHASFS3:43209

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF NEW MARTINSVILLE on the 29th day of July, 1996.

Dated: July 29, 1996.

[SEAL]

Faye R. Smith
Recorder

CHASFS3:43209

CITY OF NEW MARTINSVILLE

NOTICE OF SPECIAL COUNCIL MEETING

TUESDAY, FEBRUARY 11, 1997, 6:30 P.M.

MUNICIPAL BUILDING, SMALL CONFERENCE ROOM

AGENDA

[1] FIRST READING - WATER AND SEWER BOND AND NOTE ORDINANCE

[2] BICYCLE PATH

[3] POLICE EQUIPMENT ON PRESENT TOWER

Posted this 7th day of February, 1997

Faye R. Smith

Faye R. Smith

RECEIVED FEB 20 1997

City of New Martinsville

SPECIAL COUNCIL MEETING, TUESDAY, FEBRUARY 11, 1997, 6:30 P.M.

MUNICIPAL BUILDING, EXECUTIVE CONFERENCE ROOM

CITY OFFICIALS PRESENT:

Richard P. Snyder, Mayor
Faye R. Smith, Recorder
Larry J. Edgell, Second Ward Councilman
Steven A. Bohrer, Third Ward Councilman
C. E. "Gene" Berger, Fourth Ward Councilman
Bonnie S. Shannon, Fifth Ward Councilwoman
James E. Herrick, Jr., Sixth Ward Councilman

MEETING CALLED TO ORDER BY MAYOR SNYDER (QUORUM PRESENT).

FIRST READING - WATER & SEWER BOND AND NOTE ORDINANCE:

ON MOTION OF COUNCILMAN EDGELL, SECOND BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED THAT AN ORDINANCE ENTITLED "AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER TREATMENT FACILITY PORTION OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF NEW MARTINSVILLE; AUTHORIZING THE ISSUANCE OF THREE SEPARATE SERIES OF WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS OF THE CITY OF NEW MARTINSVILLE IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $8,000,000 TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NEW MARTINSVILLE WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO EFFECT THE REFUNDING AND TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING A REVOLVING LINE OF CREDIT IN AN AMOUNT NOT TO EXCEED $1,000,000 TO PROVIDE FUNDS FOR SUCH ACQUISITION AND CONSTRUCTION TO THE EXTENT BOND PROCEEDS, GRANT RECEIPTS OR OTHER FUNDS ARE NOT TIMELY AVAILABLE THEREFORE, AND AN AGREEMENT WITH RESPECT TO SAID LINE OF CREDIT; AUTHORIZING ISSUANCE OF A COMBINED WATERWORKS AND SEWERAGE SYSTEM CONSTRUCTION NOTE OF THE CITY OF NEW MARTINSVILLE IN THE STATED PRINCIPAL AMOUNT NOT TO EXCEED $1,000,000 TO EVIDENCE THE CITY'S OBLIGATION TO REPAY ANY DRAWS UPON SAID LINE OF CREDIT; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTE; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATED THERETO." BE ACCEPTED AS FIRST READING. (COPIES OF ENTIRE ORDINANCE DISTRIBUTED TO ALL CITY OFFICIALS FOR REVIEW PRIOR TO THIS MEETING.) SECOND AND ADOPTIVE READING - TUESDAY, FEBRUARY 18, 1997 - 7:00 P.M., MUNICIPAL BUILDING, EXECUTIVE CONFERENCE ROOM. PUBLICATION OF NOTICE OF PUBLIC HEARING FOR 2 WEEKS. PUBLIC HEARING MARCH 3, 1997 - 7:15 P.M. THIRD READING AND FINAL ADOPTION AT THE REGULAR COUNCIL MEETING, MARCH 3, 1997, 7:30 P.M., MUNICIPAL BUILDING, COUNCIL CHAMBER.

BICYCLE PATH:

Mayor Snyder - This has to do with the City's funding and financing this. Dave, do you want to give a brief explanation on this?

Building Inspector/Grants Coordinator Dave White - Basically what we need to do is, we have two financial options that the State wants us to choose from. First of all we have an option that the City can submit $22,000 to the State Department of Transportation. Once we do that, all invoices will be paid by D.O.T., 80% will be paid by them and 20% will come from our $22,000. The second option is the City pays 100% of all invoices and then file for reimbursement through the D.O.T., and they will reimburse us 80% until our $22,000 match has been achieved, and then they will pay 100% from that point on, up to the $110,000 total. Basically it's just an option of how we want to go about it. I personally feel that if we send them $22,000 that is only interest earned that we're losing.

Recorder Smith - But then we don't have to mess with it.

Dave White - Right, because you're going to have a headache documenting all expenditures.

Recorder Smith - It would be easier to let them handle it and send them the $22,000.

Mayor Snyder - This total project has been estimated at $110,000. What if it only goes to $90,000 or $100,000? Why should we pay our $22,000 first?

BICYCLE PATH (CONTINUED):

Dave White - If it should fall short we're still only going to be required to pay 20% of what the total expenses are. It's going to be hard to distinguish between those amounts no matter which option we choose because if we send them the money they're going to pay 100% of all invoices, but if we pay the invoices and then file for reimbursement they're only going to pay 80% of that until we reach our match, and then they'll take over.

Mayor Snyder - I understand, but if it does fall short and we send our money to them, that would be more than our 20%.

Dave White - I'm sure it would be reimbursed.

Mayor Snyder - I don't think it's going to take $110,000.

Recorder Smith - Regardless, if we take the option to pay the bills here, you're going to have to put a lot more than $22,000 aside, because we'd have to pay all the bills, request reimbursement, which could take several weeks to get our money back. If we get a bill for $50,000 and we only have $22,000 allocated, we'd still have to pay the $50,000 up front and wait for reimbursement.

Dave White - That was exactly my point. You're looking at two to four weeks reimbursement time.

Mayor Snyder - Let me play the devil's advocate here .. say the total project went to just $100,000, we'd only need to give them $20,000. So we're automatically setting aside $22,000.

Recorder Smith - That's the agreement.

Councilwoman Shannon - That's the way the agreement is.

Dave White - Then we'd file for a refund.

Mayor Snyder - I don't think we'll get a refund. That's my personal opinion. They'd only spend $78,000 against their $88,000.

Recorder Smith - Do you have some place that you can draw that $88,000 from to pay the expenses up front?

Mayor Snyder - One way or the other you're going to eventually get that.

Recorder Smith - I understand that, but we have to have a line item in our budget for this. I can't pay from a $22,000 line item, a $50,000 bill.

Dave White - I was talking to Larry about this earlier. If we choose Option #2 we're not going to be losing our money just the interest earned on that amount, but the City may have to set aside a lot larger sum of money to cover incoming invoices. You're going to have the option of losing the interest on $22,000 and let them handle the hassle of taking care of the invoices, or we're going to handle the paperwork of paying the invoices and dedicate that larger amount of money for that time frame until we're reimbursed. I honestly feel that if the project would fall short, and I don't believe that it will, that they would have to reimburse our share.

Recorder Smith - Is there any problem with the rights-of-way for this project?

Mayor Snyder - You can still take it by right of eminent domain because it's a public project.

Councilman Edgell - We technically have the right-of-way now because we could go right on top of the sewer right-of-way.

Dave White - The thing is though, Larry, that right-of-way is dedicated for the sewer, and it's going to have to be completely rewritten with everybody who is going to be involved in that property. It's going to have to be completely rewritten to include the right-of-way for use of the bicycle path.

Mayor Snyder - That could be an addendum to the existing right-of-way agreement.

Dave White - Right.

Mayor Snyder - We only have two pieces of property that we're concerned with right now.

Councilman Edgell - I've already talked to Darris Cunningham.

Mayor Snyder - Did you all get a copy of the letter Klug wrote to the Sand & Gravel guy?

BICYCLE PATH (CONTINUED):

Councilman Edgell - No.

Dave White - He basically wrote a letter asking to meet with him to talk about it.

Mayor Snyder - He owns from the north end of Hydro Drive up to where Darris Cunningham owns, and then Darris Cunningham owns up to the airport. So we're only talking about two pieces of property. A lot of the costs of this project was when we intended to go out on Route 2 where you had to put up a big barrier, pavement, and all that, and those costs would be excluded. You're right though, it might go to $110,000, it just depends on how many streets are involved.

Dave White - But the thing is, by changing it the way that we have, we're going to have a lot of extra costs on pavement or whatever form that we choose. It doesn't have to be pavement but, it could be crushed stone or whatever form we choose to go with, but you're going to have to include preparing the ground, laying a base, etc.

Mayor Snyder - That has to be compacted, that force main line, I do know that.

Dave White - That's one of the benefits of going on top of that, and maybe if we put in a little extra money in while they're doing that project, we might be able to save a little of this money, and say .. while you're compacting that go ahead and put some crushed stone down and compact it as well.

Mayor Snyder - That's the only area that I'm concerned with really right now, of course there are some streets .. coming down Benjamin Drive there, I don't know how much of the street right-of-way we can use there.

Dave White - The west side of Benjamin Drive is a concern.

Recorder Smith - The traffic is thick in there. Bonnie and I live in that neighborhood.

Mayor Snyder - I agree with you that the second option is the way we should go. I was just playing a little devil's advocate here.

Councilman Bohrer - That doesn't make us use our money.

Councilman Edgell - Right now the State is asking us to set aside some money to move this project along.

Dave White - Right now they just want us to choose which option we want to take, then they're going to write up an agreement and they're going to send it for our approval with the Mayor's signature, to say that the City is committed to carry this project through. They need to know, for financial matters, which way we choose to go, so that it can be written into the agreement.

Mayor Snyder - They probably will want to see a copy of the minutes showing that we approved our share of the money.

Dave White - They didn't tell me that was a requirement. Basically they want to see that we're committed to the project, and they want to know which option we choose to handle the financial part of it.

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED CITY COUNCIL OFFICIALLY ENDORSES THE PROJECT, SELECTS THE OPTION WHEREBY WE SUBMIT TO THE DEPARTMENT OF TRANSPORTATION OUR SHARE OF $22,000 FOR THE BICYCLE PATH PROJECT, AND LET THEM HANDLE ALL EXPENDITURES ON THE PROJECT, AND RECORDER TO TRANSFER THE MONEY INTO A LINE ITEM FOR THIS PURPOSE FROM HANNIBAL HYDRO ROYALTY FUND CAPITAL RESERVE. MAYOR SNYDER TO EXECUTE ALL NECESSARY DOCUMENTS IN REGARD THERETO.

Councilman Edgell - I think we should plan to take this $22,000 from the next 2 royalty checks to reimburse our capital reserve line item.

Dave White - I just want to bring this up, so that people know about it, if we use in-kind service and our employees do some of the work on this and write it off as part of our share, their salary is going to be reimbursable from the State, but that also would take two to four weeks to get paid, and so the City would have to go ahead and pay their salaries and document it somehow so we could request reimbursement.

POLICE EQUIPMENT ON PRESENT RADIO TOWER:

Mayor Snyder - There has been a little controversy on this item. I'll ask Councilman Herrick to report on this.

POLICE EQUIPMENT ON PRESENT RADIO TOWER (CONTINUED):

Executive Session:

Councilman Herrick - Since this deals with a contract, or a possible contract, I MAKE A MOTION THAT WE GO INTO EXECUTIVE SESSION FOR A SHORT TIME.

Councilwoman Shannon - SECOND.

VOTE ON MOTION: "AYE" - UNANIMOUS. MOTION CARRIES. COUNCIL WENT INTO EXECUTIVE SESSION AT 6:50 P.M.

BACK IN SESSION - 7:05 P.M.

Councilman Herrick - Ron Schupbach has stated that he is willing for us to stay there until he has a chance to make us a proposal for future use of the tower at a cost per month per foot plus electrical costs, and pending that proposal to us, I MAKE A MOTION THAT WE DO NOT HAVE STALEY MOVE OUR EQUIPMENT AS HAS BEEN SCHEDULED AND PREVIOUSLY APPROVED BY COUNCIL, UNTIL WE DECIDE WHETHER OR NOT TO ACCEPT HIS PROPOSAL OR ANOTHER COMPANY'S PROPOSAL.

Councilman Edgell - SECOND.

Mayor Snyder - Motion has been moved and seconded. Any discussion? One comment that I'd like to make, I'd like to see the committee explore the idea that we are partial owners of that tower. Are we renting the tower or are we renting the ground that the tower stands on? If we are partial owners of the tower then that cost should come down considerably. Does he realize that the tower may not be his?

Councilman Herrick - Carl brought this point up to me today. I didn't talk about this last night because I wasn't aware of it at that point. I think he will talk about that when we meet again.

Mayor Snyder - Any further discussion?

VOTE ON MOTION: "AYE" - UNANIMOUS. MOTION CARRIES.

ADJOURN:

No further business, Mayor Snyder declared this meeting adjourned at 7:08 P.M.

RICHARD P. SNYDER, MAYOR

FAYE R. SMITH, RECORDER

CITY OF NEW MARTINSVILLE

BOND AND NOTE ORDINANCE

CITY OF NEW MARTINSVILLE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A, SERIES 1997 B AND SERIES 1997 C

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Exhibit C - Notice of Public Hearing and Abstract of Bond Ordinance

Introduced in Council
on the 11th day of February, 1997

Introduced by
Honorable Richard P. Snyder, Mayor

Passed by Council
on the 18th day of February, 1997

An Ordinance authorizing the refunding of the Waterworks and Sewerage System Revenue Bonds, Series 1995 and authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater treatment facility portion of the combined waterworks and sewerage system of the City of New Martinsville; authorizing the issuance of three separate series of Waterworks and Sewerage System Revenue Bonds of the City of New Martinsville in aggregate principal amount not to exceed $8,000,000 to be used, along with other funds and moneys of, or available to, the City of New Martinsville which may be lawfully expended for such purposes, to effect the refunding and to finance the cost of such acquisition and construction, to fund reserve accounts for such bonds, and to pay other costs in connection therewith; authorizing a revolving line of credit in an amount not to exceed $1,000,000 to provide funds for such acquisition and construction to the extent bond proceeds, grant receipts or other funds are not timely available therefore, and an agreement with respect to said Line of Credit; authorizing issuance of a combined waterworks and sewerage system construction note of the City of New Martinsville in the stated principal amount not to exceed $1,000,000 to evidence the City's obligation to repay any draws upon said Line of Credit; providing for the rights and remedies of and security for the owners of such bonds and note; authorizing execution and delivery of all documents relating to the issuance of such bonds; approving, ratifying and confirming a loan agreement or loan agreements relating to such bonds; and adopting other provisions related thereto.

Be It Ordained by the Common Council of the City of New Martinsville, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise.

A. "Act" shall mean collectively Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

B. "Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds on behalf of the Program and the Infrastructure Council, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

C. "Bank" shall mean the bank set forth in a resolution supplemental hereto.

D. "Board" shall mean the Water and Sanitary Sewer Board of the City, as created and appointed by ordinance enacted by the Council of the City pursuant to the provisions of Section 18 of the Act, and any successor thereto.

E. "Bond Act" means Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

F. "Bond Construction Trust Fund" shall mean the fund created by Section 6.01 hereof.

G. "Bondholder" or "Owner of the Bonds" or "Registered Owners" or any similar term shall mean any person who shall be the registered owner of any Outstanding Bond as hereinafter defined.

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

I. "Bond Year" shall mean 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.

J. "Bonds" shall mean the Original Bonds and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

K. "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.

L. "City" shall mean the City of New Martinsville, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any

department, board, organization or institution thereof in control of the management and operation of the System, as hereinafter defined.

M. "Closing Date" shall mean the date upon which there is an exchange of the Bonds for the proceeds or a portion of the proceeds representing the purchase of the Bonds by the Authority.

N. "Code" shall mean the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

O. "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.

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

Q. "Consulting Engineers" shall mean Burgess & Niple, Ltd., Consulting Engineers, Parkersburg, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the City as Consulting Engineers for the System.

R. "Cost of Project" or "Costs" shall mean those costs described in Section 1.04(G) hereof to be a part of the cost of the acquisition and construction phase of the Project, as the case may be, as hereinafter defined.

S. "Council" shall mean the Common Council of the City.

T. "Debt Service" shall mean the scheduled amount of interest and amortization of principal payable on the Bonds 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.

U. "DEP" shall mean the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds the function of the DEP.

V. "Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, as hereinafter defined, and its successors and assigns.

W. "Excess Investment Earnings" shall mean 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.

X. "Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

Y. "Fund" shall mean the "West Virginia Water Pollution Control Revolving Fund" established by the State, administered by the DEP and funded by capitalization grants awarded to the State pursuant to the federal Clean Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the construction, acquisition and improvement of wastewater treatment facilities.

Z. "Grant" shall mean any grant or grants received by the City in aid of the cost of the design, acquisition and construction of the Project.

AA. "Grant Agreement" shall mean a written commitment for the payment of any Grant, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is repaid to the City.

BB. "Grant Receipts" shall mean all monies received by the City on account of any Grant.

CC. "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.

DD. "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 Original 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 Original 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 Original 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 Original Bonds ratably as original proceeds of the Original 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 Original 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 Original Bonds 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 Original Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Original Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

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.

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

FF. "Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the City as independent accountants for the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

GG. "Infrastructure Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

HH. "Infrastructure Council Act" means Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

II. "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 or investment-type property or residential rental property for family units which is not located within the jurisdiction of the city 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.

JJ. "Line of Credit" shall mean the revolving line of credit established for the City by the Bank in an amount not to exceed $1,000,000.

KK. "Line of Credit Agreement" shall mean the agreement to be approved as to form and substance by the Supplemental Resolution establishing the Line of Credit with the Bank.

LL. "Line of Credit Bonds" shall mean the not more than $1,000,000 in aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, authorized by Section 4.10 to be issued, if necessary, to pay the principal of and interest on the Note.

MM. "Loan Agreement" or "Loan Agreements" shall mean (a) the Water Pollution Control Revolving Fund Loan Agreement by and among the Authority, the DEP and the City providing for the purchase of the Series A Bonds from the City by the

Authority, and/or, as the case may be, (b) the Loan Agreement or Loan Agreements to be entered into between the Authority and the City, pursuant to which the Authority shall agree, subject to the City's satisfying certain legal, engineering and other requirements, to purchase the Series B Bonds and Series C Bonds, the forms of which are attached hereto as Exhibit B.

NN. "Mayor" shall mean the Mayor of the City.

OO. "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 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.

PP. "Net Revenues" shall mean the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereafter defined.

QQ. "Nonpurpose Investment" shall mean 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.

RR. "Note" or "Credit Line Note" shall mean the not more than $1,000,000 in aggregate principal amount of a Bond Anticipation Note or Notes evidencing the City's obligation to repay any draw upon the Line of Credit originally authorized hereby, and unless the context clearly indicates otherwise, the term "Notes" means any refunding Notes of the City.

SS. "Note Registrar" shall mean the entity named as such in a resolution supplemental hereto.

TT. "Noteholder," "Holder of the Notes" or any similar term shall mean the person who shall be the registered owner of any Outstanding Note or Notes, as hereinafter defined.

UU. "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, DEP, the Infrastructure Council, fiscal agents, the Registrar and Paying Agent (both as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the 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.

VV. "Ordinance" or "this Ordinance" shall mean this Ordinance, in its present form or as hereafter amended or supplemented.

WW. "Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the not more than $8,000,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 A, Series 1997 B and Series 1997 C to be issued for the purpose of refunding the Prior Bonds and paying a portion of the Costs of the acquisition and construction of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

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

YY. "Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof, payable from Net Revenues on a parity with the Original Bonds.

ZZ. "Paying Agent" shall mean the West Virginia Municipal Bond Commission or such other entity or authority as may be designated as a paying agent by the City and the Supplemental Resolution with the written consent of the Authority and the DEP.

AAA. "Prior Bonds" means the Waterworks and Sewerage System Revenue Bonds, Series 1995, issued in the aggregate principal amount of $615,100 on October 26, 1995.

BBB. "Prior Ordinance" means the Ordinance of the City authorizing the Prior Bonds enacted on October 2, 1995.

CCC. "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.

DDD. "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.

EEE. "Project" shall mean the acquisition and construction of extensions, additions, betterments and improvements to sewerage portion of the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference.

FFF. "Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC"), 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 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;

(h) 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

(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 Investor Service, Inc. or Standard and Poor's, Corporation.

GGG. "Recorder" shall mean the Recorder of the City.

HHH. "Registrar" shall mean the entity or entities named as such in the Supplemental Resolution.

III. "Regulations" shall mean the regulations promulgated under the Code.

JJJ. "Renewal and Replacement Fund" shall mean the fund created by Section 5.01(2) hereof.

KKK. "Reserve Requirement" shall mean as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on each series of the Bonds in the then current or any succeeding Fiscal Year.

LLL. "Revenue Fund" shall mean the fund created by Section 5.01(1) hereof.

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

NNN. "SRF Act" shall mean Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

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

PPP. "Series A Bonds" shall mean the not more than $385,000 in aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, Series 1997 A to be purchased by the Authority on behalf of the Fund.

QQQ. "Series B Bonds" shall mean the not more than $6,720,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 B to be purchased by the Authority on behalf of the Infrastructure Council.

RRR. "Series C Bonds" shall mean the not more than $420,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 C to be purchased by the Authority on behalf of the Infrastructure Council.

SSS. "Series A Reserve Account" shall mean the account in the Series A Sinking Fund, as hereinafter defined, created by Section 5.02(1)(a) hereof.

TTT. "Series B Reserve Account" shall mean the account in the Series B Sinking Fund, as hereinafter defined, created by Section 5.02(1)(a) hereof.

UUU. "Series C Reserve Account" shall mean the account in the Series C Sinking Fund, as hereinafter defined, created by Section 5.02(1)(a) hereof.

VVV. "Series A Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

WWW. "Series B Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

XXX. "Series C Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

YYY. "State" shall mean the State of West Virginia.

ZZZ. "Supplemental Resolution" shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article "the", refers specifically to the supplemental resolutions authorizing the sale of the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Original Bonds and not so included may be included in another Supplemental Resolution.

AAAA. "Surplus Revenues" shall mean the net revenues not required by this Ordinance to be set aside and held for the payment of or security for the Bonds, including the reserve accounts and the Renewal and Replacement Fund.

BBBB. "System" shall mean the complete existing combined waterworks and sewerage system now owned by the City, consisting of a waterworks system in its entirety or any integral part thereof, and a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the wastewater treatment facility, hereafter acquired or constructed for said waterworks and sewerage system from any sources whatsoever, both within and without said City.

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

DDDD. "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.

EEEE. 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.

FFFF. Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

GGGG. The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of the enactment of this Ordinance.

HHHH. 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 Original Bonds and any other bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Bondholders, and the covenants and agreements herein set forth to be performed by said City shall be for the equal benefit, protection and security of the legal owners of any and all of such 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 City of New Martinsville, West Virginia, a municipal corporation and political subdivision of the State in Wetzel County of said State, now owns a combined waterworks and sewerage system consisting of a waterworks system in its entirety or any integral part thereof, including some or all of mains, hydrants, meters, values, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system,

and 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").

B. In accordance with Section 18 of the Act, the System is under the supervision and control of the Water and Sanitary Sewer Board of the City (the "Board").

C. The design of the Project was financed, in part, with the proceeds of the Prior Bonds and the Prior Bonds have a lien on the Gross Revenues of the System. The City derives Gross Revenues from the System, and, other than the Prior Bonds, said Gross Revenues are not pledged or encumbered in any manner.

D. The acquisition and construction of the Project will bring the City into compliance with various environmental laws.

E. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that there be acquired and constructed the Project, at an estimated cost of $8,800,000, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by DEP and are on file with the City, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of forty (40) years.

F. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of said System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on each series of Waterworks and Sewerage System Revenue Bonds of the City and all sinking fund and other payments provided for in this Ordinance.

G. It is deemed necessary for the City to issue its Original Bonds in the aggregate principal amount of not more than $8,000,000 to finance the costs of the acquisition and construction of the Project herein described through the Program and the Infrastructure Council. 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; engineering, fiscal 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, DEP and the Infrastructure Council, 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, the Note or the Line of Credit, 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 City 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 City for such purposes shall be deemed part of the Cost of the Project.

H. The Infrastructure Council has approved the Project and has authorized the Authority to purchase bonds of the City, to provide moneys which, along with the grant from the Infrastructure Council and the bonds issued to the SRF Program, will finance the Project. It is in the best interests of the City that its Series A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement by and among the Authority, the DEP and the City and it is in the best interest of the City that its Series B Bonds and Series C Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreements by and between the Authority and the City. The current refunding of the Prior Bonds with a portion of the proceeds of the Series B Bonds is in the best interest of the City and provides a debt service savings.

I. It is necessary and in the best interests of the City to establish the Line of Credit in an aggregate principal amount not to exceed $1,000,000, to provide funds for acquisition and construction of the Project to the extent Original Bond proceeds, Grant Receipts or other funds are not timely available therefor, to enter into the Line of Credit Agreement with the Bank, to issue the Note to evidence the City's obligation to repay any draw upon the Line of Credit, and, if necessary, to issue the Line of Credit Bonds or take such other actions as are hereinafter set forth to provide for the payment of the principal and interest of the Note on or prior to maturity thereof.

J. The City has received the approval of the Infrastructure Council. The City has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Original Bonds, or will have so complied prior to the 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 or will have been waived prior to the issuance of the Original Bonds.

K. The Code provides exceptions from the rebate provisions for issues of small governmental units meeting certain requirements. It is in the best interest of the City and its inhabitants to qualify for the small governmental unit exception from the rebate provisions for the Original Bonds. Accordingly, it is hereby found and determined:

(1) The City is a governmental unit with general taxing powers.

(2) The Original Bonds and the Note are not private activity bonds as defined by the Code.

(3) Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds and the Note will be used for local governmental activities of the City.

(4) The City reasonably expects that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the City and all subordinate entities thereof during the calendar year in which the Original Bonds will be issued will not exceed $5,000,000.

L. The City will not permit, at any time, 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 or the Note from the treatment afforded by Section 103(a) of the Code.

M. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds and the Note.

N. Neither the Bonds nor the Note will be federally guaranteed within the meaning of the Code.

O. It is reasonably anticipated that all proceeds of the Original Bonds will be spent within three years from the date of issuance.

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM AND REFUNDING OF PRIOR BONDS

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications prepared by the Consulting Engineers, approved by DEP, the Infrastructure Council and the City, and on file in the office of the Board.

Prior to issuing the Original Bonds for the acquisition and construction of the Project, the City must receive acceptable bids or enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program and the Infrastructure Council.

Section 2.02. Authorization of Refunding of Prior Bonds. The Prior Bonds outstanding as of the date of issuance of the Original Bonds are hereby ordered to be refunded pursuant to the terms of the Prior Ordinance and the lien of said Prior Bonds imposed by the Prior Ordinance on the revenues of the System is hereby ordered terminated, discharged and released upon payment to the Commission of funds sufficient to provide for the payment of the principal and interest to the date of refunding. Upon the refunding of the Prior Bonds, the amounts on deposit in the Renewal and Replacement Fund created and maintained under the Prior Ordinance with respect to the Prior Bonds shall be transferred to the Renewal and Replacement Fund created under this Ordinance and the amounts held in the reserve account for the Prior Bonds, if any, shall be transferred to the reserve accounts for the Original Bonds.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Original Bonds. For the purposes of funding the reserve accounts, paying costs of issuance and financing a portion of the costs of the acquisition and construction of the Project not otherwise provided for, on any one of such items, there shall be issued the Original Bonds of the City. The Original Bonds shall be issued in three series, with the first series to be designated "Waterworks and Sewerage System Revenue Bonds, Series 1997 A" and so on, in an aggregate principal amount of not more than $8,000,000. Each series of Original Bonds shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding forty (40) years after the date of issuance, and in such amount or amounts as shall be set out in each Loan Agreement. The Original Bonds shall not bear interest during the construction period but interest shall commence accruing on the Completion Date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest on the Series A Bonds shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Original Bonds shall be as set forth on Schedule Y to the respective Loan Agreements. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreement and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Original Bonds.

The Bonds shall be payable as to principal, at the principal office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the 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 City, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each series, 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 Agreements and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in said Supplemental Resolution and shall bear interest from such date.

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the City by the Mayor and attested by the Recorder, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.08, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the registered Owner thereof in person or by the Owner's attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Owner or the Owner's duly authorized attorney.

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

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond 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 Owner's furnishing the City proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by 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 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all the Original Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established are hereby

irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 3.08. Form of Original Bonds. The text of each series of Original Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

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[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WETZEL
CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 199__

No. R-1 $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NEW MARTINSVILLE, a municipal corporation of the State of West Virginia, in Wetzel County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($___ ____), in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of _____ percent (__%) per annum. 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. The interest on this Bond is payable by check or draft mailed to the Authority at the address as it appears on the books of 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 as otherwise provided by the Loan Agreement dated _____, 199__, among the Authority, the DEP and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"), (ii) to fund a reserve account therefor, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance

with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the __ day of _____, 1997, and a Supplemental Resolution adopted by the City on the __ day of _____, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 B AND 1997 C (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the __ day of _____, 199__.

[SEAL] _____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

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 the said Bond on the books kept for registration of the within Bond of the said City, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WETZEL
CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 199__

No. R-2 $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NEW MARTINSVILLE, a municipal corporation of the State of West Virginia, in Wetzel County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($___ ____), in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of _____ percent (__%) per annum. 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. The interest on this Bond is payable by check or draft mailed to the Authority at the address as it appears on the books of 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 as otherwise provided by the Loan Agreement dated _____, 199__, between the Authority and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"), (ii) to fund a reserve account therefor, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance

with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the __ day of _____, 1997, and a Supplemental Resolution adopted by the City on the __ day of _____, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A AND 1997 C (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the _____ day of _____, 199__.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

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 the said Bond on the books kept for registration of the within Bond of the said City, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WETZEL
CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 199__

No. R-3 $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NEW MARTINSVILLE, a municipal corporation of the State of West Virginia, in Wetzel County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($___ ____), in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of _____ percent (__%) per annum. 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. The interest on this Bond is payable by check or draft mailed to the Authority at the address as it appears on the books of 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 as otherwise provided by the Loan Agreement dated _____, 199__, between the Authority and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"), (ii) to fund a reserve account therefor, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance

with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the __ day of _____, 1997, and a Supplemental Resolution adopted by the City on the __ day of _____, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A AND 1997 B (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the ____ day of _____, 199__.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

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 the said Bond on the books kept for registration of the within Bond of the said City, with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

Section 3.09. Sale of Original Bonds; Ratification and Execution of Loan Agreements. The Original Bonds for each phase shall be sold to the Authority, pursuant to the respective terms and conditions of the Loan Agreements. As a ratification of the resolution of Council authorizing execution of the Loan Agreements, the Mayor is specifically authorized and directed to execute the Loan Agreements and the Recorder is directed to affix the seal of the City, attest the same and deliver the Loan Agreements to the Authority. The Loan Agreements are specifically incorporated into this Ordinance.

Section 3.10. Certificate of Consulting Engineers. Prior to the issuance of the Original Bonds, the City must obtain the certificate of the Consulting Engineers, in the form attached to the SRF Loan Agreement, to the effect that the Project has been designed as provided in the Program application and will be constructed in accordance with the approved plans, specifications and design as submitted to the DEP and the Authority, as the case may be, that the Project will be 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 the acquisition and construction of the Project.

Section 3.11. Amended Schedule A Filing. Within 60 days following the Completion Date, the City will file with the Authority its schedule, in substantially the form of "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE IV

LINE OF CREDIT

Section 4.01. Authorization of Line of Credit. For the purpose of providing funds for the acquisition and construction of the Project to the extent Original Bond proceeds, Grant Receipts or other funds are not timely available therefor, the Line of Credit to be established by the Bank is hereby authorized, and upon approval by the Supplemental Resolution, the Mayor of the City is hereby authorized and directed to execute the Line of Credit Agreement.

Section 4.02. Authorization of Note. For the purpose of evidencing the City's obligation to repay any draw upon the Line of Credit and, thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Note of the City, in the stated principal amount of not to exceed $1,000,000. The Note shall be originally issued in single, fully registered form, without coupons, and shall be dated as of the date of delivery thereof. There shall be attached to the Note a Record of Advances and Payments, upon which, the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of and interest on the Note and the amount of the Note Outstanding after either of said transactions shall be recorded. Anything to the contrary herein or in the Line of Credit Agreement notwithstanding, the Note shall evidence only the Outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount of each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest at the rate, not to exceed eight percent per annum, specified in the Supplemental Resolution. Interest shall cease to accrue on the amount of the Note Outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Note shall mature on such date or dates, not later than 48 months after the date thereof, specified in the Supplemental Resolution. Interest on the Note shall be payable as specified in the Supplemental Resolution. The Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement or said Supplemental Resolution. Notwithstanding the foregoing, the terms of the Note, other than the principal amount thereof, maximum rate of interest thereon and maximum maturity thereof, may be modified by the Supplemental Resolution, subject to the limits of the Act.

The Note shall be payable as to principal upon presentation, and, in the case of payment at maturity or surrender, at the principal office of the Note Registrar, in any coin or currency which, on such date of payment, is legal tender for the payment of public and private debts under the laws of the United States of America. The Note is subject to prepayment in whole or in part at any time, upon two days' written notice (or telephone notice, confirmed in writing as soon as practical) to the Note Registrar and the Note Owner; provided, that any payment of principal, in whole or in part, prior to the final maturity of the Note shall be recorded by the Note Registrar on the Record of Advances and Payments attached to the Note, and the Note shall be returned to the Owner.

Section 4.03. Execution of Note. The Note shall be executed in the name of the City by the signature of its Mayor, and the seal of the City shall be affixed thereto and attested by the signature of the City Recorder. Any Note may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Note, shall hold the proper office of the City, although at the date of such Note such person may not have held such office or may not have been so authorized.

Section 4.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Note, shall be conclusively deemed to have agreed that the Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Note or any portion thereof remains Outstanding, the Note Registrar shall keep and maintain, at its principal office, books for the registration and transfer of the Note. The Note shall be transferable only upon such books of the Note Registrar by the Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Note Registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Note, there shall be issued, at the option of the Owner or the transferee, another Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Note and Outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Note is exercised, Notes shall only be issued in accordance with the provisions of this Ordinance. All Notes surrendered in any such transfers shall forthwith be cancelled by the Note Registrar. For every such transfer of Notes, the Note Registrar may make a charge sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Note upon each transfer, and any other expenses of the Note Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer.

Section 4.05. Form of Note. The text of the Note shall be in substantially the form set forth by the Supplemental Resolution. The Note shall not become valid until authenticated by the Note Registrar.

Section 4.06. Security for Note. The principal of and interest on the Note are payable solely from and secured by the net proceeds of the Bonds and such other sources, including the net proceeds of the Line of Credit Bonds, as are hereinafter set forth. The principal and interest on the Note are further payable from and secured by the Net Revenues derived from the operation of the System; provided, that such lien on the Net Revenues is

and shall be junior, inferior and subordinate in all respects to the lien thereon of the Holders and owners of the Bonds.

Section 4.07. Notes are Special Obligations. The Note shall be a special obligation of the City, payable as to principal and interest solely from said sources described in this Article. The Note does not and shall not constitute an indebtedness of the City within the meaning of any charter, constitutional or statutory provisions. The general funds of the City are not liable, and neither the full faith and credit nor the taxing power of the City is pledged, for the payment of the Note. The Owner of the Note shall never have the right to compel the forfeiture of any property of the City. The Note shall not be a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or upon any of its income, receipts or revenues, except the net proceeds of the Bonds and the Line of Credit Bonds, the Net Revenues and other funds pledged thereto by this Ordinance.

Notwithstanding anything in this Ordinance, the City shall not be required to advance any money derived from any source of income other than the net proceeds of the Bonds and the Line of Credit Bonds, the Grant Receipts, the Net Revenues and other funds pledged by this Ordinance for the payment of the principal of or interest on the Note or for the performance of any of its duties under this Ordinance. The City may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the City for such purpose without incurring indebtedness.

Section 4.08. Note Payment Fund. There is hereby created and established with the Note Depository a special fund, designated "Sewerage System 1997 Construction Note Payment Fund." The Note Depository shall segregate all funds and securities in the Note Payment Fund from other deposits and funds of the Note Depository and other deposits and funds of the City, including the payment fund established therefor. All moneys in the Note Payment Fund, until payment in full of all principal and interest owing on the Note at its maturity, shall be held in trust for the Owner of the Note, and the City shall have no rights with respect thereto, except to receive the balance therein after payment of the Note and the interest thereon and the charges, if any, of the Note Depository and the Note Registrar. Pending such application, moneys in the Note Payment Fund shall be invested and reinvested in Qualified Investments. Any balance received by the City shall be applied to the costs of the Project. At least one day prior to the maturity of the Note, there shall be deposited in the Note Payment Fund, the net proceeds of the Original Bonds or other moneys, including Net Revenues and the net proceeds of the Line of Credit Bonds, if necessary, in an amount sufficient to pay the principal of and interest on the Note at maturity. The City may, at any time, prepay all or any portion of the Note Outstanding as herein provided. The Note Depository shall transfer any such principal payment, whether at maturity or a prepayment, or whether in whole or in part, to the Note Registrar for payment, and the Note Registrar shall make such payment as provided in this Article IV.

Section 4.09. Conversion to Long-Term Obligation. Notwithstanding the foregoing, the City may, rather than pay the principal of the Note at or prior to the maturity

thereof, convert the Note to a long-term obligation, subject to such terms, rate or rates of interest and other provisions as shall be mutually agreeable to the Owner and the City and authorized by the Supplemental Resolution, payable from the Net Revenues of the System on a basis junior, subordinate and inferior to the Bonds. Such long-term obligation may constitute the Line of Credit Bonds authorized hereunder.

Section 4.10. Line of Credit Bonds. A. For the purpose of paying the principal of and interest on the Note at or prior to maturity, to the extent not otherwise provided for, there is hereby authorized to be issued, and the City hereby agrees to issue, the Line of Credit Bonds in a principal amount not to exceed $1,000,000. The Line of Credit Bonds shall be issued at such time and in such amount, bear interest at such rate or rates not to exceed ten percent (10%) per annum and be subject to such terms, all as shall be determined by a Supplemental Resolution.

B. The principal of and interest on the Line of Credit Bonds shall be payable only from, and secured by, the Net Revenues derived from the operation of the System; provided, that such lien on the Net Revenues shall be junior, inferior and subordinate in all respects to the lien thereon of the Holders and owners of the Bonds.

C. There shall be created and established with the Commission, upon the issuance of the Line of Credit Bonds, a special fund, to be designated the "Line of Credit Debt Service Fund" and, within such fund, a special account, to be designated the "Line of Credit Reserve Account." Deposits into the Line of Credit Debt Service Fund for the payment of principal of and interest and fiscal agency or other charges on the Line of Credit Bonds, and payments into the Line of Credit Reserve Account, shall be made both at the times and in the proportions, and such fund and account shall otherwise be handled, as set forth in a resolution supplemental hereto. Said deposits from the Net Revenues, on account of the Line of Credit Bonds, shall be made only after those deposits required by Section 5.03 of this Ordinance and any deposits required by the Loan Agreement.

Section 4.11. Draws upon Line of Credit. The City may draw upon the Line of Credit from time to time, upon the resolution of Council (or, if authorized by the Supplemental Resolution, upon the resolution of the Board), and otherwise as provided by the Line of Credit Agreement.

Section 4.12. Line of Credit Construction Trust Fund. There is hereby created and established with the Note Depository a special fund, designated the "Waterworks and Sewerage System Line of Credit Construction Trust Fund" (hereinafter referred to as the "Trust Fund"). Any draws upon the Line of Credit shall be deposited in the Trust Fund and shall be kept separate and apart from all other funds of the City or the Note Depository and expended solely for the purposes hereinafter provided. Expenditures may be made from the Trust Fund for paying the costs of acquisition and construction of the Project to the extent Original Bond proceeds or other funds are not timely available therefor; provided, that no expenditures shall be made from said fund without the approval of the Board and the Consulting Engineers. The balance of any such deposit in the Trust Fund, in excess of the

amount insured by FDIC, shall at all times be secured to the full extent thereof by Government Obligations or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State. Any balance in the Trust Fund after the completion of the Project shall be deposited in the Note Payment Fund and used only for the payment of the Note as provided in this Ordinance. Pending the authorized use thereof, moneys in the Trust Fund shall be invested in Qualified Investments.

Section 4.13. Line of Credit Bond Proceeds. The proceeds of the Line of Credit Bonds, if necessary, after the payment of the cost of issuance thereof, shall be applied as provided by Section 4.08.

Section 4.14. Note and Line of Credit Bonds Secured by Ordinance. All of the covenants and agreements contained in this Ordinance shall be deemed to have been made, to the extent applicable, for the benefit of the Owner of the Note and, subsequently, of the registered owners of the Line of Credit Bonds (except as to details inconsistent with this Ordinance). Such covenants and agreements shall be fully enforceable in the manner provided in the Ordinance by the Owner of the Note or the registered owners of the Line of Credit Bonds; provided, that any such rights and remedies shall be junior, subordinate and inferior to those of the Holders and owners of the Bonds.

Section 4.15. Covenants with Owner of Note. In order to secure the payment of the Note, the City hereby particularly covenants and agrees with the Owner of the Note, and makes provisions which shall be a part of the contract with such Owner, that the City, if and so long as any of the Note is Outstanding and unpaid:

(A) Will proceed with all practicable dispatch to construct the Project;

(B) Will not make or cause or permit to be made any application of the proceeds of the Note or of any moneys held in the Note Payment Fund or the Note Construction Trust Fund except in accordance with the provisions of this Ordinance;

(C) Will comply in all respects with the terms and provisions of the Loan Agreement and with all applicable state and federal laws and regulations governing the implementation of the Loan Agreement;

(D) Will impose and collect rates and charges for the use and services of the System in accordance with the requirements of the Ordinance and the Loan Agreement;

(E) Will take all actions necessary to preserve its right to receive reimbursements under the Loan Agreement;

(F) Will promptly request any reimbursements to which it has become entitled under the Loan Agreement;

(G) Will not unilaterally terminate, or enter into any agreement to terminate, the Loan Agreement;

(H) The Bonds and the bond anticipation notes provided for by Section 4.17 will not create a pledge or otherwise encumber the Net Revenues prior to or on a parity with the lien thereon of the Owner of the Note, and, except with respect to said loan anticipation notes, will not create a pledge or otherwise encumber the proceeds of the Original Bonds prior to or on a parity with the lien created hereby on behalf of the Note.

Section 4.16. Required Notices to Note Depository and Owner of Note. The City will give to the Bank, the Note Depository and the Owner of the Note prompt written notice, appropriately documented, of any change in the status of the Program and of any authorization of additional indebtedness of the City, and particularly of any of the following events:

(A) Any modification of the Loan Agreement;

(B) The suspension of the Loan Agreement;

(C) The lifting or cancellation of the suspension of the Loan Agreement;

(D) The termination of the Loan Agreement;

(E) The annulment of the Loan Agreement; or

(F) The authorization by the City of any additional indebtedness related to the System.

Whenever the Bank and the Note Depository shall have received notice that the Loan Agreement has been suspended or a stop-work order has been issued, no further draws upon the Line of Credit or withdrawals from the Line of Credit Construction Trust Fund shall be made until the Note Depository shall have received notice of the lifting of such suspension or stop-work order.

Section 4.17. Bond Anticipation Notes. Notwithstanding any provision of this Ordinance to the contrary, the City may hereafter issue bond anticipation notes with a lien on the Net Revenues and the net proceeds of the Original Bonds prior to or on a parity with that of the Note, all as may be set forth in a resolution supplemental hereto.

Section 4.18. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Note or the Line of Credit Bonds, as the case may be:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Note or any Line of Credit Bond, as the case may be;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Note, or the Line of Credit Bonds, as the case may be, in this Ordinance or any resolution or ordinance supplemental hereto or amendatory hereof or in the Note or the Line of Credit Bonds, as the case may be, contained, and such default shall have continued for a period of thirty (30) days after the City shall have been given written notice of such default by the Note Depository or any Owner or registered owner of the Note or a Line of Credit Bond, as the case may be; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 4.19. Remedies. Upon the happening and continuance of any Event of Default, the Owner of the Note or any registered owner of a Line of Credit Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding, enforce all rights of the Owner of the Note or the respective registered owners of the Line of Credit Bonds, as the same may be, including the right to require the City to perform its respective duties under the Act and this Ordinance relating thereto, (iii) bring suit upon the Note or the Line of Credit Bonds, as the case may be, (iv) by action at law or bill in equity, require the City to account as if it were the trustee of an express trust for the Owner of the Note or the respective registered owners of the Line of Credit Bonds, as the case may be, and (v) by action at law or bill in equity, enjoin any acts in violation of this Ordinance with respect to the rights of the Owner of the Note or the respective registered owners of the Line of Credit Bonds, as the case may be; all subject, however, to the rights of the holders and Owners of the Bonds, and Line of Credit Bonds.

Section 4.20. Appointment of Receiver. The Owner of the Note or any registered owner of the Line of Credit Bonds, as the case may be, may, by proper legal action, compel the performance of the duties of the City under this Ordinance and the Act, all as provided by Section 9.03 of the Ordinance, subject, however, to the rights of the holders and Owners of the Bonds.

Section 4.21. Modification or Amendment. No material modification of or amendment to this Ordinance or any ordinance or resolution amendatory hereof or supplemental hereto, which would materially and adversely affect the rights of any Owner of the Note or any registered owner of the Line of Credit Bonds, shall be made without the consent in writing of the Owners or registered owners of two-thirds (2/3) or more in principal amount of the Note or Line of Credit Bonds, as the case may be, then Outstanding; provided, however, that no change shall be made in the maturity of any Note or Line of Credit Bond or the rate or rates of interest thereon, or in the principal amounts thereof, or affecting the unconditional promise of the City to pay the principal of and interest on the Note or Line of Credit Bonds out of the funds respectively pledged therefor, without the consent of the Owners or registered owners thereof, as the case may be. No amendment or modification shall be made which would reduce the percentage of the principal amount of the Note or Line

of Credit Bonds, as the case may be, required for consent to the above-permitted amendments or modifications.

Section 4.22. The Bank. The Bank may serve as the Note Registrar and the Note Depository regardless of its ownership of the Note. The Bank is further hereby authorized to authenticate the Note and any Notes issued in exchange or as replacements therefor prior to the delivery thereof.

Section 4.23. Note Depository. The City may pay to the Note Depository, from time to time, reasonable compensation for all services rendered by the Note Depository and all reasonable expenses, charges, counsel fees and other disbursements incurred by the Note Depository in connection with its performance of its functions hereunder. The City shall, from time to time, have the right to appoint a successor Note Depository, provided that such successor Note Depository be a bank or national banking association located in the State and insured by the FDIC. The depository bank shall signify its acceptance of the duties and obligations hereby imposed by executing and delivering to the City a written acceptance thereof.

Section 4.24. Note Registrar. The Note Depository shall also serve as the Note Registrar for the Note. The Note Depository's acceptance of the trusts and the duties of Note Depository provided for in Section 4.08 shall also include the duties and obligations of Note Registrar. Any successor Note Registrar for the Note shall be designated by the City in a Supplemental Resolution and must be a bank, trust company or national banking association. Any such successor Note Registrar shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the City a written acceptance thereof. The Note Registrar shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Note Registrar in connection with such services, solely from moneys available therefor.

Section 4.25. Notice to Authority and DEP. The City shall give the Authority, the Infrastructure Council and the DEP written notice of the issuance of the Note, any Line of Credit Bonds or any bond anticipation notes authorized by Section 4.17 hereof.

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; and

(3) Bond Construction Trust Fund (separate subaccount to be established for each series of Original Bonds).

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission for each series of Original Bonds:

(1) Sinking Fund;

(a) Within the Sinking Fund, the 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 Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

(1) The City shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The City shall next, on the first day of each month (i) 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 respective Sinking Funds, 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 respective Sinking Funds 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 respective Sinking Funds, 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 respective Sinking Funds 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. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03(2) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(3) The City shall next transfer from the Revenue Fund and pay to the Commission 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, for deposit in the respective Reserve Accounts, an amount equal to 1/120 of the Reserve Requirement; provided, that no further payments shall be made into the respective Reserve Accounts when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the respective Reserve Requirement. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03(3) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(4) The City 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 City 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 [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, pro rata, to the Sinking Funds.

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 City 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 Ordinance.

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 System.

D. The City 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.

Simultaneously with the deposit made to the Commission pursuant to Section 5.03(2) and (3) the City shall remit to the Commission the SRF Administrative Fee.

The City shall complete the "monthly payment form," which form is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

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 City to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

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

Section 5.04. Excess Bond Proceeds. The City shall place any excess proceeds from the Original Bonds not required by the Project in the applicable 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. The amount of the Series B Bond proceeds which, together with any funds held under the Prior Ordinance, shall be deposited with the Commission and applied to the payment in full of the Prior Bonds.

B. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the respective reserve account the sum, if any, set forth in the Supplemental Resolution for funding of said Reserve Account.

C. The remaining moneys derived from the sale of the Original Bonds shall be deposited by the City, as received from time to time, in the Bond Construction Trust Fund hereinafter established.

D. 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. With respect to the proceeds of the Series A Bonds, on or before the Closing Date, the City shall have delivered to the Authority 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. With respect to the proceeds of the Series B Bonds and Series C Bonds, by the ____ day of each month, the City shall provide the Infrastructure Council with a requisition for costs incurred for the Project with such documentation as the Infrastructure Council shall from time to time require. Upon receipt of the proceeds from the Authority, the City shall deposit the proceeds in the Construction Trust Fund and pay any approved costs. 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 (except for the cost of issuance of the Original Bonds which shall be made upon request of the City) 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 City.

ARTICLE VII

ADDITIONAL COVENANTS OF THE CITY

Section 7.01. General Covenants of the City. All the covenants, agreements and provisions set forth in this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article 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 City 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 Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the City to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith, equally and ratably, by a first lien on the Gross 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 Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds 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 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. Such schedule of rates and charges shall be changed and readjusted, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. The City shall take the necessary actions with respect to the imposition of rates, at such times and with such provisions with respect to interest rate and maturity of the Bonds, to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from

time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and the reserve account for the Bonds is funded at least at the requirement provided for in the Ordinances, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bonds.

Section 7.05. Completion, Operation and Maintenance; Schedule of Cost. The City will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures, for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof, from the revenues of said System, in the manner provided in the Ordinance.

Upon completion of the Project, the City shall file with the Authority a schedule, in substantially the form of Amended Schedule A to the Program loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 7.06. Sale of the System. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds, and the City shall direct the Commission to apply such proceeds to the payment of principal and any interest at maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the City by the Commission, unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

The foregoing provision notwithstanding, the City shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. The Council may then, if it be so advised, as evidenced by certificates of the Consulting Engineers, by resolution duly adopted, approve and concur in such finding and provide for the sale of such property if the amount to be received therefor is not in excess of ten thousand dollars ($10,000), or authorize such sale, lease or other disposition of such property, upon public bidding, if the amount to be received therefor is in excess of ten thousand dollars ($10,000) but not in excess of fifty thousand dollars ($50,000). The proceeds of any such sale, lease or other disposition of such property, not in excess of $10,000, shall be deposited in the Renewal and

Replacement Fund. The proceeds derived from any such sale, lease or other disposition of such property, in excess of $10,000 and not in excess of $50,000, shall be remitted by the City to the Commission for deposit in the appropriate Sinking Funds and shall be applied only to the redemption of Bonds of the last maturities then Outstanding or to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the City if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars ($50,000) and be insufficient to pay or redeem, prior to maturity, all the Bonds then Outstanding, without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds then Outstanding. The City shall prepare the form of such approval and consent for execution by the then owners of the Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The City shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 7.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 7.08 hereafter. All obligations hereafter issued by the City payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds to the extent such are Outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund, at the time of the issuance of such subordinate obligations, have been made and are current.

Except as provided above, the City shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said pari passu additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

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

Section 7.08. Parity Bonds. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided and with the prior written consent of DEP, the Infrastructure Council and the Authority.

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) Each series of Original Bonds then Outstanding;

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

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

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the City, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder 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 City, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the 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 City shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Outstanding Bonds on such revenues. The City shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, 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 on account of the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the Parity Bonds, and the City shall then be in full compliance with all the covenants, agreements and terms of this Ordinance.

Section 7.09. Insurance and Construction Bonds. The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The City 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 City 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 City, 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 City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards

of war. The proceeds of all such insurance policies shall be 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 City shall also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Authority 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 City.

The City 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 City shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority, the Infrastructure Council 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 City, 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 City 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 City shall notify the DEP in writing of such receipt. The City 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 City 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 City 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 City 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 City shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

The City agrees that qualified operating personnel, properly certified by the State, will be retained to operate the System during the entire term of the Loan Agreements.

Section 7.11. Compliance With Loan Agreement, Rules and Regulations. The City 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 Infrastructure Council, 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 City will not render or cause to be rendered any free services, of any nature, by its System; and, in the event the City or any department, agency, instrumentality, officer or employee of the City shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the City shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.13. Enforcement of Collections. The City will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, 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 City further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or 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 City will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.15. Books, Records and Facilities. The City 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 City shall permit the Authority, the Infrastructure

Council, 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 City shall submit to the Authority, the Infrastructure Council, 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 Agreements or Grant Receipts or other sources of financing for the Project.

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

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the West Virginia Public Service Commission and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Consulting Engineers and the Authority, the Infrastructure Council 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 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 Ordinance with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Bonds, Notes or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report to the Authority, the Infrastructure Council and the DEP. The report of said audit shall include a statement that the City is in compliance with the terms and provisions of the Act and the Loan Agreements and that the City's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The City 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 and forward a copy by the 10th of each month to the Authority, the Infrastructure Council and the DEP.

The City shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the SRF Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the City's construction schedule.

The City 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 City shall permit the Authority, the Infrastructure Council 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 City shall also provide the Authority, the Infrastructure Council 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, the Infrastructure Council and the DEP with respect to the System pursuant to the Act.

Section 7.16. Operating Budget. The Board 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, the Infrastructure Council 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 Board 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 City 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 City 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 Agreements. The City agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the City will provide the DEP and the Infrastructure Council with copies of all documents submitted to the Authority.

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

A. PUBLIC PURPOSE BONDS. The City 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 City.

B. 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.

C. PRIVATE LOAN LIMITATION. The City 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 City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

E. INFORMATION RETURN. 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.

F. FURTHER ACTIONS. The City 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 Bond Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding 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. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Original Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the City. The City reasonably expects it and all its subordinate entities to issue less than $5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1997, in which the first series of Original Bonds are to be issued. Therefore, the City believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further

described in Section 8.03. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Original Bonds.

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 Ordinance, 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 City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

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

Section 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 City'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. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Original Bonds. In addition, the City covenants to comply with all regulations, from time to time in effect and applicable to the Original Bonds, as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds used to fund the purchase of the 1997 Subordinate Bonds and fully comply with Section 148(f) of the Code, and covenants to take

such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not quality for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Original Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City, to be used for any lawful purpose of the System. The City shall remit payments to the United States, in the time and at the address prescribed by the regulations as the same may be from time to time in effect, with such reports and statements as may be prescribed by such regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the City. To the extent not so performed by the Authority, the City and the Depository Bank (at the expense of the City) may provide for the employment of independent attorneys, accountants or consultants, compensated on such reasonable basis as the City or the Depository Bank may deem appropriate, in order to assure compliance with this Section 8.03. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City 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.

The City shall submit to the Authority, within 15 days following the end of each Bond Year, a certified copy of its rebate calculation and certificate with respect thereto or, if the City qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the City shall submit to the Authority a certificate stating that it

is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Original Bonds subject to rebate. The City 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 defined in the Code).

The City shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority and shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as the Authority may request.

Section 8.04. Restriction of Yield and 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. 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 series of Original Bonds; or

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or an owner of such Bonds; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

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

Section 9.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the City under the 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 City of such default, any Bondholder shall, in addition to all other remedies or rights, have the right, by appropriate legal proceedings, to obtain the appointment of a receiver to administer the System on behalf

of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of 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, maintain, manage and control such facilities, and each and every part thereof, and in the name of the City exercise all the rights and powers of the City with respect to said facilities as the City itself might do.

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the City and for the joint protection and benefit of the City and Owners of Bonds issued pursuant to the Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of the Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Bondholders 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 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 agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the City, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

Section 10.02. Defeasance of Notes. The Notes shall be defeased as set forth in a resolution supplemental hereto.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 11.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 11.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 11.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of 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 11.05. Abstract of Ordinance and Notice of Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least six full days intervening between each publication, in the Wetzel Chronicle, a newspaper of general circulation in the City of New Martinsville, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Bonds, and that any person interested may appear before the City upon a certain date, 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 City for review by interested persons during office hours of the City. The Council hereby determines that the Abstract contains

sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the City shall take such action as it shall deem proper in the premises.

Section 11.06. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

First Reading: February 11, 1997

Second Reading
and Passage: February 18, 1997

Public Hearing: March 3, 1997

This Ordinance was placed into effect following the public hearing held on March 3, 1997.

(SEAL)

Faye L. Smith
Recorder

Richard P. Snyder
Mayor

EXHIBIT A

Project Description

Acquisition and construction of the proposed 1.37 mgd wastewater treatment plant; 1,500 feet of sewer joint sealing; 825 feet of sewer lines; 6,500 feet of sewer replacement; emergency generator improvements at two existing lift stations; rehabilitate two existing lift stations; and 22,000 feet of force main and all necessary appurtenances thereto.

EXHIBIT B

[Loan Agreements]

(See Tab No. 11)

EXHIBIT C

CITY OF NEW MARTINSVILLE, WEST VIRGINIA

NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on February 18, 1997, the Council of the City of New Martinsville, West Virginia (the "City") adopted an ordinance which:

1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the sewer portion of existing combined waterworks and sewer system ("System") of the City and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than $8,000,000 in aggregate principal amount of Waterworks and Sewerage System Bonds, Series 1997 A, 1997 B and 1997 C (the "Bonds"). The Project, estimated at $8,800,000, was authorized to be financed with the Bond proceeds and grants in the approximate amount of $1,161,395. Authorized the refunding and defeasance of the City's Series 1995 Bonds.

2. Directed that the Bonds be issued in three series and in the form of one bond each, fully registered with a payment record attached; that interest on the Bonds shall be no more than three percentum (3%) per annum, that said Bonds mature in not more than forty years and that said Bonds be sold for the par value thereof; that the Bonds be executed in the name of the City by the Mayor, and the seal of the City be affixed thereto and attested to by the Recorder; that such Bonds be duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser on behalf of the West Virginia Infrastructure and Jobs Development Council and the West Virginia Division of Environmental Protection.

3. Directed the establishment of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly

payment of principal and interest when due; provided for the creation of reserve accounts for the Bonds and a Renewal and Replacement Fund; and provided for the use of excess funds of the System.

4. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

5. Pledged to payment of the Bonds the Gross Revenues of the System.

6. Provided upon certain conditions for the issuance of additional bonds.

7. Provided for insurance coverage on the Project; provided that the City will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service.

8. Established the terms for defaults and the remedies of the Bondholders.

9. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of New Martinsville at a regular meeting thereof at 7:30 p.m., prevailing time, on Monday, March 3, 1997, at the Municipal Building, 197 Main Street, New Martinsville, West Virginia, and present objections and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on February 18, 1997, is on file in the Office of the Recorder for review by interested persons during the regular office of such office, to-wit: 8:00 a.m. to 4:30 p.m. Mondays through Fridays.

_____

Recorder - City of New Martinsville, West Virginia

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as Recorder of the City of New Martinsville, Wetzel County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of New Martinsville, such records being in the custody of the undersigned and maintained at the City of New Martinsville, Municipal Building, New Martinsville, Wetzel County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 13th day of March, 1997.

Faye R. Smith

Recorder

[SEAL]

CHASFS3:46428

CITY OF NEW MARTINSVILLE

NOTICE OF SPECIAL COUNCIL MEETING

TUESDAY, FEBRUARY 18, 1997, 7:00 P.M.

MUNICIPAL BUILDING, EXECUTIVE CONFERENCE ROOM

A G E N D A

[1] FIRST READING - SEWER USE ORDINANCE

[2] SECOND READING AND ADOPTION - WATER AND SEWER BOND AND NOTE ORDINANCE

Posted this 7th day of February, 1997

Faye R. Smith

Faye R. Smith, Recorder

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RECEIVED FEB 2 5 1997

City of New Martinsville

SPECIAL COUNCIL MEETING, TUESDAY, FEBRUARY 18, 1997, 7:00 P.M.

MUNICIPAL BUILDING, EXECUTIVE CONFERENCE ROOM

CITY OFFICIALS PRESENT:

Richard P. Snyder, Mayor
Faye R. Smith, Recorder
Larry J. Edgell, Second Ward Councilman
Steven A. Bohrer, Third Ward Councilman
C. E. "Gene" Berger, Fourth Ward Councilman
Bonnie S. Shannon, Fifth Ward Councilwoman
James E. Herrick, Jr., Sixth Ward Councilman

MEETING CALLED TO ORDER BY MAYOR SNYDER (QUORUM PRESENT).

SEWER USE ORDINANCE:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILMAN BERGER, AN ORDINANCE ENTITLED "AN ORDINANCE AMENDING CHAPTER 23 OF THE CODE OF THE CITY OF NEW MARTINSVILLE" WAS ACCEPTED AS FIRST READING (COPIES DISTRIBUTED FOR REVIEW PRIOR TO THIS MEETING).

SECOND READING AND ADOPTION - WATER AND SEWER BOND AND NOTE ORDINANCE:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED THAT AN ORDINANCE ENTITLED "AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER TREATMENT FACILITY PORTION OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF NEW MARTINSVILLE; AUTHORIZING THE ISSUANCE OF THREE SEPARATE SERIES OF WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS OF THE CITY OF NEW MARTINSVILLE IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $8,000,000 TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NEW MARTINSVILLE WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO EFFECT THE REFUNDING AND TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING A REVOLVING LINE OF CREDIT IN AN AMOUNT NOT TO EXCEED $1,000,000 TO PROVIDE FUNDS FOR SUCH ACQUISITION AND CONSTRUCTION TO THE EXTENT BOND PROCEEDS, GRANT RECEIPTS OR OTHER FUNDS ARE NOT TIMELY AVAILABLE THEREFORE, AND AN AGREEMENT WITH RESPECT TO SAID LINE OF CREDIT; AUTHORIZING ISSUANCE OF A COMBINED WATERWORKS AND SEWERAGE SYSTEM CONSTRUCTION NOTE OF THE CITY OF NEW MARTINSVILLE IN THE STATED PRINCIPAL AMOUNT NOT TO EXCEED $1,000,000 TO EVIDENCE THE CITY'S OBLIGATION TO REPAY ANY DRAWS UPON SAID LINE OF CREDIT; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTE; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATED THERETO." WAS READ FOR THE SECOND TIME AND DULY ADOPTED.

(Note: Ordinance can be found in Recorder's Office File or Water & Sewer Superintendent's File - Too lengthy to include in the minute book.)

ADJOURN:

No further business, Mayor Snyder declared this meeting adjourned at 7:07 PM.

RICHARD P. SNYDER, MAYOR

FAYE R. SMITH, RECORDER

BEFORE THE COMMON COUNCIL OF THE
CITY OF NEW MARTINSVILLE, WEST VIRGINIA

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATE, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE CITY OF NEW MARTINSVILLE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A, SERIES 1997 B AND SERIES 1997 C; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; MAKING PROVISIONS FOR THE PAYMENT OF THE SERIES 1995 BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Common Council (the "Governing Body") of The City of New Martinsville (the "City"), has duly and officially adopted a Bond and Note Ordinance on February 18, 1997, effective March 3, 1997 (the "Bond and Note Ordinance"), entitled:

> AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER TREATMENT FACILITY PORTION OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF NEW MARTINSVILLE; AUTHORIZING THE ISSUANCE OF THREE SEPARATE SERIES OF WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS OF THE CITY OF NEW MARTINSVILLE IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $8,000,000 TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NEW MARTINSVILLE WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO EFFECT THE REFUNDING AND TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING A REVOLVING LINE OF CREDIT IN AN AMOUNT NOT TO EXCEED $1,000,000 TO PROVIDE FUNDS FOR SUCH ACQUISITION AND CONSTRUCTION TO THE EXTENT BOND PROCEEDS, GRANT RECEIPTS OR OTHER FUNDS ARE NOT TIMELY AVAILABLE THEREFORE, AND AN AGREEMENT WITH RESPECT TO SAID LINE OF CREDIT; AUTHORIZING ISSUANCE OF A COMBINED

WATERWORKS AND SEWERAGE SYSTEM CONSTRUCTION NOTE OF THE CITY OF NEW MARTINSVILLE IN THE STATED PRINCIPAL AMOUNT NOT TO EXCEED $1,000,000 TO EVIDENCE THE CITY'S OBLIGATION TO REPAY ANY DRAWS UPON SAID LINE OF CREDIT; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTE; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Bond and Note Ordinance provides for the issuance of The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, Series 1997 B and Series 1997 C of the City (the "Bonds"), in the aggregate principal amount not to exceed $8,000,000, and has authorized the execution and delivery of a loan agreement or loan agreements relating to the Bonds, including all amendments and supplements (collectively, the "Loan Agreement"), by and among the City and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Division of Environmental Protection ("DEP") and the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 8, Article 20, Chapter 22C, Article 2, and Chapter 31, Article 15A, of the West Virginia Code of 1991, as amended (collectively, the "Act"); and in the Bond and Note 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 Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and 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, that the Prior Bonds be refunded, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF NEW MARTINSVILLE, WEST VIRGINIA, AS FOLLOWS:

Section 1. Pursuant to the Bond and Note Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the:

(A) $385,000 The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, of the City, originally represented by a single Bond, numbered AR-1, in the principal amount of $385,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2019, and shall bear no interest. Principal of the Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1999. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and to the Loan Agreement and incorporated herein by reference. The City shall pay the 1% SRF Administrative Fee as provided in the Loan Agreement.

(B) $6,720,000 The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B, of the City, originally represented by a single Bond, numbered BR-1, in the principal amount of $6,720,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2037, and shall bear no interest. Principal of the Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1999. The Bonds shall be subject to redemption upon the written consent of the Authority and the Infrastructure Council, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and to the Loan Agreement and incorporated herein by reference.

Proceeds of the Series 1997 B Bonds in the amount of $602,524 are hereby authorized to be wired by the West Virginia Water Development Authority to the West Virginia Municipal Bond Commission for the purpose of paying, along with other moneys legally available therefor, in full the principal and interest due on the Prior Bonds.

(C) $420,000 The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C, of the City, originally represented by a single Bond, numbered CR-1, in the principal amount of $420,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2037, and shall bear interest at the rate of one percent (1.00%) per annum, commencing March 1, 2019. Both principal of and interest on the Bonds are payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2019. The Bonds shall be subject to redemption upon the written consent of the Authority and the Infrastructure Council, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and to the Loan Agreement and incorporated herein by reference.

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

Section 3. The City does hereby ratify the Loan Agreements, copies of which are incorporated herein by reference, and the execution and delivery of the Mayor of the Loan Agreements, and the performance of the obligations contained therein, on behalf of the City are hereby authorized, directed, ratified and approved. The City hereby affirms all covenants and representations made in the Loan Agreements and in the Applications to the DEP, Infrastructure Council and the Authority. The price of the 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 City.

Section 4. The City does hereby appoint and designate Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar (the "Registrar") for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the City 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 City are hereby authorized, approved and directed.

Section 5. The City does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds.

Section 6. The City does hereby appoint Bank One, Wheeling-Steelton, National Association, New Martinsville, West Virginia, as Depository Bank under the Bond and Note Ordinance.

Section 7. The City has created the Reserve Accounts which will be funded with equal payments on a monthly basis over a 10 year period until such Reserve Accounts hold an amount equal to the maximum amount of principal and interest which will mature and become due on each Series of Bonds in the then current or any succeeding year. Moneys in the Reserve Accounts and the Sinking Funds (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

Section 8. The proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Bond Construction Trust Fund, as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds.

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 and Note Ordinance approved and provided for, to the end that the Bonds may be delivered on or about March 13, 1997, to the Authority pursuant to the Loan Agreements.

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 City and will promote the health, welfare and safety of the residents of the City.

Section 11. The City hereby determines to invest all moneys in the funds and accounts established by the Bond and Note Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the City hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing by the City. Moneys in the Series A, Series B and Series C Sinking Funds, including the Series A, Series B and Series C Reserve Accounts therein, shall be invested by the Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 12. 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 Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City 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 following adoption hereof.

The foregoing Resolution was read and duly adopted at a regular meeting of the Common Council of The City of New Martinsville held on the 3rd day of March, 1997.

THE CITY OF NEW MARTINSVILLE

[SEAL]

Richard P. Snyder
Mayor

ATTEST:

Faye R. Smith
Recorder

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of New Martinsville on the 3rd day of March, 1997.

Dated: March 3, 1997.

Faye R. Smith
Recorder

26406

CITY OF NEW MARTINSVILLE

PUBLIC HEARING

MONDAY, MARCH 3, 1997, 7:30 P.M.

MUNICIPAL BUILDING, COUNCIL CHAMBER

A G E N D A

[1] DISCUSSION OF WATER AND SEWER PROPOSED BOND AND NOTE ORDINANCE

Posted this 19th day of February, 1997

Faye R. Smith

Faye R. Smith, Recorder

City of New Martinsville

PUBLIC HEARING - MONDAY, MARCH 3, 1997, 7:30 P.M.

MUNICIPAL BUILDING, COUNCIL CHAMBER

CITY OFFICIALS PRESENT:

Richard P. Snyder, Mayor
Brooks K. Barkwill, City Attorney
Faye R. Smith, Recorder
Larry J. Edgell, Second Ward Councilman
C. E. "Gene" Berger, Fourth Ward Councilman
Bonnie S. Shannon, Fifth Ward Councilwoman
James E. Herrick, Jr., Sixth Ward Councilman

OTHER REPRESENTATIVES PRESENT:

Samme L. Gee, Attorney, Jackson & Kelly, Charleston, WV
W. David Rogers, City Water & Sanitary Sewer Superintendent

PUBLIC HEARING CALLED TO ORDER BY MAYOR SNYDER.

PUBLIC INPUT ON PROPOSED WATER AND SEWER BOND ORDINANCE:

Mayor Snyder - As advertised in the paper the past two weeks, the Wetzel Chronicle, we are going to conduct a public hearing tonight to obtain comments from the audience regarding our new Water and Sewerage Revenue Bonds. If anyone from the audience has any comments and wishes to be heard, come up and speak to the podium here tonight. Any comments from anyone here in the audience? If not, we'll adjourn this public hearing, and go into our regular council meeting.

ADJOURNED AT 7:33 P.M.

RICHARD P. SNYDER, MAYOR

FAYE R. SMITH, RECORDER

REGULAR COUNCIL MEETING, MONDAY, MARCH 3, 1997, 7:34 P.M.

MUNICIPAL BUILDING, COUNCIL CHAMBER

CITY OFFICIALS PRESENT:

Richard P. Snyder, Mayor
Brooks K. Barkwill, City Attorney
Faye R. Smith, Recorder
Larry J. Edgell, Second Ward Councilman
C. E. "Gene" Berger, Fourth Ward Councilman
Bonnie S. Shannon, Fifth Ward Councilwoman
James E. Herrick, Jr., Sixth Ward Councilman

MEETING CALLED TO ORDER BY MAYOR SNYDER (QUORUM PRESENT).

PLEDGE OF ALLEGIANCE.

PRAYER - PASTOR MIKE CARA, TRINITY PRESBYTERIAN CHURCH.

THIRD READING AND ADOPTION - WATER & SEWER BOND AND NOTE ORDINANCE:

ON MOTION OF COUNCILMAN BERGER, SECONDED BY COUNCILMAN EDGELL, IT WAS UNANIMOUSLY AGREED THAT THE FOLLOWING ORDINANCE BE ADOPTED FOLLOWING THIRD READING:

(STARTS ON PAGE 30 - 116)

Introduced in Council
on the 11 th day of February, 1997

Introduced by

Honorable Richard P. Snyder, Mayor

Passed by Council

on the 18th day of February, 1997

An Ordinance authorizing the refunding of the Waterworks and Sewerage System Revenue Bonds, Series 1995 and authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the wastewater treatment facility portion of the combined waterworks and sewerage system of the City of New Martinsville; authorizing the issuance of three separate series of Waterworks and Sewerage System Revenue Bonds of the City of New Martinsville in aggregate principal amount not to exceed $8,000,000 to be used, along with other funds and moneys of, or available to, the City of New Martinsville which may be lawfully expended for such purposes, to effect the refunding and to finance the cost of such acquisition and construction, to fund reserve accounts for such bonds, and to pay other costs in connection therewith; authorizing a revolving line of credit in an amount not to exceed $1,000,000 to provide funds for such acquisition and construction to the extent bond proceeds, grant receipts or other funds are not timely available therefore, and an agreement with respect to said Line of Credit; authorizing issuance of a combined waterworks and sewerage system construction note of the City of New Martinsville in the stated principal amount not to exceed $1,000,000 to evidence the City's obligation to repay any draws upon said Line of Credit; providing for the rights and remedies of and security for the owners of such bonds and note; authorizing execution and delivery of all documents relating to the issuance of such bonds; approving, ratifying and confirming a loan agreement or loan agreements relating to such bonds; and adopting other provisions related thereto.

Be It Ordained by the Common Council of the City of New Martinsville, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise.

A. "Act" shall mean collectively Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

B. "Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds on behalf of the Program and the Infrastructure Council, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

C. "Bank" shall mean the bank set forth in a resolution supplemental hereto.

D. "Board" shall mean the Water and Sanitary Sewer Board of the City, as created and appointed by ordinance enacted by the Council of the City pursuant to the provisions of Section 18 of the Act, and any successor thereto.

E. "Bond Act" means Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

F. "Bond Construction Trust Fund" shall mean the fund created by Section 6.01 hereof.

G. "Bondholder" or "Owner of the Bonds" or "Registered Owners" or any similar term shall mean any person who shall be the registered owner of any Outstanding Bond as hereinafter defined.

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

I. "Bond Year" shall mean 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.

J. "Bonds" shall mean the Original Bonds and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

K. "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.

L. "City" shall mean the City of New Martinsville, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any

department, board, organization or institution thereof in control of the management and operation of the System, as hereinafter defined.

M. "Closing Date" shall mean the date upon which there is an exchange of the Bonds for the proceeds or a portion of the proceeds representing the purchase of the Bonds by the Authority.

N. "Code" shall mean the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

O. "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.

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

Q. "Consulting Engineers" shall mean Burgess & Niple, Ltd., Consulting Engineers, Parkersburg, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the City as Consulting Engineers for the System.

R. "Cost of Project" or "Costs" shall mean those costs described in Section 1.04(G) hereof to be a part of the cost of the acquisition and construction phase of the Project, as the case may be, as hereinafter defined.

S. "Council" shall mean the Common Council of the City.

T. "Debt Service" shall mean the scheduled amount of interest and amortization of principal payable on the Bonds 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.

U. "DEP" shall mean the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds the function of the DEP.

V. "Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, as hereinafter defined, and its successors and assigns.

W. "Excess Investment Earnings" shall mean 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.

X. "Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

Y. "Fund" shall mean the "West Virginia Water Pollution Control Revolving Fund" established by the State, administered by the DEP and funded by capitalization grants awarded to the State pursuant to the federal Clean Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the construction, acquisition and improvement of wastewater treatment facilities.

Z. "Grant" shall mean any grant or grants received by the City in aid of the cost of the design, acquisition and construction of the Project.

AA. "Grant Agreement" shall mean a written commitment for the payment of any Grant, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is repaid to the City.

BB. "Grant Receipts" shall mean all monies received by the City on account of any Grant.

CC. "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.

DD. "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 Original 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 Original 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 Original 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 Original Bonds ratably as original proceeds of the Original 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 Original 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 Original Bonds 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 Original Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Original Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

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.

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

FF. "Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the City as independent accountants for the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

GG. "Infrastructure Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

HH. "Infrastructure Council Act" means Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

II. "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 or investment-type property or residential rental property for family units which is not located within the jurisdiction of the city 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.

JJ. "Line of Credit" shall mean the revolving line of credit established for the City by the Bank in an amount not to exceed $1,000,000.

KK. "Line of Credit Agreement" shall mean the agreement to be approved as to form and substance by the Supplemental Resolution establishing the Line of Credit with the Bank.

LL. "Line of Credit Bonds" shall mean the not more than $1,000,000 in aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, authorized by Section 4.10 to be issued, if necessary, to pay the principal of and interest on the Note.

MM. "Loan Agreement" or "Loan Agreements" shall mean (a) the Water Pollution Control Revolving Fund Loan Agreement by and among the Authority, the DEP and the City providing for the purchase of the Series A Bonds from the City by the

Authority, and/or, as the case may be, (b) the Loan Agreement or Loan Agreements to be entered into between the Authority and the City, pursuant to which the Authority shall agree, subject to the City's satisfying certain legal, engineering and other requirements, to purchase the Series B Bonds and Series C Bonds, the forms of which are attached hereto as Exhibit B.

NN. "Mayor" shall mean the Mayor of the City.

OO. "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 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.

PP. "Net Revenues" shall mean the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereafter defined.

QQ. "Nonpurpose Investment" shall mean 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.

RR. "Note" or "Credit Line Note" shall mean the not more than $1,000,000 in aggregate principal amount of a Bond Anticipation Note or Notes evidencing the City's obligation to repay any draw upon the Line of Credit originally authorized hereby, and unless the context clearly indicates otherwise, the term "Notes" means any refunding Notes of the City.

SS. "Note Registrar" shall mean the entity named as such in a resolution supplemental hereto.

TT. "Noteholder," "Holder of the Notes" or any similar term shall mean the person who shall be the registered owner of any Outstanding Note or Notes, as hereinafter defined.

UU. "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, DEP, the Infrastructure Council, fiscal agents, the Registrar and Paying Agent (both as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the 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.

VV. "Ordinance" or "this Ordinance" shall mean this Ordinance, in its present form or as hereafter amended or supplemented.

WW. "Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the not more than $8,000,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 A, Series 1997 B and Series 1997 C to be issued for the purpose of refunding the Prior Bonds and paying a portion of the Costs of the acquisition and construction of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

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

YY. "Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof, payable from Net Revenues on a parity with the Original Bonds.

ZZ. "Paying Agent" shall mean the West Virginia Municipal Bond Commission or such other entity or authority as may be designated as a paying agent by the City and the Supplemental Resolution with the written consent of the Authority and the DEP.

AAA. "Prior Bonds" means the Waterworks and Sewerage System Revenue Bonds, Series 1995, issued in the aggregate principal amount of $615,100 on October 26, 1995.

BBB. "Prior Ordinance" means the Ordinance of the City authorizing the Prior Bonds enacted on October 2, 1995.

CCC. "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.

DDD. "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.

EEE. "Project" shall mean the acquisition and construction of extensions, additions, betterments and improvements to sewerage portion of the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference.

FFF. "Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC"), 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 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;

(h) 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

(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 Investor Service, Inc. or Standard and Poor's, Corporation.

GGG. "Recorder" shall mean the Recorder of the City.

HHH. "Registrar" shall mean the entity or entities named as such in the Supplemental Resolution.

III. "Regulations" shall mean the regulations promulgated under the Code.

JJJ. "Renewal and Replacement Fund" shall mean the fund created by Section 5.01(2) hereof.

KKK. "Reserve Requirement" shall mean as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on each series of the Bonds in the then current or any succeeding Fiscal Year.

LLL. "Revenue Fund" shall mean the fund created by Section 5.01(1) hereof.

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

NNN. "SRF Act" shall mean Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Ordinance.

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

PPP. "Series A Bonds" shall mean the not more than $385,000 in aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, Series 1997 A to be purchased by the Authority on behalf of the Fund.

QQQ. "Series B Bonds" shall mean the not more than $6,720,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 B to be purchased by the Authority on behalf of the Infrastructure Council.

RRR. "Series C Bonds" shall mean the not more than $420,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 C to be purchased by the Authority on behalf of the Infrastructure Council.

SSS. "Series A Reserve Account" shall mean the account in the Series A Sinking Fund, as hereinafter defined, created by Section 5.02(1)(a) hereof.

TTT. "Series B Reserve Account" shall mean the account in the Series B Sinking Fund, as hereinafter defined, created by Section 5.02(1)(a) hereof.

UUU. "Series C Reserve Account" shall mean the account in the Series C Sinking Fund, as hereinafter defined, created by Section 5.02(1)(a) hereof.

VVV. "Series A Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

WWW. "Series B Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

XXX. "Series C Sinking Fund" shall mean the fund created by Section 5.02(1) hereof.

YYY. "State" shall mean the State of West Virginia.

ZZZ. "Supplemental Resolution" shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article "the", refers specifically to the supplemental resolutions authorizing the sale of the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Original Bonds and not so included may be included in another Supplemental Resolution.

AAAA. "Surplus Revenues" shall mean the net revenues not required by this Ordinance to be set aside and held for the payment of or security for the Bonds, including the reserve accounts and the Renewal and Replacement Fund.

BBBB. "System" shall mean the complete existing combined waterworks and sewerage system now owned by the City, consisting of a waterworks system in its entirety or any integral part thereof, and a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the wastewater treatment facility, hereafter acquired or constructed for said waterworks and sewerage system from any sources whatsoever, both within and without said City.

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

DDDD. "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.

EEEE. 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.

FFFF. Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

GGGG. The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of the enactment of this Ordinance.

HHHH. 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 Original Bonds and any other bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Bondholders, and the covenants and agreements herein set forth to be performed by said City shall be for the equal benefit, protection and security of the legal owners of any and all of such 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 City of New Martinsville, West Virginia, a municipal corporation and political subdivision of the State in Wetzel County of said State, now owns a combined waterworks and sewerage system consisting of a waterworks system in its entirety or any integral part thereof, including some or all of mains, hydrants, meters, values, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system,

and 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").

B. In accordance with Section 18 of the Act, the System is under the supervision and control of the Water and Sanitary Sewer Board of the City (the "Board").

C. The design of the Project was financed, in part, with the proceeds of the Prior Bonds and the Prior Bonds have a lien on the Gross Revenues of the System. The City derives Gross Revenues from the System, and, other than the Prior Bonds, said Gross Revenues are not pledged or encumbered in any manner.

D. The acquisition and construction of the Project will bring the City into compliance with various environmental laws.

E. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that there be acquired and constructed the Project, at an estimated cost of $8,800,000, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by DEP and are on file with the City, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of forty (40) years.

F. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of said System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on each series of Waterworks and Sewerage System Revenue Bonds of the City and all sinking fund and other payments provided for in this Ordinance.

G. It is deemed necessary for the City to issue its Original Bonds in the aggregate principal amount of not more than $8,000,000 to finance the costs of the acquisition and construction of the Project herein described through the Program and the Infrastructure Council. 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; engineering, fiscal 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, DEP and the Infrastructure Council, 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, the Note or the Line of Credit, 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 City 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 City for such purposes shall be deemed part of the Cost of the Project.

H. The Infrastructure Council has approved the Project and has authorized the Authority to purchase bonds of the City, to provide moneys which, along with the grant from the Infrastructure Council and the bonds issued to the SRF Program, will finance the Project. It is in the best interests of the City that its Series A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement by and among the Authority, the DEP and the City and it is in the best interest of the City that its Series B Bonds and Series C Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreements by and between the Authority and the City. The current refunding of the Prior Bonds with a portion of the proceeds of the Series B Bonds is in the best interest of the City and provides a debt service savings.

I. It is necessary and in the best interests of the City to establish the Line of Credit in an aggregate principal amount not to exceed $1,000,000, to provide funds for acquisition and construction of the Project to the extent Original Bond proceeds, Grant Receipts or other funds are not timely available therefor, to enter into the Line of Credit Agreement with the Bank, to issue the Note to evidence the City's obligation to repay any draw upon the Line of Credit, and, if necessary, to issue the Line of Credit Bonds or take such other actions as are hereinafter set forth to provide for the payment of the principal and interest of the Note on or prior to maturity thereof.

J. The City has received the approval of the Infrastructure Council. The City has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Original Bonds, or will have so complied prior to the 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 or will have been waived prior to the issuance of the Original Bonds.

K. The Code provides exceptions from the rebate provisions for issues of small governmental units meeting certain requirements. It is in the best interest of the City and its inhabitants to qualify for the small governmental unit exception from the rebate provisions for the Original Bonds. Accordingly, it is hereby found and determined:

(1) The City is a governmental unit with general taxing powers.

(2) The Original Bonds and the Note are not private activity bonds as defined by the Code.

(3) Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds and the Note will be used for local governmental activities of the City.

(4) The City reasonably expects that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the City and all subordinate entities thereof during the calendar year in which the Original Bonds will be issued will not exceed $5,000,000.

L. The City will not permit, at any time, 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 or the Note from the treatment afforded by Section 103(a) of the Code.

M. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds and the Note.

N. Neither the Bonds nor the Note will be federally guaranteed within the meaning of the Code.

O. It is reasonably anticipated that all proceeds of the Original Bonds will be spent within three years from the date of issuance.

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM AND REFUNDING OF PRIOR BONDS

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications prepared by the Consulting Engineers, approved by DEP, the Infrastructure Council and the City, and on file in the office of the Board.

Prior to issuing the Original Bonds for the acquisition and construction of the Project, the City must receive acceptable bids or enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program and the Infrastructure Council.

Section 2.02. Authorization of Refunding of Prior Bonds. The Prior Bonds outstanding as of the date of issuance of the Original Bonds are hereby ordered to be refunded pursuant to the terms of the Prior Ordinance and the lien of said Prior Bonds imposed by the Prior Ordinance on the revenues of the System is hereby ordered terminated, discharged and released upon payment to the Commission of funds sufficient to provide for the payment of the principal and interest to the date of refunding. Upon the refunding of the Prior Bonds, the amounts on deposit in the Renewal and Replacement Fund created and maintained under the Prior Ordinance with respect to the Prior Bonds shall be transferred to the Renewal and Replacement Fund created under this Ordinance and the amounts held in the reserve account for the Prior Bonds, if any, shall be transferred to the reserve accounts for the Original Bonds.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Original Bonds. For the purposes of funding the reserve accounts, paying costs of issuance and financing a portion of the costs of the acquisition and construction of the Project not otherwise provided for, on any one of such items, there shall be issued the Original Bonds of the City. The Original Bonds shall be issued in three series, with the first series to be designated "Waterworks and Sewerage System Revenue Bonds, Series 1997 A" and so on, in an aggregate principal amount of not more than $8,000,000. Each series of Original Bonds shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding forty (40) years after the date of issuance, and in such amount or amounts as shall be set out in each Loan Agreement. The Original Bonds shall not bear interest during the construction period but interest shall commence accruing on the Completion Date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest on the Series A Bonds shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Original Bonds shall be as set forth on Schedule Y to the respective Loan Agreements. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreement and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Original Bonds.

The Bonds shall be payable as to principal, at the principal office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the 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 City, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each series, 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 Agreements and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in said Supplemental Resolution and shall bear interest from such date.

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the City by the Mayor and attested by the Recorder, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.08, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the registered Owner thereof in person or by the Owner's attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Owner or the Owner's duly authorized attorney.

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

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond 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 Owner's furnishing the City proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by 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 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all the Original Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established are hereby

irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 3.08. Form of Original Bonds. The text of each series of Original Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

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[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WETZEL
CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 199__

No. R-1 $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NEW MARTINSVILLE, a municipal corporation of the State of West Virginia, in Wetzel County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($___ ____), in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of _____ percent (__%) per annum. 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. The interest on this Bond is payable by check or draft mailed to the Authority at the address as it appears on the books of 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 as otherwise provided by the Loan Agreement dated _____, 199__, among the Authority, the DEP and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"), (ii) to fund a reserve account therefor, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance

with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the __ day of _____, 1997, and a Supplemental Resolution adopted by the City on the __ day of _____, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 B AND 1997 C (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the __ day of _____, 199__.

[SEAL] _____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $		(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

MAR 0 2 1997

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

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

_____

_____

_____

_____

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

Dated: _____, ___

_____

In the presence of:

_____

[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WETZEL
CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 199__

No. R-2 $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NEW MARTINSVILLE, a municipal corporation of the State of West Virginia, in Wetzel County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority"), or registered assigns, the sum of _____ ($___ ____), in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of _____ percent (__%) per annum. 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. The interest on this Bond is payable by check or draft mailed to the Authority at the address as it appears on the books of 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 as otherwise provided by the Loan Agreement dated _____, 199__, between the Authority and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"), (ii) to fund a reserve account therefor, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance

with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the __ day of _____, 1997, and a Supplemental Resolution adopted by the City on the __ day of _____, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A AND 1997 C (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the _____ day of _____, 199__.

[SEAL] _____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

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 the said Bond on the books kept for registration of the within Bond of the said City, with full power of substitution in the premises.

Dated: _____, ____

_____

In the presence of:

_____

[FORM OF THE ORIGINAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WETZEL
CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 199__

No. R-3 $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NEW MARTINSVILLE, a municipal corporation of the State of West Virginia, in Wetzel County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority (the "Authority "), or registered assigns, the sum of _____ ($___ ____), in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

Interest on this Bond shall be zero (0%) percent from the date hereof until the Date of Completion of the Project, and after such date, interest shall be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 199_, at the rate of _____ percent (__%) per annum. 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. The interest on this Bond is payable by check or draft mailed to the Authority at the address as it appears on the books of 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 as otherwise provided by the Loan Agreement dated _____, 199__, between the Authority and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"), (ii) to fund a reserve account therefor, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance

with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the ___ day of _____, 1997, and a Supplemental Resolution adopted by the City on the ___ day of _____, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A AND 1997 B (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of _____, _____, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the ____ day of _____, 199__.

[SEAL] _____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____,
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

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 the said Bond on the books kept for registration of the within Bond of the said City, with full power of substitution in the premises.

Dated: _____, ____

_____

In the presence of:

_____

Section 3.09. Sale of Original Bonds; Ratification and Execution of Loan Agreements. The Original Bonds for each phase shall be sold to the Authority, pursuant to the respective terms and conditions of the Loan Agreements. As a ratification of the resolution of Council authorizing execution of the Loan Agreements, the Mayor is specifically authorized and directed to execute the Loan Agreements and the Recorder is directed to affix the seal of the City, attest the same and deliver the Loan Agreements to the Authority. The Loan Agreements are specifically incorporated into this Ordinance.

Section 3.10. Certificate of Consulting Engineers. Prior to the issuance of the Original Bonds, the City must obtain the certificate of the Consulting Engineers, in the form attached to the SRF Loan Agreement, to the effect that the Project has been designed as provided in the Program application and will be constructed in accordance with the approved plans, specifications and design as submitted to the DEP and the Authority, as the case may be, that the Project will be 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 the acquisition and construction of the Project.

Section 3.11. Amended Schedule A Filing. Within 60 days following the Completion Date, the City will file with the Authority its schedule, in substantially the form of "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE IV

LINE OF CREDIT

Section 4.01. Authorization of Line of Credit. For the purpose of providing funds for the acquisition and construction of the Project to the extent Original Bond proceeds, Grant Receipts or other funds are not timely available therefor, the Line of Credit to be established by the Bank is hereby authorized, and upon approval by the Supplemental Resolution, the Mayor of the City is hereby authorized and directed to execute the Line of Credit Agreement.

Section 4.02. Authorization of Note. For the purpose of evidencing the City's obligation to repay any draw upon the Line of Credit and, thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Note of the City, in the stated principal amount of not to exceed $1,000,000. The Note shall be originally issued in single, fully registered form, without coupons, and shall be dated as of the date of delivery thereof. There shall be attached to the Note a Record of Advances and Payments, upon which, the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of and interest on the Note and the amount of the Note Outstanding after either of said transactions shall be recorded. Anything to the contrary herein or in the Line of Credit Agreement notwithstanding, the Note shall evidence only the Outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount of each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest at the rate, not to exceed eight percent per annum, specified in the Supplemental Resolution. Interest shall cease to accrue on the amount of the Note Outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Note shall mature on such date or dates, not later than 48 months after the date thereof, specified in the Supplemental Resolution. Interest on the Note shall be payable as specified in the Supplemental Resolution. The Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement or said Supplemental Resolution. Notwithstanding the foregoing, the terms of the Note, other than the principal amount thereof, maximum rate of interest thereon and maximum maturity thereof, may be modified by the Supplemental Resolution, subject to the limits of the Act.

The Note shall be payable as to principal upon presentation, and, in the case of payment at maturity or surrender, at the principal office of the Note Registrar, in any coin or currency which, on such date of payment, is legal tender for the payment of public and private debts under the laws of the United States of America. The Note is subject to prepayment in whole or in part at any time, upon two days' written notice (or telephone notice, confirmed in writing as soon as practical) to the Note Registrar and the Note Owner; provided, that any payment of principal, in whole or in part, prior to the final maturity of the Note shall be recorded by the Note Registrar on the Record of Advances and Payments attached to the Note, and the Note shall be returned to the Owner.

Section 4.03. Execution of Note. The Note shall be executed in the name of the City by the signature of its Mayor, and the seal of the City shall be affixed thereto and attested by the signature of the City Recorder. Any Note may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Note, shall hold the proper office of the City, although at the date of such Note such person may not have held such office or may not have been so authorized.

Section 4.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Note, shall be conclusively deemed to have agreed that the Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Note or any portion thereof remains Outstanding, the Note Registrar shall keep and maintain, at its principal office, books for the registration and transfer of the Note. The Note shall be transferable only upon such books of the Note Registrar by the Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Note Registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Note, there shall be issued, at the option of the Owner or the transferee, another Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Note and Outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Note is exercised, Notes shall only be issued in accordance with the provisions of this Ordinance. All Notes surrendered in any such transfers shall forthwith be cancelled by the Note Registrar. For every such transfer of Notes, the Note Registrar may make a charge sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Note upon each transfer, and any other expenses of the Note Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer.

Section 4.05. Form of Note. The text of the Note shall be in substantially the form set forth by the Supplemental Resolution. The Note shall not become valid until authenticated by the Note Registrar.

Section 4.06. Security for Note. The principal of and interest on the Note are payable solely from and secured by the net proceeds of the Bonds and such other sources, including the net proceeds of the Line of Credit Bonds, as are hereinafter set forth. The principal and interest on the Note are further payable from and secured by the Net Revenues derived from the operation of the System; provided, that such lien on the Net Revenues is

and shall be junior, inferior and subordinate in all respects to the lien thereon of the Holders and owners of the Bonds.

Section 4.07. Notes are Special Obligations. The Note shall be a special obligation of the City, payable as to principal and interest solely from said sources described in this Article. The Note does not and shall not constitute an indebtedness of the City within the meaning of any charter, constitutional or statutory provisions. The general funds of the City are not liable, and neither the full faith and credit nor the taxing power of the City is pledged, for the payment of the Note. The Owner of the Note shall never have the right to compel the forfeiture of any property of the City. The Note shall not be a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or upon any of its income, receipts or revenues, except the net proceeds of the Bonds and the Line of Credit Bonds, the Net Revenues and other funds pledged thereto by this Ordinance.

Notwithstanding anything in this Ordinance, the City shall not be required to advance any money derived from any source of income other than the net proceeds of the Bonds and the Line of Credit Bonds, the Grant Receipts, the Net Revenues and other funds pledged by this Ordinance for the payment of the principal of or interest on the Note or for the performance of any of its duties under this Ordinance. The City may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the City for such purpose without incurring indebtedness.

Section 4.08. Note Payment Fund. There is hereby created and established with the Note Depository a special fund, designated "Sewerage System 1997 Construction Note Payment Fund." The Note Depository shall segregate all funds and securities in the Note Payment Fund from other deposits and funds of the Note Depository and other deposits and funds of the City, including the payment fund established therefor. All moneys in the Note Payment Fund, until payment in full of all principal and interest owing on the Note at its maturity, shall be held in trust for the Owner of the Note, and the City shall have no rights with respect thereto, except to receive the balance therein after payment of the Note and the interest thereon and the charges, if any, of the Note Depository and the Note Registrar. Pending such application, moneys in the Note Payment Fund shall be invested and reinvested in Qualified Investments. Any balance received by the City shall be applied to the costs of the Project. At least one day prior to the maturity of the Note, there shall be deposited in the Note Payment Fund, the net proceeds of the Original Bonds or other moneys, including Net Revenues and the net proceeds of the Line of Credit Bonds, if necessary, in an amount sufficient to pay the principal of and interest on the Note at maturity. The City may, at any time, prepay all or any portion of the Note Outstanding as herein provided. The Note Depository shall transfer any such principal payment, whether at maturity or a prepayment, or whether in whole or in part, to the Note Registrar for payment, and the Note Registrar shall make such payment as provided in this Article IV.

Section 4.09. Conversion to Long-Term Obligation. Notwithstanding the foregoing, the City may, rather than pay the principal of the Note at or prior to the maturity

thereof, convert the Note to a long-term obligation, subject to such terms, rate or rates of interest and other provisions as shall be mutually agreeable to the Owner and the City and authorized by the Supplemental Resolution, payable from the Net Revenues of the System on a basis junior, subordinate and inferior to the Bonds. Such long-term obligation may constitute the Line of Credit Bonds authorized hereunder.

Section 4.10. Line of Credit Bonds. A. For the purpose of paying the principal of and interest on the Note at or prior to maturity, to the extent not otherwise provided for, there is hereby authorized to be issued, and the City hereby agrees to issue, the Line of Credit Bonds in a principal amount not to exceed $1,000,000. The Line of Credit Bonds shall be issued at such time and in such amount, bear interest at such rate or rates not to exceed ten percent (10%) per annum and be subject to such terms, all as shall be determined by a Supplemental Resolution.

B. The principal of and interest on the Line of Credit Bonds shall be payable only from, and secured by, the Net Revenues derived from the operation of the System; provided, that such lien on the Net Revenues shall be junior, inferior and subordinate in all respects to the lien thereon of the Holders and owners of the Bonds.

C. There shall be created and established with the Commission, upon the issuance of the Line of Credit Bonds, a special fund, to be designated the "Line of Credit Debt Service Fund" and, within such fund, a special account, to be designated the "Line of Credit Reserve Account." Deposits into the Line of Credit Debt Service Fund for the payment of principal of and interest and fiscal agency or other charges on the Line of Credit Bonds, and payments into the Line of Credit Reserve Account, shall be made both at the times and in the proportions, and such fund and account shall otherwise be handled, as set forth in a resolution supplemental hereto. Said deposits from the Net Revenues, on account of the Line of Credit Bonds, shall be made only after those deposits required by Section 5.03 of this Ordinance and any deposits required by the Loan Agreement.

Section 4.11. Draws upon Line of Credit. The City may draw upon the Line of Credit from time to time, upon the resolution of Council (or, if authorized by the Supplemental Resolution, upon the resolution of the Board), and otherwise as provided by the Line of Credit Agreement.

Section 4.12. Line of Credit Construction Trust Fund. There is hereby created and established with the Note Depository a special fund, designated the "Waterworks and Sewerage System Line of Credit Construction Trust Fund" (hereinafter referred to as the "Trust Fund"). Any draws upon the Line of Credit shall be deposited in the Trust Fund and shall be kept separate and apart from all other funds of the City or the Note Depository and expended solely for the purposes hereinafter provided. Expenditures may be made from the Trust Fund for paying the costs of acquisition and construction of the Project to the extent Original Bond proceeds or other funds are not timely available therefor; provided, that no expenditures shall be made from said fund without the approval of the Board and the Consulting Engineers. The balance of any such deposit in the Trust Fund, in excess of the

amount insured by FDIC, shall at all times be secured to the full extent thereof by Government Obligations or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State. Any balance in the Trust Fund after the completion of the Project shall be deposited in the Note Payment Fund and used only for the payment of the Note as provided in this Ordinance. Pending the authorized use thereof, moneys in the Trust Fund shall be invested in Qualified Investments.

Section 4.13. Line of Credit Bond Proceeds. The proceeds of the Line of Credit Bonds, if necessary, after the payment of the cost of issuance thereof, shall be applied as provided by Section 4.08.

Section 4.14. Note and Line of Credit Bonds Secured by Ordinance. All of the covenants and agreements contained in this Ordinance shall be deemed to have been made, to the extent applicable, for the benefit of the Owner of the Note and, subsequently, of the registered owners of the Line of Credit Bonds (except as to details inconsistent with this Ordinance). Such covenants and agreements shall be fully enforceable in the manner provided in the Ordinance by the Owner of the Note or the registered owners of the Line of Credit Bonds; provided, that any such rights and remedies shall be junior, subordinate and inferior to those of the Holders and owners of the Bonds.

Section 4.15. Covenants with Owner of Note. In order to secure the payment of the Note, the City hereby particularly covenants and agrees with the Owner of the Note, and makes provisions which shall be a part of the contract with such Owner, that the City, if and so long as any of the Note is Outstanding and unpaid:

(A) Will proceed with all practicable dispatch to construct the Project;

(B) Will not make or cause or permit to be made any application of the proceeds of the Note or of any moneys held in the Note Payment Fund or the Note Construction Trust Fund except in accordance with the provisions of this Ordinance;

(C) Will comply in all respects with the terms and provisions of the Loan Agreement and with all applicable state and federal laws and regulations governing the implementation of the Loan Agreement;

(D) Will impose and collect rates and charges for the use and services of the System in accordance with the requirements of the Ordinance and the Loan Agreement;

(E) Will take all actions necessary to preserve its right to receive reimbursements under the Loan Agreement;

(F) Will promptly request any reimbursements to which it has become entitled under the Loan Agreement;

(G) Will not unilaterally terminate, or enter into any agreement to terminate, the Loan Agreement;

(H) The Bonds and the bond anticipation notes provided for by Section 4.17 will not create a pledge or otherwise encumber the Net Revenues prior to or on a parity with the lien thereon of the Owner of the Note, and, except with respect to said loan anticipation notes, will not create a pledge or otherwise encumber the proceeds of the Original Bonds prior to or on a parity with the lien created hereby on behalf of the Note.

Section 4.16. Required Notices to Note Depository and Owner of Note. The City will give to the Bank, the Note Depository and the Owner of the Note prompt written notice, appropriately documented, of any change in the status of the Program and of any authorization of additional indebtedness of the City, and particularly of any of the following events:

(A) Any modification of the Loan Agreement;

(B) The suspension of the Loan Agreement;

(C) The lifting or cancellation of the suspension of the Loan Agreement;

(D) The termination of the Loan Agreement;

(E) The annulment of the Loan Agreement; or

(F) The authorization by the City of any additional indebtedness related to the System.

Whenever the Bank and the Note Depository shall have received notice that the Loan Agreement has been suspended or a stop-work order has been issued, no further draws upon the Line of Credit or withdrawals from the Line of Credit Construction Trust Fund shall be made until the Note Depository shall have received notice of the lifting of such suspension or stop-work order.

Section 4.17. Bond Anticipation Notes. Notwithstanding any provision of this Ordinance to the contrary, the City may hereafter issue bond anticipation notes with a lien on the Net Revenues and the net proceeds of the Original Bonds prior to or on a parity with that of the Note, all as may be set forth in a resolution supplemental hereto.

Section 4.18. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Note or the Line of Credit Bonds, as the case may be:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Note or any Line of Credit Bond, as the case may be;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Note, or the Line of Credit Bonds, as the case may be, in this Ordinance or any resolution or ordinance supplemental hereto or amendatory hereof or in the Note or the Line of Credit Bonds, as the case may be, contained, and such default shall have continued for a period of thirty (30) days after the City shall have been given written notice of such default by the Note Depository or any Owner or registered owner of the Note or a Line of Credit Bond, as the case may be; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 4.19. Remedies. Upon the happening and continuance of any Event of Default, the Owner of the Note or any registered owner of a Line of Credit Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding, enforce all rights of the Owner of the Note or the respective registered owners of the Line of Credit Bonds, as the same may be, including the right to require the City to perform its respective duties under the Act and this Ordinance relating thereto, (iii) bring suit upon the Note or the Line of Credit Bonds, as the case may be, (iv) by action at law or bill in equity, require the City to account as if it were the trustee of an express trust for the Owner of the Note or the respective registered owners of the Line of Credit Bonds, as the case may be, and (v) by action at law or bill in equity, enjoin any acts in violation of this Ordinance with respect to the rights of the Owner of the Note or the respective registered owners of the Line of Credit Bonds, as the case may be; all subject, however, to the rights of the holders and Owners of the Bonds, and Line of Credit Bonds.

Section 4.20. Appointment of Receiver. The Owner of the Note or any registered owner of the Line of Credit Bonds, as the case may be, may, by proper legal action, compel the performance of the duties of the City under this Ordinance and the Act, all as provided by Section 9.03 of the Ordinance, subject, however, to the rights of the holders and Owners of the Bonds.

Section 4.21. Modification or Amendment. No material modification of or amendment to this Ordinance or any ordinance or resolution amendatory hereof or supplemental hereto, which would materially and adversely affect the rights of any Owner of the Note or any registered owner of the Line of Credit Bonds, shall be made without the consent in writing of the Owners or registered owners of two-thirds (2/3) or more in principal amount of the Note or Line of Credit Bonds, as the case may be, then Outstanding; provided, however, that no change shall be made in the maturity of any Note or Line of Credit Bond or the rate or rates of interest thereon, or in the principal amounts thereof, or affecting the unconditional promise of the City to pay the principal of and interest on the Note or Line of Credit Bonds out of the funds respectively pledged therefor, without the consent of the Owners or registered owners thereof, as the case may be. No amendment or modification shall be made which would reduce the percentage of the principal amount of the Note or Line

of Credit Bonds, as the case may be, required for consent to the above-permitted amendments or modifications.

Section 4.22. The Bank. The Bank may serve as the Note Registrar and the Note Depository regardless of its ownership of the Note. The Bank is further hereby authorized to authenticate the Note and any Notes issued in exchange or as replacements therefor prior to the delivery thereof.

Section 4.23. Note Depository. The City may pay to the Note Depository, from time to time, reasonable compensation for all services rendered by the Note Depository and all reasonable expenses, charges, counsel fees and other disbursements incurred by the Note Depository in connection with its performance of its functions hereunder. The City shall, from time to time, have the right to appoint a successor Note Depository, provided that such successor Note Depository be a bank or national banking association located in the State and insured by the FDIC. The depository bank shall signify its acceptance of the duties and obligations hereby imposed by executing and delivering to the City a written acceptance thereof.

Section 4.24. Note Registrar. The Note Depository shall also serve as the Note Registrar for the Note. The Note Depository's acceptance of the trusts and the duties of Note Depository provided for in Section 4.08 shall also include the duties and obligations of Note Registrar. Any successor Note Registrar for the Note shall be designated by the City in a Supplemental Resolution and must be a bank, trust company or national banking association. Any such successor Note Registrar shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the City a written acceptance thereof. The Note Registrar shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Note Registrar in connection with such services, solely from moneys available therefor.

Section 4.25. Notice to Authority and DEP. The City shall give the Authority, the Infrastructure Council and the DEP written notice of the issuance of the Note, any Line of Credit Bonds or any bond anticipation notes authorized by Section 4.17 hereof.

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; and

(3) Bond Construction Trust Fund (separate subaccount to be established for each series of Original Bonds).

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission for each series of Original Bonds:

(1) Sinking Fund;

(a) Within the Sinking Fund, the 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 Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

(1) The City shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The City shall next, on the first day of each month (i) 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 respective Sinking Funds, 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 respective Sinking Funds 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 respective Sinking Funds, 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 respective Sinking Funds 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. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03(2) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(3) The City shall next transfer from the Revenue Fund and pay to the Commission 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, for deposit in the respective Reserve Accounts, an amount equal to 1/120 of the Reserve Requirement; provided, that no further payments shall be made into the respective Reserve Accounts when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the respective Reserve Requirement. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03(3) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(4) The City 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 City 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 [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, pro rata, to the Sinking Funds.

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 City 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 Ordinance.

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 System.

D. The City 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.

Simultaneously with the deposit made to the Commission pursuant to Section 5.03(2) and (3) the City shall remit to the Commission the SRF Administrative Fee.

The City shall complete the "monthly payment form," which form is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

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 City to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

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

Section 5.04. Excess Bond Proceeds. The City shall place any excess proceeds from the Original Bonds not required by the Project in the applicable 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. The amount of the Series B Bond proceeds which, together with any funds held under the Prior Ordinance, shall be deposited with the Commission and applied to the payment in full of the Prior Bonds.

B. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the respective reserve account the sum, if any, set forth in the Supplemental Resolution for funding of said Reserve Account.

C. The remaining moneys derived from the sale of the Original Bonds shall be deposited by the City, as received from time to time, in the Bond Construction Trust Fund hereinafter established.

D. 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. With respect to the proceeds of the Series A Bonds, on or before the Closing Date, the City shall have delivered to the Authority 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. With respect to the proceeds of the Series B Bonds and Series C Bonds, by the ____ day of each month, the City shall provide the Infrastructure Council with a requisition for costs incurred for the Project with such documentation as the Infrastructure Council shall from time to time require. Upon receipt of the proceeds from the Authority, the City shall deposit the proceeds in the Construction Trust Fund and pay any approved costs. 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 (except for the cost of issuance of the Original Bonds which shall be made upon request of the City) 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 City.

ARTICLE VII

ADDITIONAL COVENANTS OF THE CITY

Section 7.01. General Covenants of the City. All the covenants, agreements and provisions set forth in this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article 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 City 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 Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the City to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith, equally and ratably, by a first lien on the Gross 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 Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds 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 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. Such schedule of rates and charges shall be changed and readjusted, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. The City shall take the necessary actions with respect to the imposition of rates, at such times and with such provisions with respect to interest rate and maturity of the Bonds, to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from

time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and the reserve account for the Bonds is funded at least at the requirement provided for in the Ordinances, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bonds.

Section 7.05. Completion, Operation and Maintenance; Schedule of Cost. The City will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures, for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof, from the revenues of said System, in the manner provided in the Ordinance.

Upon completion of the Project, the City shall file with the Authority a schedule, in substantially the form of Amended Schedule A to the Program loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 7.06. Sale of the System. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds, and the City shall direct the Commission to apply such proceeds to the payment of principal and any interest at maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the City by the Commission, unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

The foregoing provision notwithstanding, the City shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. The Council may then, if it be so advised, as evidenced by certificates of the Consulting Engineers, by resolution duly adopted, approve and concur in such finding and provide for the sale of such property if the amount to be received therefor is not in excess of ten thousand dollars ($10,000), or authorize such sale, lease or other disposition of such property, upon public bidding, if the amount to be received therefor is in excess of ten thousand dollars ($10,000) but not in excess of fifty thousand dollars ($50,000). The proceeds of any such sale, lease or other disposition of such property, not in excess of $10,000, shall be deposited in the Renewal and

Replacement Fund. The proceeds derived from any such sale, lease or other disposition of such property, in excess of $10,000 and not in excess of $50,000, shall be remitted by the City to the Commission for deposit in the appropriate Sinking Funds and shall be applied only to the redemption of Bonds of the last maturities then Outstanding or to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the City if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars ($50,000) and be insufficient to pay or redeem, prior to maturity, all the Bonds then Outstanding, without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds then Outstanding. The City shall prepare the form of such approval and consent for execution by the then owners of the Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The City shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 7.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 7.08 hereafter. All obligations hereafter issued by the City payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds to the extent such are Outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund, at the time of the issuance of such subordinate obligations, have been made and are current.

Except as provided above, the City shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said pari passu additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

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

Section 7.08. Parity Bonds. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided and with the prior written consent of DEP, the Infrastructure Council and the Authority.

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) Each series of Original Bonds then Outstanding;

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

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

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the City, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder 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 City, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the 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 City shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Outstanding Bonds on such revenues. The City shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, 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 on account of the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the Parity Bonds, and the City shall then be in full compliance with all the covenants, agreements and terms of this Ordinance.

Section 7.09. Insurance and Construction Bonds. The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The City 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 City 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 City, 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 City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards

of war. The proceeds of all such insurance policies shall be 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 City shall also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Authority 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 City.

The City 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 City shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority, the Infrastructure Council 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 City, 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 City 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 City shall notify the DEP in writing of such receipt. The City 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 City 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 City 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 City 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 City shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

The City agrees that qualified operating personnel, properly certified by the State, will be retained to operate the System during the entire term of the Loan Agreements.

Section 7.11. Compliance With Loan Agreement, Rules and Regulations. The City 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 Infrastructure Council, 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 City will not render or cause to be rendered any free services, of any nature, by its System; and, in the event the City or any department, agency, instrumentality, officer or employee of the City shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the City shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.13. Enforcement of Collections. The City will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, 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 City further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or 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 City will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.15. Books, Records and Facilities. The City 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 City shall permit the Authority, the Infrastructure

Council, 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 City shall submit to the Authority, the Infrastructure Council, 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 Agreements or Grant Receipts or other sources of financing for the Project.

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

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the West Virginia Public Service Commission and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Consulting Engineers and the Authority, the Infrastructure Council 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 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 Ordinance with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Bonds, Notes or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report to the Authority, the Infrastructure Council and the DEP. The report of said audit shall include a statement that the City is in compliance with the terms and provisions of the Act and the Loan Agreements and that the City's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The City 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 and forward a copy by the 10th of each month to the Authority, the Infrastructure Council and the DEP.

The City shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the SRF Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the City's construction schedule.

The City 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 City shall permit the Authority, the Infrastructure Council 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 City shall also provide the Authority, the Infrastructure Council 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, the Infrastructure Council and the DEP with respect to the System pursuant to the Act.

Section 7.16. Operating Budget. The Board 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, the Infrastructure Council 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 Board 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 City 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 City 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 Agreements. The City agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the City will provide the DEP and the Infrastructure Council with copies of all documents submitted to the Authority.

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

A. PUBLIC PURPOSE BONDS. The City 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 City.

B. 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.

C. PRIVATE LOAN LIMITATION. The City 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 City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

E. INFORMATION RETURN. 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.

F. FURTHER ACTIONS. The City 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 Bond Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding 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. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Original Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the City. The City reasonably expects it and all its subordinate entities to issue less than $5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1997, in which the first series of Original Bonds are to be issued. Therefore, the City believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further

described in Section 8.03. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Original Bonds.

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 Ordinance, 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 City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

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

Section 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 City'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. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Original Bonds. In addition, the City covenants to comply with all regulations, from time to time in effect and applicable to the Original Bonds, as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds used to fund the purchase of the 1997 Subordinate Bonds and fully comply with Section 148(f) of the Code, and covenants to take

such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not quality for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Original Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City, to be used for any lawful purpose of the System. The City shall remit payments to the United States, in the time and at the address prescribed by the regulations as the same may be from time to time in effect, with such reports and statements as may be prescribed by such regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the City. To the extent not so performed by the Authority, the City and the Depository Bank (at the expense of the City) may provide for the employment of independent attorneys, accountants or consultants, compensated on such reasonable basis as the City or the Depository Bank may deem appropriate, in order to assure compliance with this Section 8.03. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City 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.

The City shall submit to the Authority, within 15 days following the end of each Bond Year, a certified copy of its rebate calculation and certificate with respect thereto or, if the City qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the City shall submit to the Authority a certificate stating that it

is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Original Bonds subject to rebate. The City 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 defined in the Code).

The City shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority and shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as the Authority may request.

Section 8.04. Restriction of Yield and 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. 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 series of Original Bonds; or

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or an owner of such Bonds; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

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

Section 9.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the City under the 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 City of such default, any Bondholder shall, in addition to all other remedies or rights, have the right, by appropriate legal proceedings, to obtain the appointment of a receiver to administer the System on behalf

of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of 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, maintain, manage and control such facilities, and each and every part thereof, and in the name of the City exercise all the rights and powers of the City with respect to said facilities as the City itself might do.

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the City and for the joint protection and benefit of the City and Owners of Bonds issued pursuant to the Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of the Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Bondholders 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 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 agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the City, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

Section 10.02. Defeasance of Notes. The Notes shall be defeased as set forth in a resolution supplemental hereto.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 11.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 11.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 11.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of 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 11.05. Abstract of Ordinance and Notice of Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least six full days intervening between each publication, in the Wetzel Chronicle, a newspaper of general circulation in the City of New Martinsville, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Bonds, and that any person interested may appear before the City upon a certain date, 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 City for review by interested persons during office hours of the City. The Council hereby determines that the Abstract contains

sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the City shall take such action as it shall deem proper in the premises.

Section 11.06. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

First Reading: February 11, 1997

Second Reading
and Passage: _____, 1997

Public Hearing: _____, 1997

This Ordinance was placed into effect following the public hearing held on March 3, 1997.

(SEAL)

Recorder

Mayor

EXHIBIT A

Project Description

Acquisition and construction of the proposed 1.37 mgd wastewater treatment plant; 1,500 feet of sewer joint sealing; 825 feet of sewer lines; 6,500 feet of sewer replacement; emergency generator improvements at two existing lift stations; rehabilitate two existing lift stations; and 22,000 feet of force main and all necessary appurtenances thereto.

EXHIBIT B

[Loan Agreements]

EXHIBIT C

CITY OF NEW MARTINSVILLE, WEST VIRGINIA

NOTICE OF PUBLIC HEARING and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on February 18, 1997, the Council of the City of New Martinsville, West Virginia (the "City") adopted an ordinance which:

1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the sewer portion of existing combined waterworks and sewer system ("System") of the City and the financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than $8,000,000 in aggregate principal amount of Waterworks and Sewerage System Bonds, Series 1997 A, 1997 B and 1997 C (the "Bonds"). The Project, estimated at $8,800,000, was authorized to be financed with the Bond proceeds and grants in the approximate amount of $1,161,395. Authorized the refunding and defeasance of the City's Series 1995 Bonds.

2. Directed that the Bonds be issued in three series and in the form of one bond each, fully registered with a payment record attached; that interest on the Bonds shall be no more than three percentum (3%) per annum, that said Bonds mature in not more than forty years and that said Bonds be sold for the par value thereof; that the Bonds be executed in the name of the City by the Mayor, and the seal of the City be affixed thereto and attested to by the Recorder; that such Bonds be duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser on behalf of the West Virginia Infrastructure and Jobs Development Council and the West Virginia Division of Environmental Protection.

3. Directed the establishment of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly

payment of principal and interest when due; provided for the creation of reserve accounts for the Bonds and a Renewal and Replacement Fund; and provided for the use of excess funds of the System.

4. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

5. Pledged to payment of the Bonds the Gross Revenues of the System.

6. Provided upon certain conditions for the issuance of additional bonds.

7. Provided for insurance coverage on the Project; provided that the City will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service.

8. Established the terms for defaults and the remedies of the Bondholders.

9. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of New Martinsville at a regular meeting thereof at 7:30 p.m., prevailing time, on Monday, March 3, 1997, at the Municipal Building, 197 Main Street, New Martinsville, West Virginia, and present objections and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on February 18, 1997, is on file in the Office of the Recorder for review by interested persons during the regular office of such office, to-wit: 8:00 a.m. to 4:30 p.m. Mondays through Fridays.

Recorder - City of New Martinsville, West Virginia

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as Recorder of the City of New Martinsville, Wetzel County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of New Martinsville, such records being in the custody of the undersigned and maintained at the City of New Martinsville, Municipal Building, New Martinsville, Wetzel County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this ____ day of March, 1997.

_____
Recorder

[SEAL]

CHASFS3:46428

CITY OF NEW MARTINSVILLE

BOND AND NOTE ORDINANCE

CITY OF NEW MARTINSVILLE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A, SERIES 1997 B AND SERIES 1997 C

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SECOND READING AND ADOPTION - SEWER USE ORDINANCE:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILMAN BERGER, IT WAS UNANIMOUSLY AGREED THAT THE FOLLOWING ORDINANCE BE ADOPTED FOLLOWING SECOND READING:

AN ORDINANCE AMENDING CHAPTER 23
OF THE CODE OF THE CITY OF
NEW MARTINSVILLE, WEST VIRGINIA

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NEW MARTINSVILLE, WEST VIRGINIA:

That Chapter 23 of The Code Of The City Of New Martinsville, West Virginia be and it is hereby amended as follows --

- As to Articles I and IV of Chapter 23, that same be deleted in their entirety and that there be substituted therefor the following, to-wit:

[As to the contents of the Chapter, commencing on present page 280 of the Code]

New Martinsville City Code

Article I. In General.

§ 23-1. Declaration of necessity.
§ 23-2. Purpose of ordinance.
§§ 23-3 to 23-10. Reserved.

Article IV. Sewers and Sewage Disposal.

Division 1. Generally.

§ 23-33. Definitions.
§ 23-34. Placing or depositing wastes upon public or private property.
§ 23-35. Discharging untreated sewage, industrial wastes, etc. to natural outlets.
§ 23-35.1. City and Board not liable for damage.
§ 23-36. Construction or maintenance of privies, septic tanks, etc. restricted.
§ 23-37 Use of public sewers required.
§ 23-37.1 User's responsibility to keep sewer or user's side of connection to city service clean.
§ 23-38. Damaging, etc. sewage works.
§ 23-39. Right of entry of Board employees for purposes of inspection, testing, etc.
§ 23-40. Violations--Notice.
§ 23-41. Same--Penalty; continuing violations.
§ 23-42. Same--Liability to Board for damages, etc.

Division 2. Private Sewage Disposal Systems.

§ 23-43. When connection permitted.
§ 23-44. Permit--Required; application; fee.
§ 23-45. Same--Effective date; inspections.
§ 23-46. Compliance with state regulations; restriction on employment of subsurface soil absorption facilities; discharge to public sewers or natural outlets prohibited.
§ 23-47. Abandonment when public sewer becomes available.
§ 23-48. Owner to operate and maintain.
§ 23-49. Effect of division on additional requirements of health officer.

Division 3. Building Sewers and Connections.

§ 23-50. Connection permit--Required.
§ 23-51. Same--Classifications; application; fees; easement granted.
§ 23-52. Owner to bear installation and connection costs, and to indemnify Board and employees for losses or damages.
§ 23-53. Separate building sewer required for each building; exception.
§ 23-54. Use of old building sewers in connection with new buildings.
§ 23-55. Building sewer construction.
§ 23-56. Size and slope.
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§ 23-63.1. Approval of connections; unauthorized connections prohibited.

Division 4. Use of Public Sewers.

§ 23-64. Discharge of storm water, surface water, unpolluted industrial process waters, etc. to sanitary sewers prohibited.
§ 23-65. Storm water, unpolluted drainage, etc. to be discharged to approved combined sewers, storm sewers or natural outlets.
§ 23-66. Discharge of certain waters or wastes restricted.
§ 23-66.1. Toxic substances.
§ 23-66.2. Conditional service.
§ 23-67. Grease, oil and sand interceptors--Generally.
§ 23-68. Same--Maintenance.

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Division 5. Powers and Authority of Inspectors.

§ 23-73.1. Right of entry for purpose of discharge inspection.
§ 23-73.2. Collection of information.
§ 23-73.3. Required safety procedures.
§ 23-73.4. Right of entry to and from all easements.

[As to the text of the amended, enlarged Articles]

Article I. In General.

Sec. 23-1. Declaration of necessity.

The use of the sewer system of the City of New Martinsville is determined and declared to be essential for the protection and preservation of the public health, comfort, safety, economy and general welfare of the inhabitants of the city and of the area served by such sewer system.

Sec. 23-2. Purpose of ordinance.

The purpose hereof is to establish an ordinance controlling the construction, acquisition, operation and maintenance of the sewage collection and disposal system of the City of New Martinsville and areas being served by said system, to include such terminology as is necessary to bring applicable codes pertinent to the City of New Martinsville sewage collection and disposal system into compliance with federal and state regulations. It is the further purpose hereof to charge the responsibility of updating and amending this ordinance, to comply with future changes or expansions of the rules and regulations governing said system, and in consultation with the City's Water and Sanitary Sewer Board, to the Common Council of the City of New Martinsville, and that such update be performed on an annual basis commencing from the date of passage of this ordinance, and all such amendments, upon final approval of the Common Council, shall be a part of this ordinance.

Secs. 23-3 to 23-10. Reserved.

Article IV. Sewers and Sewage Disposal.

Division 1. Generally.

Sec. 23-33. Definitions.

For the purposes of Chapter 23 of the City Code, and unless the context specifically indicates otherwise, the following words and phrases shall have the meanings respectively ascribed to them by this section:

B.O.D. (denoting "biochemical oxygen demand"). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at twenty degrees Centigrade, expressed in milligrams per liter.

Building drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

Building sewer. The extension from the building drain to the public sewer or other place of disposal; also called house connection.

City. The City of New Martinsville, West Virginia.

Combined sewer. A sewer intended to receive both wastewater and storm or surface water.

Commercial user. A user of the city sewerage system in a location where a trade, business, profession or occupation is carried on or where a service is rendered.

Common Council or Council. The Mayor and six (6) Ward Councilmen of the City of New Martinsville, West Virginia, constituting the governing body of the City.

Domestic user. Each family unit which uses the sewerage system of the city, which family unit may consist of one or more persons; where there is more than one family unit using water from the same water meter or under the same roof, each family unit shall be considered a separate domestic user.

Easement. An acquired legal right for the specific use of land owned by another or others.

Floatable Oil. Oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage. Solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Industrial user. A user of the city sewerage system, such as a factory or a similar organization, where more than ten persons are employed.

Industrial waste. The wastewater from industrial processes, trade or business, as distinct from domestic or sanitary strength wastes.

May. Denotes permissive, as opposed to mandatory.

Natural outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.

Occupied building. Any structure erected and intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which sanitary sewage or industrial wastes is or may be discharged.

Person. Any individual, firm, company, association, society, corporation or group.

pH. The logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen-ion in grams per liter of solution. Neutral water, for example, has a pH value of 7 and hydrogen-ion concentration of 10-.

Premises accessible to the sanitary sewage system. Any real estate which adjoins, abuts or is adjacent to the city sanitary sewerage system and which can be connected to such system by the construction of a lateral or private sewer of not more than one hundred feet in length.

Properly shredded garbage. The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension.

Public sewer. A common sewer controlled by a governmental agency or public utility.

Public user. A governmental, educational, church, charitable, benevolent, civic, service or similar unit or organization which is a user of the city sewerage system.

Sanitary sewage, or sewage. The normal, water carried, household and toilet wastes from residences, business buildings, institutions, industries and commercial establishments, exclusive of storm water runoff, surface water or ground water. Also, the spent water of a community. The preferred term is wastewater.

Sanitary sewer. A sewer that carries liquid and water-carried wastes from

residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

Sewer. A pipe or conduit that carries wastewater or drainage water.

Sewage treatment plant. Any arrangement of devices and structures used for treating sewage.

Sewage works. All facilities for collecting, pumping, treating and disposing of sewage.

Shall. Denotes mandatory, as opposed to permissive.

Slug. Any discharge of water or wastewater, which in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation and adversely affects the collection system and/or performance of the wastewater treatment works.

Storm drain, or storm sewer. A drain or sewer for conveying surface water, ground water, subsurface water or unpolluted water from any source.

Superintendent. The duly appointed Superintendent of the City of New Martinsville Water and Sanitary Sewer Board, who is charged with the responsibility of the day-to-day operation of the wastewater facilities, or his Board-authorized deputy, agent or representative.

Suspended Solids. Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, that is removable by laboratory filtering as prescribed in "standard methods for the examination of water and wastewater"; also referred to as "nonfilterable residue".

Unpolluted water. Water of quality equal to or better than the effluent criteria in effect or water that would cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater. The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present.

Wastewater facilities. The structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Wastewater treatment works. An arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with

"waste treatment plant" or "wastewater treatment plant" or "water pollution control plant".

Water and Sanitary Sewer Board, or Board. The public body created under the authority of W.Va. Code §16-13-1, et seq., as amended, and by Chapter 23, Article II of The Code Of The City Of New Martinsville, West Virginia, and charged with the administration of the municipal waterworks and sewage system.

Watercourse. A natural or artificial channel for the passage of water, either continuously or intermittently. (2-2-59; 3-3-97.)

Sec. 23-34. Placing or depositing wastes upon public or private property.

It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner, upon public or private property within the city or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste. (2-2-59.)

Sec. 23-35. Discharging untreated sewage, industrial wastes, etc. to natural outlets.

It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city any sanitary sewage, industrial wastes or other polluted waters, except where suitable treatment has been provided in accordance with this article. (2-2-59.)

Sec. 23-35.1. City and Board not liable for damage.

Neither the city nor the Board shall be liable for any damage resulting from the bursting of any sewer main, service pipe or valve, or from discontinuing the operation of its sewer collection, treatment and disposal facilities, for repairs, extensions or connections, or from the accidental failure of the sewage collection, treatment and disposal facilities from any cause whatsoever. In cases of emergency, the Board shall have the right to restrict the use of its sewage collection, treatment and disposal facilities in any reasonable manner for the protection of the city and its sewer system. (3-3-97.)

Sec. 23-35.2. Entering sewer.

It shall be unlawful for any person, other than one employed by the Board while on duty, to enter any public sanitary and/or storm sewer and/or combined sewer or appurtenance thereof without a written permit from the Board or Superintendent. (3-3-97.)

Sec. 23-36. Construction or maintenance of privies, septic tanks, etc., restricted.

Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage. (2-2-59.)

Sec. 23-37. Use of public sewers required.

The owner, tenant or occupant of every house, building or property used for human occupancy, employment, recreation or other purpose, situated within the city and abutting on any street, alley, right-of-way, easement or other public way in which there is located a public sanitary or combined sewer of the city, and provided that such public sewer is within one hundred (100) feet of the property line, shall, at his expense, and within ninety (90) days after the date of official notice to do so, install suitable wastewater facilities therein and connect such facilities directly with the proper public sewer in accordance with the provisions of this article, and shall thereafter refrain from using or cease to use any other method in place of the sewer services which are now, or may hereafter become available, and shall thereafter pay all the charges, rates or fees as may be provided for. All such connections shall be in accordance with the rules and regulations which shall be adopted from time to time by the Water and Sanitary Sewer Board, and such rules and regulations may provide for reasonable charges, fees or deposits required for making such connections. (3-3-97.)

Sec. 23-37.1. User's responsibility to keep sewer on user's side of connection to city service clean.

The owner, tenant or occupant of property shall be responsible for continuously maintaining and keeping the sewer pipe between the plumbing system of his premises and city's connecting sewer clean and free from obstruction, and shall not cause, suffer or permit any article or thing, liquid or solid, to be introduced into the sewer pipe which causes a stoppage thereof. In the event of any such obstructions or stoppage, the Board shall have the right to cut off the water connection, which shall not be reconnected until such sewer pipe is cleaned and maintained properly; and in the further event of or continuing failure of such user to remedy such obstruction or stoppage, the Board shall have the right to enter upon said premises and make necessary repairs, the costs and expenses of which same shall be included as part of the charges against such premises. (3-3-97.)

Sec. 23-38. Damaging, etc. sewage works.

No unauthorized person shall willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal sewage works. Any person violating this provision shall be subject to immediate arrest under a charge of disorderly conduct. (2-2-59; 3-3-97.)

Sec. 23-39. Right of entry of Board employees for purposes of inspection, testing, etc.

The Superintendent and other duly authorized employees of the Board, bearing proper credentials and identification, shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing, in accordance with the provisions of this article. (2-2-59; 3-3-97.)

Sec. 23-40. Violations--Notice.

Any person found to be violating any provision of this article, except section 23-38, shall be served by the Board with written notice stating the nature of the violation and

providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. (2-2-59; 3-3-97.)

Sec. 23-41. Same--Penalty; continuing violations.

Any person who shall continue any violation beyond the time limit provided for in section 23-40 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not exceeding fifty dollars for each violation. Each day during which any such violation shall continue shall be deemed a separate offense. (2-2-59; 3-3-97.)

As to general penalty for violations of Code, see § 1-7 of this Code.

Sec. 23-42. Same--Liability to Board for damages, etc.

Any person violating any of the provisions of this article shall be liable to the Board for any expense, loss or damage occasioned the Board by reason of such violation. (2-2-59; 3-3-97.)

Division 2. Private Sewage Disposal Systems.

Sec. 23-43. When connection permitted.

Where a public sanitary or combined sewer is not available under the provisions of section 23-37, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article. (2-2-59.)

Sec. 23-44. Permit--Required; application; fee.

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Board, which the applicant shall supplement by such plans, specifications and other information as are deemed necessary by the Superintendent. A permit and inspection fee of five dollars shall be paid to the city recorder at the time the application is filed. (2-2-59; 3-3-97.)

Sec. 23-45. Same--Effective date; inspections.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. He shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the Superintendent. (2-2-59; 3-3-97.)

Sec. 23-46. Compliance with state regulation; restriction on employment of subsurface soil absorption facilities; discharge to public sewers or natural outlets prohibited.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the state department of public health. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than fifteen thousand square feet. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet. (2-2-59.)

Sec. 23-47. Abandonment when public sewer becomes available.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 23-37, a direct connection shall be made to the public sewer in compliance with this article, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material. (2-2-59; 3-3-97.)

Sec. 23-48. Owner to operate and maintain.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city. (2-2-59.)

Sec. 23-49. Effect of division on additional requirements of health officer.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer. (2-2-59.)

Division 3. Building Sewers and Connections.

Sec. 23-50. Connection permit – Required.

No person, not otherwise authorized by the Board or Superintendent, shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent. (2-2-59; 3-3-97.)

Sec. 23-51. Same – Classification; application; fees; easement granted.

There shall be two classes of building sewer permits, one for residential and commercial service, and the other for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the Board. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of twenty-five dollars shall be paid to the city recorder at the time the application is filed.

Such application shall be made on forms prescribed and furnished by the Board, and shall constitute an agreement by the applicant with the Board to abide by all provisions of this article and rules and regulations as are in force regarding use of the sewer system. Such application for service by firms, partnerships, associations and corporations shall be submitted only by their duly authorized agent, and the official title of such agent shall be signed to the application.

The application shall grant or cause to be granted to the Board, without cost, all rights, easements, permits and privileges which are necessary for the rendering of sewer service; and shall constitute permission by the applicant to permit duly authorized employees of the Board to have access at all reasonable hours to the premises of the applicant for the purpose of installing or removing any of the Board's property, examining pipes or fixtures or for any other purpose incidental to the rendering of sewer service. (2-2-59; 3-3-97.)

Sec. 23-52. Owner to bear installation and connection costs, and to indemnify Board and employees for losses or damages.

All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Board and its employees from any loss or damage that may be occasioned, directly or indirectly, by the installation of the building sewer. (2-2-59; 3-3-97.)

Sec. 23-53. Separate building sewer required for each building; exception.

A separate and independent building sewer shall be provided for every building; except, that where one building stands at the rear of another or an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway, the building sewer from the rear building may be extended to the front building and the whole considered as one building sewer. As respects such connection, the Board assumes no obligation or responsibility for the maintenance of, or damage caused by or resulting from, such single connection. (2-2-59; 3-3-97.)

Sec. 23-54. Use of old building sewers in connection with new buildings.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this article. (2-2-59; 3-3-97.)

Sec. 23-55. Building sewer construction.

The size, slope, alignment and materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Board. In the absence of code provisions or in amplification thereof, the material and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.

Article IV. Sewers and Sewage Disposal.

Division 1. Generally.

Sec. 23-33. Definitions.

For the purposes of Chapter 23 of the City Code, and unless the context specifically indicates otherwise, the following words and phrases shall have the meanings respectively ascribed to them by this section:

B.O.D. (denoting "biochemical oxygen demand"). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at twenty degrees Centigrade, expressed in milligrams per liter.

Building drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

Building sewer. The extension from the building drain to the public sewer or other place of disposal; also called house connection.

City. The City of New Martinsville, West Virginia.

Combined sewer. A sewer intended to receive both wastewater and storm or surface water.

Commercial user. A user of the city sewerage system in a location where a trade, business, profession or occupation is carried on or where a service is rendered.

Common Council or Council. The Mayor and six (6) Ward Councilmen of the City of New Martinsville, West Virginia, constituting the governing body of the City.

Domestic user. Each family unit which uses the sewerage system of the city, which family unit may consist of one or more persons; where there is more than one family unit using water from the same water meter or under the same roof, each family unit shall be considered a separate domestic user.

Easement. An acquired legal right for the specific use of land owned by another or others.

Floatable Oil. Oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage. Solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Industrial user. A user of the city sewerage system, such as a factory or a similar organization, where more than ten persons are employed.

Industrial waste. The wastewater from industrial processes, trade or business, as distinct from domestic or sanitary strength wastes.

May. Denotes permissive, as opposed to mandatory.

Natural outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.

Occupied building. Any structure erected and intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which sanitary sewage or industrial wastes is or may be discharged.

Person. Any individual, firm, company, association, society, corporation or group.

pH. The logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen-ion in grams per liter of solution. Neutral water, for example, has a pH value of 7 and hydrogen-ion concentration of 10-.

Premises accessible to the sanitary sewage system. Any real estate which adjoins, abuts or is adjacent to the city sanitary sewerage system and which can be connected to such system by the construction of a lateral or private sewer of not more than one hundred feet in length.

Properly shredded garbage. The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension.

Public sewer. A common sewer controlled by a governmental agency or public utility.

Public user. A governmental, educational, church, charitable, benevolent, civic, service or similar unit or organization which is a user of the city sewerage system.

Sanitary sewage, or sewage. The normal, water carried, household and toilet wastes from residences, business buildings, institutions, industries and commercial establishments, exclusive of storm water runoff, surface water or ground water. Also, the spent water of a community. The preferred term is wastewater.

Sanitary sewer. A sewer that carries liquid and water-carried wastes from

residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

Sewer. A pipe or conduit that carries wastewater or drainage water.

Sewage treatment plant. Any arrangement of devices and structures used for treating sewage.

Sewage works. All facilities for collecting, pumping, treating and disposing of sewage.

Shall. Denotes mandatory, as opposed to permissive.

Slug. Any discharge of water or wastewater, which in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation and adversely affects the collection system and/or performance of the wastewater treatment works.

Storm drain, or storm sewer. A drain or sewer for conveying surface water, ground water, subsurface water or unpolluted water from any source.

Superintendent. The duly appointed Superintendent of the City of New Martinsville Water and Sanitary Sewer Board, who is charged with the responsibility of the day-to-day operation of the wastewater facilities, or his Board-authorized deputy, agent or representative.

Suspended Solids. Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, that is removable by laboratory filtering as prescribed in "standard methods for the examination of water and wastewater"; also referred to as "nonfilterable residue".

Unpolluted water. Water of quality equal to or better than the effluent criteria in effect or water that would cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater. The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present.

Wastewater facilities. The structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Wastewater treatment works. An arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with

Sec. 23-61. Jointing materials and methods.

All joints and connections shall be made gastight and watertight.

Cast iron pipe joints shall be firmly packed with oakum or hemp and filled with molten lead, federal specification QC-L-156, not less than one inch deep. Lead shall be run in one pouring and caulked tight. No paint, varnish or other coatings shall be permitted on the jointing material until after the joint has been tested and approved.

All joints in vitrified clay pipe, or between such pipe and metals, shall be made with approved hot-poured jointing material or cement mortar as specified below.

Material for hot-poured joints shall not soften sufficiently to destroy the effectiveness of the joint when subjected to a temperature of one hundred sixty degrees Fahrenheit, nor be soluble in any of the wastes carried by the drainage system. The joint shall first be caulked tight with jute, hemp or similar approved material.

Cement joints shall be made by packing a closely twisted jute or oakum gasket, of suitable size to fill partly the annular space between the pipes. The remaining space shall be filled and firmly compacted with mortar composed of one part portland cement and three parts mortar sand. The material shall be mixed dry and only sufficient water shall be added to make the mixture workable. Mortar which has begun to set shall not be used or retempered. Lime putty or hydrated lime may be substituted to the extent of not more than twenty-five percent of the volume of the portland cement that may be added.

Other jointing materials and methods may be used only by approval of the Superintendent. (2-2-59; 3-3-97.)

Sec. 23-62. Method of connecting building sewer into public sewer.

The connection of the building sewer into the public sewer shall be made by the "Y" branch, if such branch is available at a suitable location. If the public sewer is twelve inches in diameter or less and no properly located "Y" branch is available, the owner shall, at his expense, install a "Y" branch in the public sewer at the location specified by the Superintendent. When the public sewer is greater than twelve inches in diameter and no properly located "Y" branch is available, a neat hole may be cut into the public sewer to receive the building sewer, with entry in the downstream direction at an angle of approximately forty-five degrees. A forty-five degree all may be used to make such connection, with the spigot and cut so as not to extend past the inner surface of the public sewer. The invert of the building sewer at the point of connection shall be at the same or a higher elevation than the invert of the public sewer. A smooth, neat joint shall be made, and the connection made secure and watertight by encasement in concrete. Special fittings may be used for the connection only when approved by the Superintendent. (2-2-59; 3-3-97.)

Sec. 23-63. Notification of Superintendent when connection ready to be made; Superintendent or representative to supervise connection.

The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his representative. (2-2-59; 3-3-97.)

Sec. 23-63.1. Approval of connections; unauthorized connections prohibited.

No sewer service shall be connected until the plumbing and connections incident thereto shall have been inspected and approved by the Superintendent or his designee.

No person shall connect to or turn on any sewer service, or cut in, interconnect, tap or make any alterations to any main or distribution or collection pipe of the City's sewer system on his premises or the premises occupied by him, or knowingly use the sewer service from connections in violation of any of the provisions of this article or any rules or regulations adopted by the Board with respect thereto. (3-3-97.)

Division 4. Use of Public Sewers.

Sec. 23-64. Discharge of storm water, surface water, unpolluted industrial process waters, etc. to sanitary sewers prohibited.

No person shall make connection of roof down spouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which is connected directly or indirectly to a public sanitary sewer, and no person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer, unless such connection or discharge is first approved by the Board for purposes of disposal of polluted surface drainage. (2-2-59; 3-3-97.)

Sec. 23-65. Storm water, unpolluted drainage, etc. to be discharged to approved combined sewers, storm sewers or natural outlets.

Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the Superintendent. Unpolluted industrial cooling water or process waters may be discharged, upon approval of the Superintendent, to a storm sewer, combined sewer or natural outlet. (2-2-59; 3-3-97.)

Sec. 23-66. Discharge of certain waters or wastes restricted.

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

(a) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(b) Without a permit to do so, any waters or wastes having a pH lower than 5.5 or higher than 9.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment, operation and personnel of the wastewater works.

(c) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity to injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the wastewater treatment plant.

(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities, such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, inground garbage, whole blood, paunch, manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders. (5-3-97.)

Sec. 23-66.1. Toxic substances.

The following-described substances, materials, waters or wastes shall be limited in discharges to public sewer systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, and will not otherwise endanger lives, limb, public property or constitute a nuisance. The Board may set limitations lower than the limitations established in the standards below if, in its opinion, such reduced limitations are necessary to meet the above objectives. In forming its opinion as to acceptability, the Board will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment plant and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sanitary sewer which shall not be violated, without approval of the Board, are as follows:

(a) Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).

(b) Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils or a product of mineral oil origin.

(c) Wastewater from industrial plants containing floatable oils, fats, or grease.

(d) Any garbage that has not been properly shredded.

(e) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Superintendent.

(f) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Board in compliance with applicable state and federal regulations.

(g) Quantities of flow, concentrations, or both, which constitute a "slug" as herein defined.

(h) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment process employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(i) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release noxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.

(j) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

(k) Any noxious or malodorous gas or substance capable of creating a public nuisance. (2-2-59; 3-3-97.)

Sec. 23-66.2. Conditional service.

If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 23.66.1 of this article, and which, in the judgment of the Board, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Board may:

(a) Reject the wastes,

(b) Require pretreatment to an acceptable condition for discharge to public sewers,

(c) Require control over the quantities and rates of discharge, and/or

(d) Require payment to cover added cost of handling and treating the wastes not covered by existing sewer charges. The added cost for said handling and treatment shall be determined by the Superintendent.

When considering the above alternatives, the Board may give consideration to the economic impact of each alternative on the discharger. If the Board permits pretreatment or equalization of waste flows, the design and installation of the pretreatment plants and equipment shall be subject to the review and approval of the Board. (3-3-97.)

Sec. 23-67. Grease, oil and sand interceptors -- Generally.

Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients; except, that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.

Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

In the maintaining of such interceptors, the owner(s) shall be responsible for the proper removal and disposal, by appropriate means, of the captured material and shall maintain records of the dates and means of disposal, which records shall be subject to review by the Superintendent. Any removal and hauling of the collected materials, not performed by owner(s) or their personnel, must be performed by a currently-licensed waste hauling firm. (2-2-59; 3-3-97.)

Sec. 23-68. Same -- Maintenance.

Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuous, satisfactory and efficient operation. (2-2-59; 3-3-97.)

Sec. 23-69. Admission of certain wastes subject to approval; preliminary treatment of certain wastes, generally.

The admission into the public sewers of any waters or wastes having (a) a five day biochemical oxygen demand greater than three hundred parts per million by weight, or (b) containing more than three hundred fifty parts per million by weight of suspended solids, or (c) containing any quantity of substances having the characteristics described in section 23-66 or 23-66.1, or (d) having an average daily flow greater than two percent of the average daily sewage flow of the city shall be subject to the review and approval of the Board. Where necessary, in the opinion of the Board, the owner shall provide, at his expense, such preliminary treatment as may be necessary to (a) reduce the biochemical oxygen demand to three hundred parts per million and the suspended solids to three hundred fifty parts per million by weight, or (b) reduce objectionable characteristics or constituents to within the maximum limits provided for in section 23-66 or 23-66.1, or (c) control the quantities and rates of discharge of such waters or wastes. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Board and of the state water pollution control commission, and no construction of such facilities shall be commenced until such approvals are obtained in writing. (2-2-59; 3-3-97.)

Sec. 23-70. Maintenance of preliminary treatment facilities.

Where preliminary treatment, pretreatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained by the owner, at his expense, in continuous, satisfactory and efficient operation. (2-2-59; 3-3-97.)

Sec. 23-71. Control manhole.

When required by the Board, the owner of any property served by a building sewer carrying industrial wastes shall install a control manhole or other suitable structure in the building sewer, together with such necessary meters and other appurtenances, so as to facilitate observation, sampling and measurement of the wastes. Such manhole or structure, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the Superintendent. The manhole or structure shall be installed by the owner, at his expense, and shall be maintained by him so as to be safe and accessible at all times. (3-3-97.)

Sec. 23-72. Measurements, tests and analyses.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Sewage," published by the American Public Health Association, and shall be determined at the control manhole provided for in section 23-71, or upon suitable samples taken at such control manhole. In the event that no special manhole is required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

Sampling methods, location, time durations and frequencies are to be determined on an individual basis, subject to approval by the Superintendent. (2-2-59; 3-3-97.)

Sec. 23-72.1. Design data on connection.

The Board may require a user of sewer service to provide information needed to determine compliance with this article, to include:

(1) Wastewater discharge peak rate and volume over a specified time period.

(2) Chemical analyses of wastewaters.

(3) Information on raw materials, processes and products affecting wastewater volume and pollutant loadings.

(4) Quantity and disposition of specific liquid, sludge, oil, solvent or other

materials important to sewer use control.

(5) A plot plan of sewers on the user's property, showing sewer and pretreatment facility location.

(6) Details of wastewater pretreatment facilities.

(7) Details of systems to prevent and control the losses of materials through spills to the public sewer. (3-3-97.)

Sec. 23-73. Special agreements for acceptance of certain industrial wastes.

No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the Board and any industrial concern, whereby an industrial waste of unusual strength or character may be accepted by the Board for treatment, subject to payment therefor by the industrial concern. (2-2-59; 3-3-97.)

Division 5. Powers and Authority of Inspectors.

Sec. 23-73.1. Right of entry for purpose of discharge inspection.

The Superintendent and other duly authorized employees of the Board, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the public sewer system in accordance with the provisions of this article.

Sec. 23-73.2. Collection of information.

The Superintendent or other properly authorized employees of Board are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. (3-3-97.)

Sec. 23-73.3. Required safety procedures.

While performing the necessary work on private properties herein referred to, the Superintendent or duly authorized employees of the Board shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to Board employees, except as such may be caused by negligence or failure of the company to maintain safe conditions as required by this article or otherwise by law. (3-3-97.)

Sec. 23-73.4. Right of entry to and from all easements.

The Superintendent and other duly authorized employees of the Board, bearing proper credentials and identification, shall be permitted to enter all private properties through which the city or Board holds an easement for the purposes of, but not limited to, inspection,

observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved. (3-3-97.)

- As to Article V of Chapter 23, that there be added thereto the following, to-wit:

[As to the contents of the Chapter, Article V thereof, at present page 282 of the Code]

Article V. Rates and Charges.

[To follow §23-75]
§23-76. Lien for enforcement of collection of billed rates or charges.

[As to the text of the enlarged Article]

Sec. 23-76. Lien for enforcement of collection of billed rates or charges.

All such rates or charges, if not paid as herein required, may be reduced to a judgment lien upon the premises served by such system or works as follows: If such rates or charges are not paid within ninety (90) days of the due date, then the amount then due, together with a penalty of ten percent, may be recovered by the Board in a civil action filed in the name of the City. Any judgment rendered in favor of the plaintiff shall constitute a lien upon the user's premises (3-3-97.)

The foregoing Ordinance was read at a Special Meeting of the Common Council held on the 18th day of February, 1997, and was read for the second time and duly adopted at a Regular Meeting of the Common Council held on the 3rd day of March, 1997.

(SEAL)

City of New Martinsville,
West Virginia

By: _____
its Mayor

Attest:

_____
its Recorder

SUPPLEMENTAL RESOLUTION - WATER & SEWER BONDS:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED THAT THE FOLLOWING SUPPLEMENTAL RESOLUTION BE ADOPTED:

BEFORE THE COMMON COUNCIL OF THE
CITY OF NEW MARTINSVILLE, WEST VIRGINIA

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATE, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE CITY OF NEW MARTINSVILLE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A, SERIES 1997 B AND SERIES 1997 C; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; MAKING PROVISIONS FOR THE PAYMENT OF THE SERIES 1995 BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Common Council (the "Governing Body") of The City of New Martinsville (the "City"), has duly and officially adopted a Bond and Note Ordinance on February 18, 1997, effective March 3, 1997 (the "Bond and Note Ordinance"), entitled:

> AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WASTEWATER TREATMENT FACILITY PORTION OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF NEW MARTINSVILLE; AUTHORIZING THE ISSUANCE OF THREE SEPARATE SERIES OF WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS OF THE CITY OF NEW MARTINSVILLE IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $8,000,000 TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NEW MARTINSVILLE WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO EFFECT THE REFUNDING AND TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING A REVOLVING LINE OF CREDIT IN AN AMOUNT NOT TO EXCEED $1,000,000 TO PROVIDE FUNDS FOR SUCH ACQUISITION AND CONSTRUCTION TO THE EXTENT BOND PROCEEDS, GRANT RECEIPTS OR OTHER FUNDS ARE NOT TIMELY AVAILABLE THEREFORE, AND AN AGREEMENT WITH RESPECT TO SAID LINE OF CREDIT; AUTHORIZING ISSUANCE OF A COMBINED

WATERWORKS AND SEWERAGE SYSTEM CONSTRUCTION NOTE OF THE CITY OF NEW MARTINSVILLE IN THE STATED PRINCIPAL AMOUNT NOT TO EXCEED $1,000,000 TO EVIDENCE THE CITY'S OBLIGATION TO REPAY ANY DRAWS UPON SAID LINE OF CREDIT; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTE; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT OR LOAN AGREEMENTS RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Bond and Note Ordinance provides for the issuance of The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, Series 1997 B and Series 1997 C of the City (the "Bonds"), in the aggregate principal amount not to exceed $8,000,000, and has authorized the execution and delivery of a loan agreement or loan agreements relating to the Bonds, including all amendments and supplements (collectively, the "Loan Agreement"), by and among the City and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Division of Environmental Protection ("DEP") and the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 8, Article 20, Chapter 22C, Article 2, and Chapter 31, Article 15A, of the West Virginia Code of 1991, as amended (collectively, the "Act"); and in the Bond and Note 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 Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and 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, that the Prior Bonds be refunded, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF NEW MARTINSVILLE, WEST VIRGINIA, AS FOLLOWS:

Section 1. Pursuant to the Bond and Note Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the:

(A) $385,000 The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, of the City, originally represented by a single Bond, numbered AR-1, in the principal amount of $385,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2019, and shall bear no interest. Principal of the Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1999. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and to the Loan Agreement and incorporated herein by reference. The City shall pay the 1% SRF Administrative Fee as provided in the Loan Agreement.

(B) $6,720,000 The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B, of the City, originally represented by a single Bond, numbered BR-1, in the principal amount of $6,720,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2037, and shall bear no interest. Principal of the Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1999. The Bonds shall be subject to redemption upon the written consent of the Authority and the Infrastructure Council, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and to the Loan Agreement and incorporated herein by reference.

Proceeds of the Series 1997 B Bonds in the amount of $602,524 are hereby authorized to be wired by the West Virginia Water Development Authority to the West Virginia Municipal Bond Commission for the purpose of paying, along with other moneys legally available therefor, in full the principal and interest due on the Prior Bonds.

(C) $420,000 The City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C, of the City, originally represented by a single Bond, numbered CR-1, in the principal amount of $420,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2037, and shall bear interest at the rate of one percent (1.00%) per annum, commencing March 1, 2019. Both principal of and interest on the Bonds are payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2019. The Bonds shall be subject to redemption upon the written consent of the Authority and the Infrastructure Council, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds, and shall be payable in installments of principal and interest in the amounts as set forth in "Schedule Y," attached thereto and to the Loan Agreement and incorporated herein by reference.

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

Section 3. The City does hereby ratify the Loan Agreements, copies of which are incorporated herein by reference, and the execution and delivery of the Mayor of the Loan Agreements, and the performance of the obligations contained therein, on behalf of the City are hereby authorized, directed, ratified and approved. The City hereby affirms all covenants and representations made in the Loan Agreements and in the Applications to the DEP, Infrastructure Council and the Authority. The price of the 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 City.

Section 4. The City does hereby appoint and designate Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar (the "Registrar") for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the City 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 City are hereby authorized, approved and directed.

Section 5. The City does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds.

Section 6. The City does hereby appoint Bank One; Wheeling-Steelton, National Association, New Martinsville, West Virginia, as Depository Bank under the Bond and Note Ordinance.

Section 7. The City has created the Reserve Accounts which will be funded with equal payments on a monthly basis over a 10 year period until such Reserve Accounts hold an amount equal to the maximum amount of principal and interest which will mature and become due on each Series of Bonds in the then current or any succeeding year. Moneys in the Reserve Accounts and the Sinking Funds (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

Section 8. The proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Bond Construction Trust Fund, as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds.

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 and Note Ordinance approved and provided for, to the end that the Bonds may be delivered on or about March 13, 1997, to the Authority pursuant to the Loan Agreements.

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 City and will promote the health, welfare and safety of the residents of the City.

Section 11. The City hereby determines to invest all moneys in the funds and accounts established by the Bond and Note Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the City hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing by the City. Moneys in the Series A, Series B and Series C Sinking Funds, including the Series A, Series B and Series C Reserve Accounts therein, shall be invested by the Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 12. 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 Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City 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 following adoption hereof.

The foregoing Resolution was read and duly adopted at a regular meeting of the Common Council of The City of New Martinsville held on the 3rd day of March, 1997.

THE CITY OF NEW MARTINSVILLE

[SEAL]

Richard P. Snyder
Mayor

ATTEST:

Faye R. Smith
Recorder

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of New Martinsville on the 3rd day of March, 1997.

Dated: March 3, 1997.

Faye R. Smith
Recorder

APPROVAL OF REGULAR CITY INVOICES:

ON MOTION OF COUNCILWOMAN SHANNON, SECONDED BY COUNCILMAN HERRICK, IT WAS UNANIMOUSLY AGREED THAT RECORDER BE DIRECTED TO PAY ALL REGULAR CITY INVOICES FOLLOWING DEPARTMENT HEAD APPROVAL.

APPROVAL OF CITY ATTORNEY INVOICES:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILMAN HERRICK, IT WAS UNANIMOUSLY AGREED THAT RECORDER BE DIRECTED TO PAY CITY ATTORNEY INVOICES AS SUBMITTED ON REGULAR ASSIGNMENTS.

THANKS TO ATTORNEY FROM JACKSON & KELLY FOR ATTENDANCE AT THIS MEETING:

Councilman Herrick thanked Attorney Samme L. Gee from Jackson & Kelly, Charleston, West Virginia, for her attendance at this meeting to answer any questions from the public on the Water and Sewer Bond Ordinance.

COMMITTEE NO. 1 (BERGER, HERRICK, GRANDSTAFF):

Chairman Berger thanked the City Street Department and Water & Sewer Department for their work during this past weekends heavy rains and different flooding problems.

COMMITTEE NO. 2 (EDGELL, SHANNON, BOHRER):

Budget Revision - Uniforms and Physical - New Patrolman:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILMAN BERGER, IT WAS UNANIMOUSLY AGREED THAT RECORDER BE DIRECTED TO TRANSFER $1,340.00 FROM POLICE SALARIES LINE ITEM TO UNIFORM LINE ITEM ($1,039.50) AND MEDICAL EXAMINATION ($300.00), SUBJECT TO APPROVAL FROM THE STATE TAX COMMISSION AND PRIOR TO THE EXPENDITURE OF FUNDS.

Budget Revision - For Theater:

Parks & Recreation Director Gibb presented a memo to the Finance Committee as follows: "THE LINCOLN THEATER BUDGET FOR FISCAL YEAR 1996-97 WAS CUT BY $2,000.00 FROM THE PREVIOUS YEAR. ALTHOUGH I HAVE DONE BY BEST TO HOLD BACK THE SPENDING, AND THE RENTALS HAVE INCREASED, THE THEATER BUDGET IS CLOSE TO ZERO. THE PARKS & RECREATION COMMISSION IS REQUESTING THAT THE ADDITIONAL $2,000.00 BE PLACED BACK INTO THE 1996-97 BUDGET.

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED THAT RECORDER BE DIRECTED TO TRANSFER $2,000.00 FROM HANNIBAL HYDRO CONTINGENCIES FOR THEATER EXPENSES IN THE 1996-97 FISCAL YEAR.

Corporate American Express Card:

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED TO RESCIND THE MOTION MADE AT THE FEBRUARY 3, 1997, TO TRY TO OBTAIN A CORPORATE AMERICAN EXPRESS CARD.

COMMITTEE NO. 3 (BOHRER, GRANDSTAFF, EDGELL):

Councilman Edgell - Nothing to report tonight.

COMMITTEE NO. 4 (HERRICK, BERGER, BOHRER):

New Police Probationary Patrolman:

A letter dated 2/21/97 from Police Chief Kocher was presented to the Mayor and members of Council on that date. It read: "THE NEW MARTINSVILLE POLICE COMMITTEE, COUNCILMAN BERGER, COUNCILMAN HERRICK, AND CHIEF CARL E. KOCHER CONDUCTED THE INTERVIEWS FOR THE POSITION OF PROBATIONARY PATROLMAN THURSDAY, FEBRUARY 20, 1997. THE INTERVIEWS WERE CONDUCTED IN THE LARGE CONFERENCE ROOM. FIVE CANDIDATES WERE INTERVIEWED. AFTER CONDUCTING ORAL INTERVIEWS WITH ALL CANDIDATES AND REVIEWING QUALIFICATIONS OF THOSE INTERVIEWED, THE COMMITTEE SELECTED STEPHEN KASTIGAR TO FILL THE PROBATIONARY PATROLMAN'S POSITION FOR THE CITY OF NEW MARTINSVILLE. THE HIRING OF MR. KASTIGAR IS CONDITIONAL ON PASSING A MEDICAL TEST AND A POLY-

COMMITTEE NO. 4 (CONTINUED):

New Police Probationary Patrolman (Continued):

Chairman Herrick - The interviews were conducted in the large conference room. Before this was done, Carl had a physical agility test and written exam and only five applicants passed both of those preliminary steps, and this was with the members of the Police Civil Service organization. After conducting oral interviews with qualified applicants, the committee selected Stephen Kastigar to fill the Probationary Patrolman position for the City. The hiring of Mr. Kastigar is conditional on passing the medical test and polygraph test. We recommend that he be hired effective April 1, 1997.

ON MOTION OF COUNCILMAN HERRICK, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED THAT STEPHEN KASTIGAR BE EMPLOYED AS A PROBATIONARY PATROLMAN FOR THE CITY OF NEW MARTINSVILLE POLICE DEPARTMENT SUBJECT TO PASSING THE MEDICAL AND POLYGRAPH TESTS, EFFECTIVE APRIL 1, 1997.

COMMITTEE NO. 5 (SHANNON, BERGER, HERRICK):

1997 Clean-Up Days Schedule:

Councilwoman Shannon presented the following 1997 Clean-Up Days Schedule:

1997 SPRING CLEAN-UP SCHEDULE

WEEK OF:

APRIL 7, 1997	EAST SIDE OF STEELTON
APRIL 14, 1997	WEST SIDE OF STEELTON
APRIL 21, 1997	EAST SIDE OF STATE ROUTE 2 - NORTH STREET TO WILLIAMS RUN
APRIL 28, 1997	WEST SIDE OF STATE ROUTE 2 - FISHING CREEK TO WILLIAMS RUN
MAY 5, 1997	ALL OF BROOKLYN

All items to be picked up are to be placed at the edge of your property (where garbage normally is placed). All material should be bagged, bundled or boxed. Refrigerators will be accepted this year.

Items not accepted:

Tires
Paint Cans (only if tops are removed)
Liquids of any kind
Batteries

PUT EVERYTHING OUT ON SUNDAY NIGHT BEFORE WEEK IN YOUR AREA. THEY WILL PICK UP EARLY AND WILL NOT GO BACK.

Councilman Herrick suggests that since refrigerators will be accepted this year that the reporters from the newspapers put a notice in their papers that the doors must be removed before setting out for pickup.

COMMITTEE NO. 5 (CONTINUED):

Policy Manual Update:

Councilwoman Shannon informed Council that a meeting will be scheduled around the third week in March to try to complete the Employee Policy Manual.

COMMITTEE NO. 6 (GRANDSTAFF, EDGELL, SHANNON:

Mayor Snyder - We have tentatively selected three or four locations where we could start a composting site. I talked to the Administrator of the Division of Natural Resources today, and she indicated that they have a lot of information she would make available to us, and also stated that there are grants available. She will send us a list of grants that we could apply for. This may help us get this composting project going.

SEWER SEPARATION COMMITTEE (GARY ALLEN, FRED FONNER, DAVE ROGERS, GARY LEMONS, ED GEORGE, GENE BERGER, STEVE BOHRER):

Councilman Berger stated that the committee interviewed several engineering firms and have selected KLH Engineers, Pittsburgh, to do the work. They will begin soon. They will be coming back with recommendations on how to correct some of our main sewer problems.

BUILDING INSPECTOR - DAVE WHITE:

Bicycle Path:

David White - We received a draft agreement between the Department of Transporation and the City. Since you all have reviewed this agreement and have not made any suggestions for change, we plan to take that before the Planning Commission Thursday night, and by Friday, March 7th, we hopefully plan to get back in touch with the State and have them start drafting a final agreement. As soon as this is received and we get it signed, we hope to begin the engineering for this project.

Terry Rose Property:

David White - We are currently seeking bids for the demolition of the Terry Rose property on North State Route 2, as you all directed me to do. By the end of this month I should have this completed.

PARKS & RECREATION DEPARTMENT:

Parks & Rec. Director, Beverly Gibb - I would like to remind everybody that the Lincoln Theater Restoration Council is putting on productions of "GYPSY" this Thursday, Friday and Saturday evenings. It promises to be a good show and tickets are going very fast. If anyone would like reserve seats they should contact Kay Edgell.

STREET DEPARTMENT:

Street Commissioner Lemons - You have my monthly report. Any questions on it?

Councilman Edgell - I have had a lot of favorable comments on the street signs that are going up. People are glad to see the signs up and the people who called wanted me to pass on their pleasure on that.

Street Commissioner Lemons - We'll get the rest of them up in the near future. On our recent heavy rains, I understand this area has been declared a disaster area, so the residents who had damages over the weekend should take pictures and maybe they can recover some of their losses. I'm not sure about this but we should know in a few days.

Mayor Snyder - Anyone who had damages should photograph and document all the damages that they had as a result of the high water, etc.

POLICE DEPARTMENT:

Police Chief Kocher - I'd like to say that we have the new cruiser on the road. Also, you need to be thinking about what you want to do with the parking meters that have been removed. I've had some inquiries from citizens who would like to buy one or two of them, and Charleroi would like to buy some.

POLICE DEPARTMENT (CONTINUED):

Police Chief Kocher - But this time we'll be selling the whole meter and so the price should probably be higher.

Councilman Edgell - We may want to set a price on the meters and allow Carl to sell them at that price. We went through the Finance Committee when the others were sold and Council said we should work with Carl, set a price, and sell these meters. Carl, if you'll contact Bonnie, Steve and I, we can go ahead with this.

Mayor Snyder - Maybe we should make a motion on this.

ON MOTION OF COUNCILMAN EDGELL, SECONDED BY COUNCILWOMAN SHANNON, IT WAS UNANIMOUSLY AGREED THAT THE FINANCE COMMITTEE SHOULD WORK WITH THE POLICE CHIEF AND SET A PRICE FOR THESE PARKING METERS AND PROCEED WITH SALE OF SAME.

PAVING OF MAIN STREET:

Councilman Herrick - Mr. Mayor, a couple of business owners on Main Street have asked me to pass along to you, to request that the contractor working on this project should consider not paving or redoing sidewalks until after Easter since this is a big business season for them.

Mayor Snyder - It will be early April. They have an endwall and a lot of rip-rapping down on the river bank which they'll probably do first.

ELECTRIC DEPARTMENT:

Electric Dept. Gen. Mgr. Dills - First of all, I'd like to thank the Electric Department and Council for helping us get the new meter truck. We received it in February and it's really been a blessing. Also, I'd like to inform Council that the Electric Department is seeking joining the AMP-Ohio organization which is similar to the APPA, as they have several favorable services to provide at a very minimal fee. Lastly, there's been a storage facility project in the works, and I think we're approaching the end of that, and we're looking at a mid-April start date on that construction. It should take 7 to 10 days for completion of it.

Mayor Snyder - Let me make a comment regarding the AMP-Ohio group. Joe Mattaliano, City Manager at Phillippi, informed me that they have joined this group and they highly recommend it. So whenever you get the costs, bring it back to your committee so we can get approval of join. He says it is an excellent group and they're hoping New Martinsville will also join.

Electric Dept. Gen. Mgr. Dills - We just received some information this past week. They really have a good program.

Councilman Edgell - We've been talking about that in committee meetings before. It looks very favorable.

FIRE DEPARTMENT:

Fire Chief Longwell - Unless there are questions on my report, I have nothing tonight.

Mayor Snyder - No questions, K.P. Thank you.

RECORDER:

Recorder Smith - I would like to report the following:

[1] DEADLINE FOR GENERAL AND COAL SEVERANCE BUDGETS TO STATE - MARCH 28, 1997.

[2] SPECIAL MEETING TO OFFICIALLY LAY THE LEVY - APRIL 15, 1997.

[3] APPLICATIONS FOR ABSENTEE VOTING - ANYTIME TILL APRIL 30, 1997.

[4] ABSENTEE VOTING IN RECORDER'S OFFICE - 4/21/97 THROUGH 5/3/97.

[5] LAST DAY TO RECEIVE HAND DELIVERED BALLOTS - 5/5/97.

[6] ELECTION DAY - TUESDAY, MAY 6, 1997, 6:30 A.M. - 7:30 P.M.

ADJOURN:

No further business, Mayor Snyder declared this meeting adjourned at 8:00 P.M.

RICHARD P. SNYDER, MAYOR

FAYE R. SMITH, RECORDER

The building sewer shall be cast iron soil pipe, ASTM specification A74-42 or equal; vitrified clay sewer pipe, ASTM specification C13-44T or equal; or other suitable material approved by the Superintendent. Joints shall be gastight and watertight, and verified by proper testing. Any part of the building sewer that is located within ten feet of a water service pipe shall be constructed of cast iron soil pipe with leaded joints. Cast iron pipe with leaded joints may be required by the Superintendent where the building sewer is exposed to damage by tree roots. If installed in filled or unstable ground, the building sewer shall be of cast iron soil pipe; except, that nonmetallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the director. (2-2-59; 3-3-97.)

Sec. 23-56. Size and slope.

The size and slope of the building sewer shall be subject to the approval of the Superintendent, but in no event shall the diameter thereof be less than four inches. The slope of such four inch pipe shall be not less than one-eighth inch per foot. (2-2-59; 3-3-97.)

Sec. 23-57. Depth, grade and alignment; changes in direction.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall which wall might thereby be weakened. The depth of the building sewer shall be sufficient to afford protection from frost. Insofar as is possible, the building sewer shall be laid at uniform grade and in straight alignment. Changes in direction shall be made only with properly curved pipe and fittings. (2-2-59; 3-3-97.)

Sec. 23-58. Buildings where building drain too low to permit gravity flow.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by means approved by the Superintendent and discharged to the building sewer. (2-2-59; 3-3-97.)

Sec. 23-59. Excavations -- Generally.

All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the Superintendent. Pipe laying and backfill shall be performed in accordance with ASTM specification C12-19; except, that no backfill shall be placed until the work has been inspected. (2-2-59; 3-3-97.)

Sec. 23-60. Same -- Protection; restoration of streets, sidewalks, etc.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City or the Board. (2-2-59; 3-3-97.)

WETZEL CHRONICLE 2-19, 26
CITY OF NEW MARTINSVILLE,
WEST VIRGINIA

NOTICE OF PUBLIC HEARING
and ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on February 18, 1997, the Council of the City of New Martinsville, West Virginia (the "CITY") adopted an ordinance which:

1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the sewer portion of existing combined waterworks and sewer system ("System") of the City and financing of the permanent cost, not otherwise provided, thereof through the issuance of not more than $8,000,000 in aggregate principal amount of Waterworks and Sewage System Bonds, Series 1997 A, 1997 B and 1997 C (the "Bonds"). The Project, estimated at $8,800,000, was authorized to be financed with the Bond proceeds and grants in the approximate amount of $1,161,395. Authorized the refunding and defeasance of the City's Series 1995 Bonds.

2. Directed that the Bonds be issued in three series and in form of one bond each, fully registered with a payment record attached; that interest on the Bonds shall be no more than three percentum (3%) per annum, that said Bonds be sold for the par value thereof; that the Bonds be executed in the name of the City by the Mayor, and the seal of the City be affixed thereto and attested to by the Recorder; that such Bonds be duly authenticated by the Registrar and delivered to the West Virginia Water Development Authority as the Original Purchaser on behalf of the West Virginia Infrastructure and Jobs Development Council and the West Virginia Division of Environmental Protection.

3. Directed the establishment of the Revenue Fund and the disposition of the System revenues; revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of reserve accounts for the Bonds and a Renewal and Replacement Funds; and provided for the use of excess funds of the System.

4. Provided for the disbursement of Bond proceeds and created a Construction Trust Fund.

5. Pledged to payment of the Bonds the Gross Revenues of the System.

6. Provided upon certain conditions for the issuance of additional bonds.

7. Provided for insurance coverage on the Project; provided that the City will render no fee service; provided for the enforcement of collection of fees, rates, rentals or other charges for service.

8. Established the terms for defaults and the remedies of the Bondholders.

9. Provided for the modifications or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of New Martinsville at a regular meeting thereof at 7:30 p.m., prevailing time, on Monday, March 3, 1997, at the Municipal Building, 197 Main Street, New Martinsville, West Virginia, and present objections and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on February 18, 1997, is on file in the Office of the Recorder for review by interested persons during the regular office of such office, to-wit: 8:00 a.m. to 4:30 p.m. Mondays through Fridays.

Faye Smith, Recorder
City of New Martinsville,
West Virginia

WETZEL CHRONICLE

New Martinsville, WV .....February 26.....1997.....

State of West Virginia, County of Wetzel:

Personally appeared before the undersigned, a Notary Public, Kenneth H. Sickle who, being duly sworn, states that he is a manager of the Wetzel Chronicle, a weekly newspaper of general circulation, published at New Martinsville, County of Wetzel, State of West Virginia, and that a copy of the notice attached hereto was published for.....2.....successive weeks in the Wetzel Chronicle, beginning on the ...19th.....day of .....February....., 1997. and ending on the...26th.....day of.....February..... ,1997.

Manager, Wetzel Chronicle

Subscribed and sworn to before me, a Notary Public of said County, on this .....26th..... day of .....February....., 1997.

Notary Public

My commission expires on the...9th.. day of ..December,....2002..

Printers Fee.....11.93.....

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
XELEE J. DINARDO
Wetzel Chronicle
P O Box 289
New Martinsville, West Virginia 26155
My Commission Expires Dec. 9, 2002

SRF-LP-1
(April 1993)

LOAN AGREEMENT

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

CITY OF NEW MARTINSVILLE
(Local Government)

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

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

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

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

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

(b) Covenants substantially as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

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

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

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

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

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

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

ARTICLE VI

Other Agreements of the Local Government

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

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

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

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

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

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

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

City of New Martinsville
[Proper Name of Local Government]

(SEAL)

By: Richard P. Snyder
Its: Mayor

Attest:

Date: Feb. 4, 1997

Its Recorder

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By:

Its: Chief, Office of Water Resources

Date: 2/6/97

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By:

Its: Director

Attest:

Date: January 22, 1997

Secretary-Treasurer

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

Attorney General

BY:

DEPUTY ATTORNEY GENERAL

EXHIBIT A

Certificate of Performance
for
Publicly Owned Treatment Works

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

a. Provided to the WV DEP written notification of the actual date of initiation of operation. This date of initiation was on the _____ day of _____, 19___.

b. Utilized the services of _____, our prime engineer who either:

_____ Supervised our project construction; and/or

_____ Provided architectural and engineering services during construction.

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

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

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

a. The specifications for which the project was planned, designed, and built.

b. The effluent limitations contained in its NPDES permit, if applicable.

_____
Local Government Name

_____ _____
Local Government Representative's Name and Title Date

EXHIBIT B

[Form of Monthly Financial Report]

[Name of Local Government]

[Name of Bond Issue]

Fiscal Year - ____

Report Month: _____

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

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

[Name of Local Government]

By: _____
Authorized Officer

EXHIBIT C

PAYMENT REQUISITION FORM

(TO BE PROVIDED BY DEP FOR EACH PROJECT)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

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

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

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

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

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

_____

By _____

West Virginia License No. ____

[SEAL]

EXHIBIT E

[Special Conditions]

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

EXHIBIT F

[Monthly Payment Form]

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

Re: [Name of bond issue]

Dear Sirs:

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

Sinking Fund:

Interest $_____

Principal $_____

Total: $_____

Reserve Fund: $_____

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Loan Closing]

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

Gentlemen:

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

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

Year	Installment	Interest Rate

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

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

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

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

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

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

3. The Local Government is a duly organized and presently existing _____ _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. The Local Bonds are, by statute, exempt _____ _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	$ 385,000
Purchase Price of Bonds	$ 385,000

Interest on the Bonds shall be zero percent ~~from the date of delivery to and including~~ _____. Principal ~~and interest~~ on the Bonds is payable quarterly, commencing June 1, 1999, at a rate of 0 % per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has no other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds ~~or {provide list of outstanding debt}~~.

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

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

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

SCHEDULE Y

New Martinsville, WV
$385,000.00
20 Year Repayment
0% Interest, 1% Administrative Fee
DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
3/01/1999	-	-	-	-
6/01/1999	4,812.50	-	-	4,812.50
9/01/1999	4,812.50	-	-	4,812.50
12/01/1999	4,812.50	-	-	4,812.50
3/01/2000	4,812.50	-	-	4,812.50
6/01/2000	4,812.50	-	-	4,812.50
9/01/2000	4,812.50	-	-	4,812.50
12/01/2000	4,812.50	-	-	4,812.50
3/01/2001	4,812.50	-	-	4,812.50
6/01/2001	4,812.50	-	-	4,812.50
9/01/2001	4,812.50	-	-	4,812.50
12/01/2001	4,812.50	-	-	4,812.50
3/01/2002	4,812.50	-	-	4,812.50
6/01/2002	4,812.50	-	-	4,812.50
9/01/2002	4,812.50	-	-	4,812.50
12/01/2002	4,812.50	-	-	4,812.50
3/01/2003	4,812.50	-	-	4,812.50
6/01/2003	4,812.50	-	-	4,812.50
9/01/2003	4,812.50	-	-	4,812.50
12/01/2003	4,812.50	-	-	4,812.50
3/01/2004	4,812.50	-	-	4,812.50
6/01/2004	4,812.50	-	-	4,812.50
9/01/2004	4,812.50	-	-	4,812.50
12/01/2004	4,812.50	-	-	4,812.50
3/01/2005	4,812.50	-	-	4,812.50
6/01/2005	4,812.50	-	-	4,812.50
9/01/2005	4,812.50	-	-	4,812.50
12/01/2005	4,812.50	-	-	4,812.50
3/01/2006	4,812.50	-	-	4,812.50
6/01/2006	4,812.50	-	-	4,812.50
9/01/2006	4,812.50	-	-	4,812.50
12/01/2006	4,812.50	-	-	4,812.50
3/01/2007	4,812.50	-	-	4,812.50
6/01/2007	4,812.50	-	-	4,812.50
9/01/2007	4,812.50	-	-	4,812.50
12/01/2007	4,812.50	-	-	4,812.50
3/01/2008	4,812.50	-	-	4,812.50
6/01/2008	4,812.50	-	-	4,812.50
9/01/2008	4,812.50	-	-	4,812.50
12/01/2008	4,812.50	-	-	4,812.50
3/01/2009	4,812.50	-	-	4,812.50
6/01/2009	4,812.50	-	-	4,812.50
9/01/2009	4,812.50	-	-	4,812.50
12/01/2009	4,812.50	-	-	4,812.50
3/01/2010	4,812.50	-	-	4,812.50
6/01/2010	4,812.50	-	-	4,812.50
9/01/2010	4,812.50	-	-	4,812.50
12/01/2010	4,812.50	-	-	4,812.50
3/01/2011	4,812.50	-	-	4,812.50
6/01/2011	4,812.50	-	-	4,812.50

New Martinsville, WV
$385,000.00
20 Year Repayment
0% Interest, 1% Administrative Fee
DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
9/01/2011	4,812.50	-	-	4,812.50
12/01/2011	4,812.50	-	-	4,812.50
3/01/2012	4,812.50	-	-	4,812.50
6/01/2012	4,812.50	-	-	4,812.50
9/01/2012	4,812.50	-	-	4,812.50
12/01/2012	4,812.50	-	-	4,812.50
3/01/2013	4,812.50	-	-	4,812.50
6/01/2013	4,812.50	-	-	4,812.50
9/01/2013	4,812.50	-	-	4,812.50
12/01/2013	4,812.50	-	-	4,812.50
3/01/2014	4,812.50	-	-	4,812.50
6/01/2014	4,812.50	-	-	4,812.50
9/01/2014	4,812.50	-	-	4,812.50
12/01/2014	4,812.50	-	-	4,812.50
3/01/2015	4,812.50	-	-	4,812.50
6/01/2015	4,812.50	-	-	4,812.50
9/01/2015	4,812.50	-	-	4,812.50
12/01/2015	4,812.50	-	-	4,812.50
3/01/2016	4,812.50	-	-	4,812.50
6/01/2016	4,812.50	-	-	4,812.50
9/01/2016	4,812.50	-	-	4,812.50
12/01/2016	4,812.50	-	-	4,812.50
3/01/2017	4,812.50	-	-	4,812.50
6/01/2017	4,812.50	-	-	4,812.50
9/01/2017	4,812.50	-	-	4,812.50
12/01/2017	4,812.50	-	-	4,812.50
3/01/2018	4,812.50	-	-	4,812.50
6/01/2018	4,812.50	-	-	4,812.50
9/01/2018	4,812.50	-	-	4,812.50
12/01/2018	4,812.50	-	-	4,812.50
3/01/2019	4,812.50	-	-	4,812.50
TOTAL	385,000.00	-	-	385,000.00 *

*Plus a one-percent administrative fee paid quarterly in the amount of $487.27. The total administrative fee over the life of the loan is $38,981.60.

YIELD STATISTICS

Accrued Interest from 03/01/1999 to 03/01/1999...	-
Average Life.....	10.125 YEARS
Bond Years.....	3,898.13
Average Coupon.....	-
Bond Yield for Arbitrage Purposes.....	1.0012500%
True Interest Cost (TIC).....	-
Effective Interest Cost (EIC).....	1.0012500%

IC/WDA-1
(July 1996)

Series 1997 B

LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency").

CITY OF NEW MARTINSVILLE, WEST VIRGINIA
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to construct, operate and improve a project, as defined by the Act, and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

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

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

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Council Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Division of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

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

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

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

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

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

ARTICLE II

The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

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

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority, acting by and through its Director or his duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

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

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

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and

all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Governmental Agency 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 Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 15th of each month to the Authority and Council.

ARTICLE III

Conditions to Loan;
Issuance of Local Bonds

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

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

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

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

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

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local

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

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

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

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

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

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available in the Infrastructure Fund funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

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

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule

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

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the gross or net revenues from the System, as more fully set forth in Schedules X and Y attached hereto;

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

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, 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 Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, based upon the rates, Operating Expenses and customer usage on the date of closing, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

(vii) That the Governmental Agency will not render any free services of the System;

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

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

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

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

(xii) That 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;

(xiii) That for wastewater systems, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

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

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

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

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for Federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xviii) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached to the Loan Application, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project;

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

(xx) That the Governmental Agency shall 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.

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

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date of first payment at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the State's general obligation bonds unless otherwise agreed to by the Council.

ARTICLE V

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

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

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

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency,

the Authority may exercise any or all of the rights and powers granted under the Act and State law, including without limitation the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

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

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

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

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

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

7.8 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority pursuant to Section 6.1 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

7.9 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Division of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

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

CITY OF NEW MARTINSVILLE, WEST VIRGINIA

(SEAL)

By: Richard G. Snyder
Its: Mayor

Attest:

Date: March 13, 1997

Faye R. Smith
Its: Recorder

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Lyon
Director

Attest:

Date: March 13, 1997

Barbara B. Meadows
Secretary-Treasurer

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

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

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

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

WITNESS my signature on this __ day of ____, 19_.

_____

By: _____

West Virginia License No. _____

[SEAL]

EXHIBIT B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
c/o West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Ladies and Gentlemen:

We are bond counsel to _____ (the "Governmental Agency"), a _____
_____.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19__, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, 19_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $_____, issued in the form of one bond registered as to principal and interest to the Authority, with interest and principal payable in installments on September 1, December 1, March 1 and June 1 of each year, beginning December 1, 1997, at the rate as set forth in Exhibit A incorporated in and made a part of the Bonds.

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

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly enacted by the Governmental Agency on _____ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

3. The Governmental Agency is a duly organized and presently existing _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Governmental Agency has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Governmental Agency, payable from the [net] revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the [net] revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. [If required, the Local Bonds are, by statute, exempt _____ ___, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for Federal income tax purposes.]

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

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

Very truly yours,

EXHIBIT C

Monthly Financial Report

_____
[Name of Governmental Agency]

_____
_____
[Name of Bond Issue]

Fiscal Year - __

Report Month: _____

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

Witnesseth my signature this __ day of ____, 19_.

[Name of Governmental Agency]

By: _____
Authorized Officer

CHASFS3:58321

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	$6,720,000
Purchase Price of Bonds	$6,720,000

Principal on the Bonds is payable quarterly, commencing June 1, 1999, to and including March 1, 2037, at a rate of 0% per annum amortized over a forty year period. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 commencing June 1, 1999, as set forth on Schedule Y attached hereto and incorporated herein by reference. The Bonds shall be issued on parity with the Governmental Agency's Series 1997A and Series 1997C Bonds issued simultaneously therewith.

The Governmental Agency shall submit its payments monthly to the West Virginia Municipal Bond Commission which will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the West Virginia Municipal Bond Commission in writing by the Authority.

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and such Bonds shall grant the Authority a first parity lien on the gross revenues of the Governmental Agency's system.

The Governmental Agency may prepay the Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with Bonds which request must be filed at least 60 days prior to the intended date of issuance.

SCHEDULE Y

City of New Martinsville, West Virginia
$6,720,000 Infrastructure Fund Loan
1996 Series A
0% Interest
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
3/01/1999	-	-	-
6/01/1999	44,210.53	-	44,210.53
9/01/1999	44,210.53	-	44,210.53
12/01/1999	44,210.53	-	44,210.53
3/01/2000	44,210.53	-	44,210.53
6/01/2000	44,210.53	-	44,210.53
9/01/2000	44,210.53	-	44,210.53
12/01/2000	44,210.53	-	44,210.53
3/01/2001	44,210.53	-	44,210.53
6/01/2001	44,210.53	-	44,210.53
9/01/2001	44,210.53	-	44,210.53
12/01/2001	44,210.53	-	44,210.53
3/01/2002	44,210.53	-	44,210.53
6/01/2002	44,210.53	-	44,210.53
9/01/2002	44,210.53	-	44,210.53
12/01/2002	44,210.53	-	44,210.53
3/01/2003	44,210.53	-	44,210.53
6/01/2003	44,210.53	-	44,210.53
9/01/2003	44,210.53	-	44,210.53
12/01/2003	44,210.53	-	44,210.53
3/01/2004	44,210.53	-	44,210.53
6/01/2004	44,210.53	-	44,210.53
9/01/2004	44,210.53	-	44,210.53
12/01/2004	44,210.53	-	44,210.53
3/01/2005	44,210.53	-	44,210.53
6/01/2005	44,210.53	-	44,210.53
9/01/2005	44,210.53	-	44,210.53
12/01/2005	44,210.53	-	44,210.53
3/01/2006	44,210.53	-	44,210.53
6/01/2006	44,210.53	-	44,210.53
9/01/2006	44,210.53	-	44,210.53
12/01/2006	44,210.53	-	44,210.53
3/01/2007	44,210.53	-	44,210.53
6/01/2007	44,210.53	-	44,210.53
9/01/2007	44,210.53	-	44,210.53
12/01/2007	44,210.53	-	44,210.53
3/01/2008	44,210.53	-	44,210.53
6/01/2008	44,210.53	-	44,210.53
9/01/2008	44,210.53	-	44,210.53
12/01/2008	44,210.53	-	44,210.53
3/01/2009	44,210.53	-	44,210.53
6/01/2009	44,210.53	-	44,210.53
9/01/2009	44,210.53	-	44,210.53
12/01/2009	44,210.53	-	44,210.53
3/01/2010	44,210.53	-	44,210.53
6/01/2010	44,210.53	-	44,210.53
9/01/2010	44,210.53	-	44,210.53

City of New Martinsville, West Virginia
$6,720,000 Infrastructure Fund Loan
1996 Series A
0% Interest
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
12/01/2010	44,210.53	-	44,210.53
3/01/2011	44,210.53	-	44,210.53
6/01/2011	44,210.53	-	44,210.53
9/01/2011	44,210.53	-	44,210.53
12/01/2011	44,210.53	-	44,210.53
3/01/2012	44,210.53	-	44,210.53
6/01/2012	44,210.53	-	44,210.53
9/01/2012	44,210.53	-	44,210.53
12/01/2012	44,210.53	-	44,210.53
3/01/2013	44,210.53	-	44,210.53
6/01/2013	44,210.53	-	44,210.53
9/01/2013	44,210.53	-	44,210.53
12/01/2013	44,210.53	-	44,210.53
3/01/2014	44,210.53	-	44,210.53
6/01/2014	44,210.53	-	44,210.53
9/01/2014	44,210.53	-	44,210.53
12/01/2014	44,210.53	-	44,210.53
3/01/2015	44,210.53	-	44,210.53
6/01/2015	44,210.53	-	44,210.53
9/01/2015	44,210.53	-	44,210.53
12/01/2015	44,210.53	-	44,210.53
3/01/2016	44,210.53	-	44,210.53
6/01/2016	44,210.53	-	44,210.53
9/01/2016	44,210.53	-	44,210.53
12/01/2016	44,210.53	-	44,210.53
3/01/2017	44,210.53	-	44,210.53
6/01/2017	44,210.53	-	44,210.53
9/01/2017	44,210.53	-	44,210.53
12/01/2017	44,210.53	-	44,210.53
3/01/2018	44,210.53	-	44,210.53
6/01/2018	44,210.53	-	44,210.53
9/01/2018	44,210.53	-	44,210.53
12/01/2018	44,210.53	-	44,210.53
3/01/2019	44,210.53	-	44,210.53
6/01/2019	44,210.53	-	44,210.53
9/01/2019	44,210.53	-	44,210.53
12/01/2019	44,210.53	-	44,210.53
3/01/2020	44,210.53	-	44,210.53
6/01/2020	44,210.53	-	44,210.53
9/01/2020	44,210.53	-	44,210.53
12/01/2020	44,210.53	-	44,210.53
3/01/2021	44,210.53	-	44,210.53
6/01/2021	44,210.53	-	44,210.53
9/01/2021	44,210.53	-	44,210.53
12/01/2021	44,210.53	-	44,210.53
3/01/2022	44,210.53	-	44,210.53
6/01/2022	44,210.53	-	44,210.53

City of New Martinsville, West Virginia
$6,720,000 Infrastructure Fund Loan
1996 Series A
0% Interest
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/2022	44,210.53	-	44,210.53
12/01/2022	44,210.53	-	44,210.53
3/01/2023	44,210.53	-	44,210.53
6/01/2023	44,210.52	-	44,210.52
9/01/2023	44,210.52	-	44,210.52
12/01/2023	44,210.52	-	44,210.52
3/01/2024	44,210.52	-	44,210.52
6/01/2024	44,210.52	-	44,210.52
9/01/2024	44,210.52	-	44,210.52
12/01/2024	44,210.52	-	44,210.52
3/01/2025	44,210.52	-	44,210.52
6/01/2025	44,210.52	-	44,210.52
9/01/2025	44,210.52	-	44,210.52
12/01/2025	44,210.52	-	44,210.52
3/01/2026	44,210.52	-	44,210.52
6/01/2026	44,210.52	-	44,210.52
9/01/2026	44,210.52	-	44,210.52
12/01/2026	44,210.52	-	44,210.52
3/01/2027	44,210.52	-	44,210.52
6/01/2027	44,210.52	-	44,210.52
9/01/2027	44,210.52	-	44,210.52
12/01/2027	44,210.52	-	44,210.52
3/01/2028	44,210.52	-	44,210.52
6/01/2028	44,210.52	-	44,210.52
9/01/2028	44,210.52	-	44,210.52
12/01/2028	44,210.52	-	44,210.52
3/01/2029	44,210.52	-	44,210.52
6/01/2029	44,210.52	-	44,210.52
9/01/2029	44,210.52	-	44,210.52
12/01/2029	44,210.52	-	44,210.52
3/01/2030	44,210.52	-	44,210.52
6/01/2030	44,210.52	-	44,210.52
9/01/2030	44,210.52	-	44,210.52
12/01/2030	44,210.52	-	44,210.52
3/01/2031	44,210.52	-	44,210.52
6/01/2031	44,210.52	-	44,210.52
9/01/2031	44,210.52	-	44,210.52
12/01/2031	44,210.52	-	44,210.52
3/01/2032	44,210.52	-	44,210.52
6/01/2032	44,210.52	-	44,210.52
9/01/2032	44,210.52	-	44,210.52
12/01/2032	44,210.52	-	44,210.52
3/01/2033	44,210.52	-	44,210.52
6/01/2033	44,210.52	-	44,210.52
9/01/2033	44,210.52	-	44,210.52
12/01/2033	44,210.52	-	44,210.52
3/01/2034	44,210.52	-	44,210.52

City of New Martinsville, West Virginia
$6,720,000 Infrastructure Fund Loan
1996 Series A
0% Interest
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2034	44,210.52	-	44,210.52
9/01/2034	44,210.52	-	44,210.52
12/01/2034	44,210.52	-	44,210.52
3/01/2035	44,210.52	-	44,210.52
6/01/2035	44,210.52	-	44,210.52
9/01/2035	44,210.52	-	44,210.52
12/01/2035	44,210.52	-	44,210.52
3/01/2036	44,210.52	-	44,210.52
6/01/2036	44,210.52	-	44,210.52
9/01/2036	44,210.52	-	44,210.52
12/01/2036	44,210.52	-	44,210.52
3/01/2037	44,210.52	-	44,210.52
TOTAL	6,720,000.00	-	6,720,000.00

YIELD STATISTICS

Bond Year Dollars	$128,519.99
Average Life	19.125 Years
Average Coupon	-
Net Interest Cost (NIC)	-
True Interest Cost (TIC)	0.0000000%
Bond Yield for Arbitrage Purposes	0.0000000%
All Inclusive Cost (AIC)	0.0000000%
IRS FORM 8038	
Net Interest Cost	-
Weighted Average Maturity	19.125 Years

IC/WDA-1
(July 1996)

Series 1997 C

LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency").

CITY OF NEW MARTINSVILLE, WEST VIRGINIA
(Governmental Agency)

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to construct, operate and improve a project, as defined by the Act, and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

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

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

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Council Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Division of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

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

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

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

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

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

ARTICLE II

The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

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

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority, acting by and through its Director or his duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

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

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

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and

all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Governmental Agency 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 Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 15th of each month to the Authority and Council.

ARTICLE III

Conditions to Loan;
Issuance of Local Bonds

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

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

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

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

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

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local

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

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

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

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

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

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available in the Infrastructure Fund funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

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

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule

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

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the gross or net revenues from the System, as more fully set forth in Schedules X and Y attached hereto;

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

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, 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 Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, based upon the rates, Operating Expenses and customer usage on the date of closing, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

(vii) That the Governmental Agency will not render any free services of the System;

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

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

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

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

(xii) That 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;

(xiii) That for wastewater systems, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

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

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

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

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for Federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xviii) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached to the Loan Application, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project;

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

(xx) That the Governmental Agency shall 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.

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

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date of first payment at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the State's general obligation bonds unless otherwise agreed to by the Council.

ARTICLE V

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

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

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

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency,

the Authority may exercise any or all of the rights and powers granted under the Act and State law, including without limitation the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

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

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

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

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

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

7.8 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority pursuant to Section 6.1 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

7.9 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Division of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

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

CITY OF NEW MARTINSVILLE, WEST VIRGINIA

(SEAL)

By: Richard P. Snyder
Its: Mayor

Attest:

Faye K. Smith
Its: Recorder

Date: March 13, 1997

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Yankoski
Director

Attest:

Barbara B. Meadows
Secretary-Treasurer

Date: March 13, 1997

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	$420,000
Purchase Price of Bonds	$420,000

Principal and interest on the Bonds is payable quarterly, commencing June 1, 2019, to and including March 1, 2037, at a rate of 1% per annum amortized over a twenty year period. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 commencing June 1, 2019, as set forth on Schedule Y attached hereto and incorporated herein by reference. The Bonds shall be issued on parity with the Governmental Agency's Series 1997A and Series 1997B Bonds issued simultaneously therewith. The Governmental Agency shall begin making monthly deposits to the Series 1997C Reserve Account on the 1st of the month following the required fund up the Series 1997A Bonds Reserve Account

The Governmental Agency shall submit its payments monthly to the West Virginia Municipal Bond Commission which will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the West Virginia Municipal Bond Commission in writing by the Authority.

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

The Governmental Agency may prepay the Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with Bonds which request must be filed at least 60 days prior to the intended date of issuance.

SCHEDULE Y

City of New Martinsville, West Virginia
$420,000 Infrastructure Fund Loan
1996 Series A
1% Interest
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
3/01/2019	-	-	-	-
6/01/2019	5,331.34	1.000%	1,050.00	6,381.34
9/01/2019	5,344.67	1.000%	1,036.67	6,381.34
12/01/2019	5,358.03	1.000%	1,023.31	6,381.34
3/01/2020	5,371.43	1.000%	1,009.91	6,381.34
6/01/2020	5,384.86	1.000%	996.49	6,381.35
9/01/2020	5,398.32	1.000%	983.02	6,381.34
12/01/2020	5,411.82	1.000%	969.53	6,381.35
3/01/2021	5,425.35	1.000%	956.00	6,381.35
6/01/2021	5,438.91	1.000%	942.44	6,381.35
9/01/2021	5,452.51	1.000%	928.84	6,381.35
12/01/2021	5,466.14	1.000%	915.21	6,381.35
3/01/2022	5,479.80	1.000%	901.54	6,381.34
6/01/2022	5,493.50	1.000%	887.84	6,381.34
9/01/2022	5,507.24	1.000%	874.11	6,381.35
12/01/2022	5,521.00	1.000%	860.34	6,381.34
3/01/2023	5,534.81	1.000%	846.54	6,381.35
6/01/2023	5,548.64	1.000%	832.70	6,381.34
9/01/2023	5,562.52	1.000%	818.83	6,381.35
12/01/2023	5,576.42	1.000%	804.92	6,381.34
3/01/2024	5,590.36	1.000%	790.98	6,381.34
6/01/2024	5,604.34	1.000%	777.01	6,381.35
9/01/2024	5,618.35	1.000%	762.99	6,381.34
12/01/2024	5,632.39	1.000%	748.95	6,381.34
3/01/2025	5,646.48	1.000%	734.87	6,381.35
6/01/2025	5,660.59	1.000%	720.75	6,381.34
9/01/2025	5,674.74	1.000%	706.60	6,381.34
12/01/2025	5,688.93	1.000%	692.41	6,381.34
3/01/2026	5,703.15	1.000%	678.19	6,381.34
6/01/2026	5,717.41	1.000%	663.93	6,381.34
9/01/2026	5,731.70	1.000%	649.64	6,381.34
12/01/2026	5,746.03	1.000%	635.31	6,381.34
3/01/2027	5,760.40	1.000%	620.95	6,381.35
6/01/2027	5,774.80	1.000%	606.54	6,381.34
9/01/2027	5,789.24	1.000%	592.11	6,381.35
12/01/2027	5,803.71	1.000%	577.63	6,381.34
3/01/2028	5,818.22	1.000%	563.13	6,381.35
6/01/2028	5,832.76	1.000%	548.58	6,381.34
9/01/2028	5,847.35	1.000%	534.00	6,381.35
12/01/2028	5,861.96	1.000%	519.38	6,381.34
3/01/2029	5,876.62	1.000%	504.72	6,381.34
6/01/2029	5,891.31	1.000%	490.03	6,381.34
9/01/2029	5,906.04	1.000%	475.30	6,381.34
12/01/2029	5,920.80	1.000%	460.54	6,381.34
3/01/2030	5,935.61	1.000%	445.74	6,381.35
6/01/2030	5,950.45	1.000%	430.90	6,381.35
9/01/2030	5,965.32	1.000%	416.02	6,381.34

City of New Martinsville, West Virginia
$420,000 Infrastructure Fund Loan
1996 Series A
1% Interest
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
12/01/2030	5,980.24	1.000%	401.11	6,381.35
3/01/2031	5,995.19	1.000%	386.16	6,381.35
6/01/2031	6,010.17	1.000%	371.17	6,381.34
9/01/2031	6,025.20	1.000%	356.15	6,381.35
12/01/2031	6,040.26	1.000%	341.08	6,381.34
3/01/2032	6,055.36	1.000%	325.98	6,381.34
6/01/2032	6,070.50	1.000%	310.84	6,381.34
9/01/2032	6,085.68	1.000%	295.67	6,381.35
12/01/2032	6,100.89	1.000%	280.45	6,381.34
3/01/2033	6,116.14	1.000%	265.20	6,381.34
6/01/2033	6,131.43	1.000%	249.91	6,381.34
9/01/2033	6,146.76	1.000%	234.58	6,381.34
12/01/2033	6,162.13	1.000%	219.21	6,381.34
3/01/2034	6,177.53	1.000%	203.81	6,381.34
6/01/2034	6,192.98	1.000%	188.37	6,381.35
9/01/2034	6,208.46	1.000%	172.88	6,381.34
12/01/2034	6,223.98	1.000%	157.36	6,381.34
3/01/2035	6,239.54	1.000%	141.80	6,381.34
6/01/2035	6,255.14	1.000%	126.20	6,381.34
9/01/2035	6,270.78	1.000%	110.57	6,381.35
12/01/2035	6,286.46	1.000%	94.89	6,381.35
3/01/2036	6,302.17	1.000%	79.17	6,381.34
6/01/2036	6,317.93	1.000%	63.42	6,381.35
9/01/2036	6,333.72	1.000%	47.62	6,381.34
12/01/2036	6,349.56	1.000%	31.79	6,381.35
3/01/2037	6,365.43	1.000%	15.91	6,381.34
TOTAL	420,000.00	-	39,456.74	459,456.74

YIELD STATISTICS

Bond Year Dollars	$3,945.68
Average Life	9.394 Years
Average Coupon	0.9999996%
Net Interest Cost (NIC)	0.9999996%
True Interest Cost (TIC)	1.0012496%
Bond Yield for Arbitrage Purposes	1.0012496%
All Inclusive Cost (AIC)	1.0012496%
IRS FORM 8038	
Net Interest Cost	0.9999996%
Weighted Average Maturity	9.394 Years

GRANT AGREEMENT

This Grant Agreement entered into as of the 13th day of March, 1997 between the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council) and the City of New Martinsville (the "Governmental Agency").

RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed $1,161,395 (the "Grant") for the purpose of the acquisition and construction/design/planning of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purpose of constructing the project described in Schedule A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Agreement sets forth the Council, the Authority and the Governmental Agency's understandings and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Authority and the Governmental Agency hereby agree as follows:

TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.

2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon the Council's receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority and the Council.

3. The monthly requisition will also set forth (i) the amounts requested for the requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.

4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Schedule A.

5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

6. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

7. This Agreement shall be governed by the law of the State of West Virginia.

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

The City of New Martinsville

By: Richard P. Snyder

Its: Mayor

Date: March 13, 1997

SEAL

ATTEST

Faye R. Smith

Its: Recorder

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: Daniel B. Yankosky
Director

Date: March 13, 1997

SEAL

ATTEST

Barbara B. Meadows

Secretary-Treasurer

SCHEDULE A

The Project consists of construction of a new 1.37 mgd wastewater treatment plant (WWTP) (oxidation ditch type) including two final clarifiers, mechanical screening, grit removal, ultraviolet light disinfection, belt filter press, maintenance building, lab building addition, personnel building, 22,000 feet of 10 inch force main and necessary appurtenances, replace 5,700 feet of existing gravity sewer, abandon existing North Plant, retrofit existing North Plant lift station to pump wastewater to the new WWTP, and upgrade emergency power equipment at three lift stations. The estimated total project cost is $8,766,000.

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

CERTIFICATE OF:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. PUBLIC SERVICE COMMISSION ORDER; RATES
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. LOAN AGREEMENT; ADDITIONAL COVENANTS
12. TRUTH AND ACCURACY
13. SPECIMEN BONDS
14. BOND PROCEEDS
15. PRIVATE USE OF FACILITIES
16. NO FEDERAL GUARANTY
17. IRS INFORMATION RETURN
18. CONFLICT OF INTEREST
19. CLEAN WATER ACT
20. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of the City of New Martinsville, West Virginia (herein called the "City"), and the undersigned ATTORNEY for the City, hereby certify in connection with the fully registered City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, numbered AR-1, dated the date hereof, in the principal amount of $385,000 and bearing no interest (the "Series 1997 A Bonds"), the Waterworks and Sewerage System Revenue Bonds, Series 1997 B, numbered BR-1, dated the date hereof, in the principal amount of $6,720,000 and bearing no interest (the "Series 1997 B Bonds") and the Waterworks and Sewerage System Revenue Bonds, Series 1997 C, numbered CR-1, dated the date hereof, in the principal amount of $420,000 and bearing interest at the rate of one percent (1.00%) per annum (the "Series 1997 C Bonds," together with the Series 1997 A Bonds and Series 1997 B Bonds, the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this Certificate and not otherwise defined shall have the same meaning as in the Bond and Note Ordinance duly passed by the Council (the "Council") of the City on February 18, 1997, effective March 3, 1997, and the Supplemental Resolution adopted March 3, 1997, relating to the Bonds (collectively, the "Ordinance"), the Loan Agreement entered into among the City, the Division of Environmental Protection ("DEP") and the West Virginia Water Development Authority (the "Authority"), dated January 22, 1997, for the Series 1997 A Bonds and the Loan Agreements entered into among the City and the Authority, both dated March 13, 1997, for the Series 1997 B Bonds and Series 1997 C Bonds (collectively, the "Loan Agreements").

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 the issuance and delivery of the Bonds; nor questioning the proceedings and authority by which the Council of the City authorized the issuance and sale of the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof or the refunding of the Prior Bonds; nor questioning the existence of the City or the title of the members or officers of the City or of the Council thereof to their respective offices; nor questioning the acquisition and construction of certain extensions, improvements or betterments to the existing sewerage portion of the combined waterworks and sewerage system of the City financed in part by the proceeds of sale of the Bonds (herein called the "Project"), nor operation by the City of the Project (the Project and any further extensions, additions, improvements or betterments thereto, herein collectively called the "System"), nor challenging the collection or use of the revenues of the System or the pledge of the revenues to the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals and certificates required by law for the construction and acquisition of the Project, operation of the System, and issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for construction of the Project have been solicited 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 City since January 22, 1997.

$602,524, being a portion of the Series 1997 B Bonds, will be deposited with the Commission and applied to the payment in full of the Prior Bonds simultaneously with the delivery of the Bonds. Other than the Prior Bonds, there are no other bonds, notes or other obligations of the City which are secured by a lien on the revenues of the system. The Bonds are being issued for the purpose of paying costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City. The Series 1997 A Bonds, Series 1997 B Bonds and Series 1997 C Bonds are being issued as first

lien bonds and will be on a parity as to liens, pledge and source of and security for payment on the Gross Revenues of the System.

5. SIGNATURES: The undersigned Mayor and Recorder are the duly elected or appointed, qualified and serving officers of the City as indicated by the official titles opposite their signatures below, and were duly authorized to execute and seal the Bonds for the City. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the City.

6. PUBLIC SERVICE COMMISSION ORDER; RATES: The undersigned Counsel hereby certifies that the City has filed information with the Public Service Commission (the "PSC") and taken all other action required to maintain the Recommended Decision which became the Final Order of the PSC issued in Case No. 96-0765-S-CN which grants a Certificate of Convenience and Necessity, and approves the sale of the Bonds, dated December 17, 1996, in full force and effect, and has taken all other action required by applicable law. The City has received a Final Order of the PSC dated March 10, 1997, approving the changes in the Project financing. The rates were enacted by ordinance adopted July 29, 1996, and the City has complied with all requirements of the Public Service Commission to make the rates valid and effective and such rates are in full force and effect. The time for appeal of such Ordinance has expired and there has been no appeal thereof.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the City is "City of New Martinsville", and it is a municipal corporation of the State of West Virginia in Wetzel County of said State. The governing body of the City is its Common Council, consisting of six Council members and the Mayor. The Recorder is the ex-officio Clerk of the Common Council. The names and dates of commencement and termination of terms of office for all such officials during these Bond proceedings, including current terms, are listed below:

Office	Name	Date Of Commencement Of Office	Date Of Termination Of Office
Mayor	Richard P. Snyder	07/01/93	06/30/97
Recorder	Faye R. Smith	07/01/95	06/30/99
Council Member	Charles Grandstaff	07/01/93	06/30/97
Council Member	Larry J. Edgell	07/01/95	06/30/99
Council Member	Steven A. Bohrer	07/01/95	06/30/99
Council Member	Gene Berger	07/01/95	06/30/99
Council Member	Bonnie S. Shannon	07/01/93	06/30/97
Council Member	James E. Herrick	07/01/93	06/30/97

The duly appointed and acting City Attorney is Brooks K. Barkwill, Esquire, Jackson & Kelly, New Martinsville, West Virginia. James P. Melick, Jackson & Kelly, Charleston, West Virginia, is the attorney for the City regarding PSC matters.

8. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the 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 City, 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 City to pay for the same without jeopardizing the security of or payments on the Bonds.

9. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the City in any way connected with the construction, acquisition, operation and financing of the Project were authorized or adopted at meetings of the Council duly and regularly or specifically called and held pursuant to all applicable statutes and the rules of procedure of Council, and a quorum of duly appointed, 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.

10. INSURANCE: The City will maintain or, as appropriate, will require all contractors to maintain Worker's 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.

11. LOAN AGREEMENTS; ADDITIONAL COVENANTS: As of the date hereof, (i) the representations of the City contained in the Loan Agreements are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreements do not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the City has occurred since January 22, 1997, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the City is in compliance with the Loan Agreements.

The City hereby covenants with respect to the payments required by Section 5.03(A)(2) of the Ordinance that if the Series 1997 A Bonds are paid in full before the maturity thereof that the City will begin the repayment of the Series 1997 C Bonds three months after said final payment. The City also covenants that on the first day of the month following the date on which the Series 1997 A Bonds Reserve Account is funded at the

Series 1997 A Bonds Reserve Requirement that the City will begin the required monthly payment to the Series 1997 C Bonds Reserve Account.

12. TRUTH AND ACCURACY: As of the date hereof, Richard P. Snyder, Mayor and Faye R. Smith, Recorder hereby certify that the copies of documents previously or on the date hereof certified by them as being true and accurate are true and accurate as of the date hereof and that none of such documents has been repealed, rescinded, amended or otherwise modified.

13. SPECIMEN BONDS: Attached hereto as Exhibit A, Exhibit B and Exhibit C are specimens of the Bonds which, except as to execution and authentication, are identical in all respects with such Bonds this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

14. BOND PROCEEDS: On the date hereof, the City received $19,250 from the Authority and the DEP, being a portion of the principal amount of the Series 1997 A Bonds, $660,400 from the Authority and the Infrastructure Council, being a portion of the principal amount of the Series 1997 B Bonds and $21,000 from the Authority and the Infrastructure Council, being a portion of the principal amount of the Series 1997 C Bonds, and more than a de minimus amount of the proceeds of each series of Bonds. The balance of the principal amount of each series of Bonds will be advanced to the City from time to time as acquisition and construction of the Project progresses.

15. PRIVATE USE OF FACILITIES: The City shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use,

directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

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

17. IRS INFORMATION RETURN: On the date hereof, the undersigned Mayor did officially sign properly completed IRS Form 8038-G and will cause each such executed Form 8038-G to be filed in a timely manner with the Internal Revenue Service Center, Philadelphia, Pennsylvania.

18. CONFLICT OF INTEREST: No officer or employee of the City has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, materials, supplies or services to the City or to any contractor supplying the City, relating to the Bonds, 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.

[Remainder of Page Intentionally Left Blank]

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

20. COUNTERPARTS: This Certificate may be executed in counterpart and such parts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of the City of New Martinsville, West Virginia on this 13th day of March, 1997.

[SEAL]

Signature	Official Title
_____	Mayor
_____	Recorder
_____	Attorney
Jackson + Kelly	PSC Counsel as to ¶ 6 only

26407

"SPECIMEN"

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 as otherwise provided by the Loan Agreement dated January 22, 1997, among the Authority, the DEP and the City.

This Bond is issued (i) to pay costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (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 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the 3rd day of March, 1997, and a Supplemental Resolution adopted by the City on the 3rd day of March, 1997 (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 CITY'S WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 B AND SERIES 1997 C (THE "PARITY BONDS") ISSUED SIMULTANEOUSLY HEREWITH AND AS MORE FULLY DESCRIBED IN THE ORDINANCE.

This Bond is payable only from and secured by a pledge of a first lien on the Gross Revenues, on a parity with the lien of the Parity 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 Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest thereon except from said special fund provided from the Gross Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity 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

"SPECIMEN"

bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of Bank One, West Virginia, National Association, Charleston, West Virginia (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

IN WITNESS WHEREOF, THE CITY OF NEW MARTINSVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated the 13th day of March, 1997.

[SEAL]

Richard J. Snyder
"SPECIMEN"
Mayor

ATTEST:

Faye R. Smith
"SPECIMEN"
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1997 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, as Registrar

By _____
Its Authorized Officer

Dated: March 13, 1997

"SPECIMEN"

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) $19,250		(7) $	
(2) $		(8) $	
(3) $		(9) $	
(4) $		(10) $	
(5) $		(11) $	
(6) $		(12) $	

Total $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

New Martinsville, WV
$385,000.00
20 Year Repayment
0% Interest, 1% Administrative Fee
DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
3/01/1999	-	-	-	-
6/01/1999	4,812.50	-	-	4,812.50
9/01/1999	4,812.50	-	-	4,812.50
12/01/1999	4,812.50	-	-	4,812.50
3/01/2000	4,812.50	-	-	4,812.50
6/01/2000	4,812.50	-	-	4,812.50
9/01/2000	4,812.50	-	-	4,812.50
12/01/2000	4,812.50	-	-	4,812.50
3/01/2001	4,812.50	-	-	4,812.50
6/01/2001	4,812.50	-	-	4,812.50
9/01/2001	4,812.50	-	-	4,812.50
12/01/2001	4,812.50	-	-	4,812.50
3/01/2002	4,812.50	-	-	4,812.50
6/01/2002	4,812.50	-	-	4,812.50
9/01/2002	4,812.50	-	-	4,812.50
12/01/2002	4,812.50	-	-	4,812.50
3/01/2003	4,812.50	-	-	4,812.50
6/01/2003	4,812.50	-	-	4,812.50
9/01/2003	4,812.50	-	-	4,812.50
12/01/2003	4,812.50	-	-	4,812.50
3/01/2004	4,812.50	-	-	4,812.50
6/01/2004	4,812.50	-	-	4,812.50
9/01/2004	4,812.50	-	-	4,812.50
12/01/2004	4,812.50	-	-	4,812.50
3/01/2005	4,812.50	-	-	4,812.50
6/01/2005	4,812.50	-	-	4,812.50
9/01/2005	4,812.50	-	-	4,812.50
12/01/2005	4,812.50	-	-	4,812.50
3/01/2006	4,812.50	-	-	4,812.50
6/01/2006	4,812.50	-	-	4,812.50
9/01/2006	4,812.50	-	-	4,812.50
12/01/2006	4,812.50	-	-	4,812.50
3/01/2007	4,812.50	-	-	4,812.50
6/01/2007	4,812.50	-	-	4,812.50
9/01/2007	4,812.50	-	-	4,812.50
12/01/2007	4,812.50	-	-	4,812.50
3/01/2008	4,812.50	-	-	4,812.50
6/01/2008	4,812.50	-	-	4,812.50
9/01/2008	4,812.50	-	-	4,812.50
12/01/2008	4,812.50	-	-	4,812.50
3/01/2009	4,812.50	-	-	4,812.50
6/01/2009	4,812.50	-	-	4,812.50
9/01/2009	4,812.50	-	-	4,812.50
12/01/2009	4,812.50	-	-	4,812.50
3/01/2010	4,812.50	-	-	4,812.50
6/01/2010	4,812.50	-	-	4,812.50
9/01/2010	4,812.50	-	-	4,812.50
12/01/2010	4,812.50	-	-	4,812.50
3/01/2011	4,812.50	-	-	4,812.50
6/01/2011	4,812.50	-	-	4,812.50

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

New Martinsville, WV
$385,000.00
20 Year Repayment
0% Interest, 1% Administrative Fee
DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
9/01/2011	4,812.50	-	-	4,812.50
12/01/2011	4,812.50	-	-	4,812.50
3/01/2012	4,812.50	-	-	4,812.50
6/01/2012	4,812.50	-	-	4,812.50
9/01/2012	4,812.50	-	-	4,812.50
12/01/2012	4,812.50	-	-	4,812.50
3/01/2013	4,812.50	-	-	4,812.50
6/01/2013	4,812.50	-	-	4,812.50
9/01/2013	4,812.50	-	-	4,812.50
12/01/2013	4,812.50	-	-	4,812.50
3/01/2014	4,812.50	-	-	4,812.50
6/01/2014	4,812.50	-	-	4,812.50
9/01/2014	4,812.50	-	-	4,812.50
12/01/2014	4,812.50	-	-	4,812.50
3/01/2015	4,812.50	-	-	4,812.50
6/01/2015	4,812.50	-	-	4,812.50
9/01/2015	4,812.50	-	-	4,812.50
12/01/2015	4,812.50	-	-	4,812.50
3/01/2016	4,812.50	-	-	4,812.50
6/01/2016	4,812.50	-	-	4,812.50
9/01/2016	4,812.50	-	-	4,812.50
12/01/2016	4,812.50	-	-	4,812.50
3/01/2017	4,812.50	-	-	4,812.50
6/01/2017	4,812.50	-	-	4,812.50
9/01/2017	4,812.50	-	-	4,812.50
12/01/2017	4,812.50	-	-	4,812.50
3/01/2018	4,812.50	-	-	4,812.50
6/01/2018	4,812.50	-	-	4,812.50
9/01/2018	4,812.50	-	-	4,812.50
12/01/2018	4,812.50	-	-	4,812.50
3/01/2019	4,812.50	-	-	4,812.50
TOTAL	385,000.00	-	-	385,000.00 *

*Plus a one-percent administrative fee paid quarterly in the amount of $487.27. The total administrative fee over the life of the loan is $38,981.60.

[Form of Assignment]

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

_____

_____

_____

_____

_____

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

Dated: _____, ___.

_____

In the presence of:

_____

62254

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, the undersigned Faye R. Smith, the permanent, duly elected Recorder of the City of New Martinsville, West Virginia (the "City"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the $385,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A (the "Series 1997 A Bonds"), the $6,720,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B (the "Series 1997 B Bonds") and the $420,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C (the "Series 1997 C Bonds," together with the Series 1997 A Bonds and the Series 1997 B Bonds, the "Bonds"), 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. Charter of the City.

2. Rules of Procedure.

3. Oaths of Office of the Mayor, Recorder, and members of Council.

4. Rate Ordinance.

5. Minutes of the special Council meeting held February 11, 1997, regarding first reading of the Bond and Note Ordinance.

6. Bond and Note Ordinance (the "Ordinance") passed by Council on February 18, 1997.

7. Minutes of special meeting held by Council on February 18, 1997, regarding second reading and passage of the Ordinance.

8. Supplemental Resolution adopted by Council on March 3, 1997, authorizing the sale of the above-referenced Bonds.

9. Minutes of the March 3, 1997, public hearing and regular Council meeting regarding the adoption of the Supplemental Resolution.

10. Loan Agreement, dated January 22, 1997, between the City, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection ("DEP").

11. Loan Agreement, dated March 13, 1997, between the City and the Authority.

12. Loan Agreement, dated March 13, 1997, between the City and the Authority.

13. West Virginia Infrastructure and Jobs Development Council approval letter dated January 10, 1997.

14. Copy of the West Virginia Public Service Commission's (the Commission") Final Order dated December 17, 1996, granting the City a Certificate of Convenience and Necessity and Final Order dated March 10, 1997, approving the financing.

WITNESS my signature and the official seal of the City of New Martinsville, West Virginia as of the 13th day of March, 1997.

Faye R. Smith

Recorder
City of New Martinsville

(SEAL)

26408

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

CERTIFICATE AS TO NON-ARBITRAGE

I, Richard P. Snyder, Mayor of the City of New Martinsville, West Virginia (the "City"), being one of the officials of the City duly charged with the responsibility for the issuance of $385,000 aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, Series 1997 A (the "Series 1997 A Bonds"), the $6,720,000 aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, Series 1997 B (the "Series 1997 B Bonds") and the $420,000 aggregate principal amount of Waterworks and Sewerage System Revenue Bonds, Series 1997 C (the "Series 1997 C Bonds," together with the Series 1997 A Bonds and the Series 1997 B Bonds, the "Bonds") of the City, dated March 13, 1997 (the "Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations (the "Code"). I am one of the officers of the City charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the City.

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the City in existence on March 13, 1997, the date on which the Bonds are to be physically delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the City set forth herein are reasonable.

5. In the Bond and Note Ordinance (the "Ordinance") pursuant to which the Bonds are issued, the City has covenanted to make no use of the proceeds of the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of the Code.

6. (A) The Series 1997 A Bonds were sold on March 13, 1997, to the West Virginia Water Development Authority (the "Authority") pursuant to a loan agreement

dated January 22, 1997, by and among the City, the Authority and the West Virginia Division of Environmental Protection (the "DEP").

(B) The Series 1997 B Bonds were sold on March 13, 1997, to the Authority pursuant to a loan agreement dated March 13, 1997, by and between the City and the Authority.

(C) The Series 1997 C Bonds were sold on March 13, 1997, to the Authority pursuant to a loan agreement dated March 13, 1997, by and between the City and the Authority.

The Series 1997 A Bonds and Series 1997 B Bonds bear no interest.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) refunding the Prior Bonds; (ii) paying costs, not otherwise provided, of the acquisition and construction of certain extensions, improvements and betterments to the existing public sewage portion of the combined waterworks and sewerage system of the City (the "Project"); and (iii) paying costs of issuance and other costs in connection therewith.

The Prior Bonds, outstanding in the amount of $602,524, are being paid in full on the date hereof. The refunding is being done to effect a savings in the net interest costs of the City.

8. The City shall, within 30 days following delivery of the Bonds, enter into agreements which require the City to expend in excess of $100,000 on the Project constituting a substantial binding commitment or has already done so. Acquisition, construction and equipping of the Project will proceed with due diligence to completion, and all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, with the exception of the reserve account deposits, if any, will be expended for payment of Costs of the Project on or before February 28, 1999.

9. The total cost of the Project is estimated at $8,776,000. Sources and uses of funds for the Project are as follows:

SOURCES

Series 1997 A Bonds	$ 385,000
Series 1997 B Bonds	6,720,000
Series 1997 C Bonds	420,000
Infrastructure Council Grant	1,161,395
Advance Assistance Grant	89,605
Total Sources	$ 8,776,000

USES

Refunding Prior Bonds and Construction	6,991,000
Technical Services	1,379,000
Legal and Fiscal	50,000
Site and Other Lands	50,000
Contingency	296,000
Costs of Issuance	$ 20,000
Total Uses	$ 8,776,000

The amount of Project costs is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds and Grant Receipts and as otherwise provided in the Ordinance, no other funds of the City will be available to meet costs of the Project, and no balances are available to meet such costs in any account which may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

10. Pursuant to Article V of the Ordinance, the following special funds or accounts have been continued or created:

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; and

(3) Bond Construction Trust Fund (separate subaccounts to be established for each series of Original Bonds).

The following special funds or accounts are hereby established with the Commission for each series of Original Bonds:

(1) Sinking Fund; and

(a) Within the Sinking Fund, the Reserve Account.

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

(1) Proceeds of the Series 1997 B Bonds in the amount of $602,524 which, together with any funds held under the Prior Ordinance, shall be deposited with the Commission and applied to the payment in full of the Prior Bonds.

(2) Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the respective reserve account the sum, if any, set forth in the Supplemental Resolution for funding of said Reserve Account.

(3) The remaining moneys derived from the sale of the Original Bonds shall be deposited by the City, as received from time to time, in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project including but not limited to payment of cost of issuance.

12. Moneys held in the Sinking Fund will be used solely to pay 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 and interest on the Bonds, as the same shall become due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. All investment earnings on moneys in the Sinking Fund and 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 into the Revenue Fund.

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

14. The City expects to enter into a contract within 1 month of the date hereof or has already entered into such a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Bonds or $100,000.

15. Work with respect to the construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within eighteen months.

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

17. All of the proceeds of the Bonds will be expended on the Project within three years from the date of issuance thereof.

18. Any money deposited in the Sinking Fund for payment of the principal and interest on the Bonds (other than the Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and any moneys received from the investment of amounts held in the Sinking Fund (other than in the Reserve Account therein) will be spent within a 1-year period beginning the date of receipt.

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

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

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

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

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

24. The City has general taxing powers to finance operations of or facilities of the nature of the System, and the City and all subordinate entities reasonably expect to issue less than $5,000,000 of tax-exempt obligations during calendar year 1997 and has issued no other tax-exempt obligations during the current calendar year and the City believes that it may avail itself of the "small governmental issuer" exception to rebate. The Series 1997 A and Series 1997 B Bonds are non-interest bearing.

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

26. 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 Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions and refrain from taking such actions as shall be

necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

27. The Bonds, 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.

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

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

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

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

32. The City shall submit to the Authority within thirty (30) days following the end of the City's bond year a certified copy of its rebate calculation or if the City qualifies for the small governmental issuer exception to rebate, then the City shall submit to the Authority a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

33. The City expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

34. The City covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Series 1997 C Bonds.

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

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

IN WITNESS WHEREOF, I have set my hand this 13th day of March, 1997.

CITY OF NEW MARTINSVILLE

By Richard P. Snyder
Mayor

26394

Form **8038-G** (Rev. May 1995) Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

(Note: *Use Form 8038-GC if the issue price is under $100,000.*)

OMB No. 1545-0720

If Amended Return, check here ▶ ☐

Part I Reporting Authority

1 Issuer's name: City of New Martinsville

2 Issuer's employer identification number: 55 : 000222

3 Number and street (or P.O. box if mail is not delivered to street address): 191 Main Street — Room/suite:

4 Report number: G1997 - 1

5 City, town, or post office, state, and ZIP code: New Martinsville, WV 26155

6 Date of issue: March 13, 1997

7 Name of issue: $420,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C

8 CUSIP number: N/A

Part II Type of Issue (check applicable box(es) and enter the issue price)

9	☐ Education (attach schedule-see instructions)	9	$
10	☐ Health and hospital (attach schedule-see instructions)	10	
11	☐ Transportation	11	
12	☐ Public safety	12	
13	☒ Environment (including sewage bonds)	13	420,000
14	☐ Housing	14	
15	☐ Utilities	15	
16	☐ Other. Describe (see instructions) ▶	16	

17 If obligations are tax or other revenue anticipation bonds, check box ▶ ☐

18 If obligations are in the form of a lease or installment sale, check box ▶ ☐

Part III Description of Obligations

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity	3/1/2037	1.00 %	6,365.43	6,365.43			
20 Entire issue			420,000	420,000	9.394 years	↓ %	↓ %

1.0012496 .9999996

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

21	Proceeds used for accrued interest	21	-0-
22	Issue price of entire issue (enter amount from line 20, column (c))	22	420,000
23	Proceeds used for bond issuance costs (including underwriters' discount)	23	10,000
24	Proceeds used for credit enhancement	24	-0-
25	Proceeds allocated to reasonably required reserve or replacement fund	25	-0-
26	Proceeds used to currently refund prior issues	26	-0-
27	Proceeds used to advance refund prior issues	27	-0-
28	Total (add lines 23 through 27)	28	10,000
29	Nonrefunding proceeds of the issue (subtract line 28 from line 22 and enter amount here)	29	410,000

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

30 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ N/A years

31 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ N/A years

32 Enter the last date on which the refunded bonds will be called ▶ N/A

33 Enter the date(s) the refunded bonds were issued ▶

Part VI Miscellaneous

34	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	34	-0-
35	Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception)	35	-0-
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	-0-
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	-0-

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☒ and enter the name of the issuer ▶ State of West Virginia ** and the date of the issue ▶ June 4, 1996

38 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

39 If the issuer has identified a hedge, check box ▶ ☐

Please Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Richard P. Snyder — Signature of issuer's authorized representative — Date: 3/13/97

Richard P. Snyder, Mayor — Type or print name and title

For Paperwork Reduction Act Notice, see page 1 of the Instructions.

Cat. No. 63773S — Form 8038-G (Rev. 5-95)

Printed on recycled paper

** Infrastructure General Obligation Bonds, Series 1996 A

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

CERTIFICATE OF CONSULTING ENGINEER

I, Craig Richards, Registered Professional Engineer, West Virginia License No. 10358, of Burgess and Niple LTD, Consulting Engineers, Parkersburg, West Virginia, hereby certify that my firm is engineer for the acquisition and construction of certain additions, improvements and betterments to the existing sewerage facilities (herein called the "Project") of the combined waterworks and sewerage system (the "System") of the City of New Martinsville (the "Issuer") to be constructed primarily in Wetzel County, West Virginia, which acquisition and construction is being permanently financed, in part, by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the Bond and Note Ordinance passed by the Council of the Issuer on February 18, 1997, effective March 3, 1997, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated January 22, 1997, for the Series 1997 A Bonds, and the Loan Agreements by and between the Issuer and the Authority, dated March 13, 1997, for the Series 1997 B Bonds and the Series 1997 C Bonds, respectively.

1. The Bonds are being issued for the purpose of (i) paying costs of acquisition and construction of a wastewater treatment facility constituting improvements, additions, extensions and betterments to the existing combined waterworks and sewerage system of the City (the "Project"); (ii) refunding the Prior Bonds; and (iii) paying certain costs of issuance thereof and related costs.

2. The undersigned hereby certifies that to the best of my knowledge and belief (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the applications submitted to the Authority, DEP and the West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") requesting the Authority to purchase the Bonds (the "Applications") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least forty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Applications and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the

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

WITNESS my signature on this 13th day of March, 1997.

BURGESS AND NIPLE LTD

By _____
Craig Richards
West Virginia License No. 10358

[SEAL]

26402

SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: City of New Martinsville

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

A. Cost of Project

1.	Construction	$ 6,991,000	
2.	Technical Services	$ 1,379,000	
3.	Legal and Fiscal	$ 50,000	
4.	Administrative	$ 0	
* 5.	Site and Other Lands	$ 50,000	
** 6.	Fac. Plan/Design or Other Loan Repayment (Specify Type: _____)	$ 0	
7.	Interim Financing Costs	$ 0	
8.	Contingency	$ 296,000	
9.	Total of Lines 1 Through 8		$ 8,766,000

B. Sources of Funds

10.	Federal Grants:[1]		$	
	(Specify Sources)		$	
11.	State Grants:[1]	Infrastructure Council	$ 1,161,395	
	(Specify Sources)	Advance Assistance	$ 89,605	
12.	Other Grants:[1]		$	
	(Specify Sources)		$	
13.	Any Other Source[2]	Infrastructure Loan	$ 7,140,000	
	(Specify)		$	
14.	Total of Lines 10 Through 13			$ 8,391,000
15.	Net Proceeds Required from Bond Issue (Line 9 minus Line 14)			$ 375,000

C. Cost of Financing

16.	Capitalized Interest (Construction period plus six months)	$ 0	
17.	Funded Reserve Account:[3]	$ 0	
18.	Other Costs:[4]	$ 10,000	
		$	
19.	Total Cost of Financing (lines 16 - 18)	$ 10,000	
20.	Size of Bond Issue (Line 15 plus Line 19)		$ 385,000

* not allowable for State Revolving Fund Assistance

** WDA loans are not allowable

Richard P. Snyder
Signature of Applicant

Date 1-9-97

Craig D. Richards
Signature of Consulting Engineer

Date 1-9-97

Series 1997 B Bonds and
Series 1997 C Bonds

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

SCHEDULE B

NAME OF GOVERNMENTAL AGENCY: City of New Martinsville

PROJECT DESCRIPTION: Wastewater Collection and Treatment Improvements

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

A. COST OF PROJECT

1.	Construction (Based on Actual Bids)	$ 6,991,000	
2.	Technical Services	$ 1,379,000	
3.	Legal and Fiscal	$ 50,000	
4.	Administrative	$ 0	
5.	Site and Other Lands	$ 50,000	
6.	Step I and/or Step II (Design) or Other Loan Repayment (Specify Type:)	$ 0	
7.	Interim Financing Costs	$ 0	
8.	Contingency	$ 296,000	
9.	Total of Lines 1 through 8		$ 8,766,000

B. SOURCES OF FUNDS

10.	Federal Grants[1] (Specify Sources):	$	
		$	
11.	State Grants[1] (Specify Sources): Advance Assistance	$ 89,605	
		$	
12.	Other Grants[1] (Specify Sources):	$	
		$	
13.	Any Other Source[2] (Specify): State Revolving Fund Loan	$ 385,000	
		$	
14.	Infrastructure Council Grant	$ 1,161,395	
15.	Total of Lines 10 through 14		$ 1,636,000
16.	Net Proceeds Required from Bond Issue (Line 9 less Line 15)		$ 7,130,000

C. IF BOND ISSUE, COST OF FINANCING

17.	Funded Reserve Account[3]	$ 0	
18.	Other Costs[4]	$ 10,000	
19.	Total Cost of Financing (Lines 17 and 18)		$ 10,000
20.	Size of Bond Issue (Line 16 plus Line 19)		$ 7,140,000

SCHEDULE B

1. Attach supporting documentation.
2. Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation.
3. Consult with bond counsel and the Authority before assuming a funded reserve.
4. For example, fees of accountants, bond counsel and local counsel for the Governmental Agency.

Additional or explanatory material may be provided on additional sheets attached to Schedule B.

Richard P. Snyder
SIGNATURE OF APPLICANT

DATE: 1-9-97

Craig O. Richards
SIGNATURE OF CONSULTING ENGINEER

DATE: 1-9-97

PHILIP R. POSTLEWAIT, JR.
CERTIFIED PUBLIC ACCOUNTANT
P.O. BOX 1281
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE (304) 422-7444
FACSIMILE (304) 422-4911

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

WEST VIRGINIA SOCIETY CERTIFIED PUBLIC ACCOUNTANTS

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B AND SERIES 1997 C

CERTIFICATE OF ACCOUNTANT AS TO COVERAGE

Philip R. Postlewait, Jr., Certified Public Accountant, has received the combined water and sewer service rates of the City of New Martinsville, West Virginia (the "City") and historic customer usage. It is my opinion that those rates are adequate to pay operation and maintenance expenses, and to meet the debt service coverage requirements of the Waterworks and Sewerage System Revenue Bonds, Series 1997 A, the Waterworks and Sewerage System Revenue Bonds, Series 1997 B, and the Waterworks and Sewerage System Revenue Bonds, Series 1997 C, and the Bond and Note Ordinance adopted by the Council on February 18, 1997, effective March 3, 1997, and a Supplemental Resolution adopted by the Council on March 3, 1997, and are sufficient to comply with the provisions of the Loan Agreement entered into by and among the City, the West Virginia Division of Environmental Protection, and the West Virginia Water Development Authority, (the "Authority") on January 22, 1997, for the Series 1997 A Bonds and the Loan Agreement entered into by and among the City and the Authority on March 13, 1997, for the Series 1997 B Bonds and Series 1997 C Bonds. The rates and charges provide debt service coverage in excess of 115%.

WITNESS my signature as of this 13th day of March, 1997.

Philip R. Postlewait, Jr.

Philip R. Postlewait, Jr.
Certified Public Accountant

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 13th day of March, 1997, by and between the CITY OF NEW MARTINSVILLE, WEST VIRGINIA, a municipal corporation (the "Governmental Agency"), and BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, Charleston, West Virginia (the "Registrar").

WHEREAS, the Governmental Agency has, contemporaneously with the execution hereof, issued and sold its $385,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A (the "Series 1997 A Bonds"), in the form of one bond, numbered AR-1, its $6,720,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B (the "Series 1997 B Bonds"), in the form of one bond, numbered BR-1 and its $420,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C (the "Series 1997 C Bonds," together with the Series 1997 A Bonds and the Series 1997 B Bonds, the "Bonds"), in the form of one bond, numbered CR-1, in fully registered form pursuant to a Bond and Note Ordinance duly passed February 18, 1997, effective March 3, 1997, and a Supplemental Resolution adopted March 3, 1997 (collectively, the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for an appointment by the Governmental Agency of a Registrar for the Bonds; and

WHEREAS, the Governmental Agency desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Governmental Agency and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar, for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer,

and shall do so with the intention of maintaining the exclusion of interest on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Governmental Agency advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Governmental Agency with appropriate records of all transactions carried out by it as Registrar and to furnish the Governmental Agency with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Governmental Agency may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Governmental Agency.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Governmental Agency hereby agrees to pay to the Registrar, from time to time, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection with this Registrar's Agreement.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Governmental Agency and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

GOVERNMENTAL AGENCY:

City of New Martinsville
191 Main Street
New Martinsville, WV 26155-1211
Attention: Mayor

REGISTRAR:

Bank One, West Virginia, National Association
P.O. Box 1113
Charleston, WV 25324-1113
Attention: Corporate Trust

The Governmental Agency and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the CITY OF NEW MARTINSVILLE and BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

CITY OF NEW MARTINSVILLE

By Richard P. Snyder
Mayor

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION

By: Teresa L. Davis
Teresa L. Davis, Vice President

26396

EXHIBIT A

See Bond and Note Ordinance (Tab No. 6)
See Supplemental Resolution (Tab No. 8)

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK

Bank One, Wheeling-Steubenville, National Association, with its office in New Martinsville, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond and Note Ordinance of the City of New Martinsville, West Virginia duly passed on February 18, 1997, effective March 3, 1997, and the Supplemental Resolution adopted March 3, 1997 (collectively, the "Ordinance"), authorizing issuance of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, in the aggregate principal amount of $385,000, the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B, in the aggregate principal amount of $6,720,000, and the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C, in the aggregate principal amount of $420,000, each dated March 3, 1997 (collectively, the "Bonds") and agrees to perform all duties of Depository Bank, all as set forth in said Ordinance.

Witness my signature as of the 13th day of March, 1997.

BANK ONE, WHEELING-STEUBENVILLE,
NATIONAL ASSOCIATION

By _____ Robert Spock
Its Authorized Officer

26409

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

REQUEST AND AUTHORIZATION AS TO AUTHENTICATION
AND DELIVERY OF THE BONDS

March 13, 1997

Bank One, West Virginia, National Association
P.O. Box 1113
Charleston, West Virginia 25324-1113

Ladies and Gentlemen:

We herewith hand to you, duly executed, $385,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A, in the form of one bond numbered AR-1, the $6,720,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B, in the form of one bond numbered BR-1 and the $420,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C, in the form of one bond numbered CR-1 (collectively, the "Bonds") of the City of New Martinsville, West Virginia (the "City"), authorized to be issued under and pursuant to the Bond and Note Ordinance, duly passed by the Council of the City on February 18, 1997, effective March 3, 1997, and a Supplemental Resolution adopted by the Council on March 3, 1997 (collectively, the "Ordinance").

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the City to the West Virginia Water Development Authority.

CITY OF NEW MARTINSVILLE

By Richard P. Snyder
Mayor

(SEAL)

Attest:

Faye R. Smith
Recorder, City of New Martinsville

26410

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

CERTIFICATE OF REGISTRATION OF BONDS

I, Teresa L. Davis, Vice President, of Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar (the "Registrar"), hereby certify that on the 13th day of March, 1997, the bonds of the City of New Martinsville, West Virginia in the principal amount of: $385,000 designated the "City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A" (the "Series 1997 A Bonds"), and numbered AR-1, dated as of the date hereof; $6,720,000 designated the "City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B" (the "Series 1997 B Bonds"), and numbered BR-1, dated as of the date hereof; and $420,000 designated the "City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C" (the "Series 1997 C Bonds"), and numbered CR-1, dated as of the date hereof, were registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the City kept for that purpose at our office, by a duly authorized officer on behalf of Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar.

WITNESS my signature as of the 13th day of March, 1997.

BANK ONE, WEST VIRGINIA, NATIONAL
ASSOCIATION, as Registrar

By Teresa L. Davis
Teresa L. Davis, Vice President

26411

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

RECEIPT FOR BONDS

The undersigned, Barbara B. Meadows, Secretary-Treasurer of the West Virginia Water Development Authority, for and on behalf of the West Virginia Water Development Authority (the "Authority"), hereby certifies as follows:

1. On the 13th day of March, 1997, in Dunbar, West Virginia, the Authority received the entire original issue of $385,000 in aggregate principal amount of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A (the "Series 1997 A Bonds"), said Bond being dated the 13th day of March, 1997; and issued in the form of one bond, fully registered to the Authority, and numbered AR-1.

2. On the 13th day of March, 1997, in Dunbar, West Virginia, the Authority received the entire original issue of $6,720,000 in aggregate principal amount of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B (the "Series 1997 B Bonds"), said Bond being dated the 13th day of March, 1997; and issued in the form of one bond, fully registered to the Authority, and numbered BR-1.

3. On the 13th day of March, 1997, in Dunbar, West Virginia, the Authority received the entire original issue of $420,000 in aggregate principal amount of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C (the "Series 1997 C Bonds"), said Bond being dated the 13th day of March, 1997; and issued in the form of one bond, fully registered to the Authority, and numbered CR-1.

4. At the time of receipt of each series of Bonds, they had been executed by Richard P. Snyder, as Mayor of the City of New Martinsville, by manual signature, and attested by Faye R. Smith, as Recorder of the City of New Martinsville, by manual signature, and the official seal of said City had been impressed upon each Bond.

IN WITNESS WHEREOF, Barbara B. Meadows duly signed and delivered this receipt on behalf of the West Virginia Water Development Authority on the 13th day of March, 1997.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By Barbara B Meadows
Secretary-Treasurer

26403

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

RECEIPT FOR BOND PROCEEDS

The undersigned Richard P. Snyder, Mayor of the City of New Martinsville (the "City"), hereby certifies as follows:

1. The City has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the $385,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A (the "Series 1997 A Bonds"), of $19,250 being more than a de minimis portion of the purchase price of the Series 1997 A Bonds. The City understands that the remaining proceeds will be advanced to the City from time to time as construction proceeds to completion.

2. The City has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the $6,720,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B (the "Series 1997 B Bonds"), of $660,400 being more than a de minimis portion of the purchase price of the Series 1997 B Bonds, of which $602,524 will be used to pay in full the Prior Bonds. The City understands that the remaining proceeds will be advanced to the City from time to time as construction proceeds to completion.

3. The City has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the $420,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C (the "Series 1997 C Bonds"), of $21,000 being more than a de minimis portion of the purchase price of the Series 1997 C Bonds. The City understands that the remaining proceeds will be advanced to the City from time to time as construction proceeds to completion.

IN WITNESS WHEREOF, the City of New Martinsville has caused this receipt to be executed by its Mayor on this 13th day of March, 1997.

CITY OF NEW MARTINSVILLE

By Richard P. Snyder
MAYOR

26404

AGENCY: ENVIRONMENTAL PROTECTION
TOTAL: $19,250.00

WARRANT #: 8-7273969
DATE: 03/11/97

TRANSACTION ID	INVOICE NUMBER	&	PAYEE REFERENCE	INVOICE DATE	PURCHASE ORDER	AMOUNT
I920028649	1, C-544-163-02					$19,250.00

If you have questions concerning the above, please call 304-759-0507.

REMOVE DOCUMENT ALONG THIS PERFORATION

CTL# 5609591

THIS CHECK HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD AND COUNTERFEITING
VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

State of West Virginia

STATE CAPITOL, CHARLESTON

WARRANT # 8-7273969

MARCH 11, 1997

PAY TO THE ORDER OF CITY OF NEW MARTINSVILLE

8-7273969

**********$19,250.00**

John D. Perdue — STATE TREASURER

Glen B Gainer III — AUDITOR

WEST VIRGINIA TREASURY

⑈8727396 9⑈ ⑆051902322⑆ 02⑈095⑈9⑈

GASTON CAPERTON
GOVERNOR

DIVISION OF ENVIRONMENTAL PROTECTION
1201 Greenbrier Street
Charleston, WV 25311-1088

LAIDLEY ELI McCOY, Ph.D.
DIRECTOR

April 29, 1996

Honorable Richard Snyder
Mayor, City of New Martinsville
197 Main Street
New Martinsville, WV 26155

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0027472
Modification No. 1

Dear Mayor Snyder:

This letter serves as Modification No. 1 of your existing WV/NPDES Water Pollution Control Permit No. WV0027472 issued the 30th day of October 1995.

After reviewing your permit and your Modification Application No. WV0027472-A dated the 13th day of December 1995, the above referenced permit is hereby modified to include the acquisition, installation, construction, operation and maintenance of a 2.3 MGD oxidation ditch sewage treatment facility consisting of a bar screen, a mechanical bar screen, a vortex-type grit removal unit, two (2) 600,000 gallon rotor aerated ditches, two (2) 191,500 gallon final clarifiers, an ultraviolet disinfection unit with two (2) 72 bulb banks, a parshall flume flow measuring device, a 153,270 gallon aerobic digester, a 1.5 meter filter belt press, and all necessary appurtenances. The new facility will also continue to operate and maintain 2,760 ft^2 of the existing sludge drying beds in reserve for emergency purposes and will also convert two (2) existing 54,600 gallon final clarifiers for use as emergency sludge storage units. Also, to include the sewer collection system improvements consisting of the acquisition, installation, construction, operation and maintenance of 37 manholes, 22,000 linear feet of 10 inch force main and the North Plant lift station improvement and to replace approximately 5,200 linear feet of various sized gravity sewer line and six (6) overflow structures.

The new sewage collection and treatment system shall upon completion replace the existing North and South sewage treatment facilities.

Also, upon completion of this project, Combined Sewer Overflow (CSO) Outlet No. 012 shall be eliminated.

SEWAGE TREATMENT FACILITIES TO BE CONSTRUCTED IN ACCORDANCE WITH:
Plans, Specifications, and Reports:
Date Approved: April 23, 1996
Prepared by: Burgess and Niple, Limited
4424 Emerson Avenue
Parkersburg, WV 26104
Title: City of New Martinsville
Wetzel County, West Virginia
Wastewater Treatment Plant Improvements
Contract No. 96-2

SEWAGE COLLECTION SYSTEM IMPROVEMENTS TO BE CONSTRUCTED IN ACCORDANCE WITH:
Plans, Specifications, and Reports:
Date Approved: April 23, 1996
Prepared by: Burgess and Niple, Limited
4424 Emerson Avenue
Parkersburg, WV 26104
Title: City of New Martinsville
Wetzel County, West Virginia
Wastewater Collection System Improvements
Contract No. 96-1

Your submission of the site registration application form (Registration No. WVG070883), dated the 22nd day of February 1996, and our acceptance, thereof, as terms and conditions of this Permit modification, expressly requires your compliance under WV/NPDES Storm Water General Water Pollution Control Permit No. WV0111457, issued the 8th day of June 1992.

Find enclosed revised Page 22 and additional pages 8A, 8B, and 8C; and additional Discharge Monitoring Reports. These pages shall be incorporated into this permit.

All other terms and conditions of the subject permit shall remain in effect and unchanged.

Sincerely,

OFFICE OF WATER RESOURCES

Barbara S. Taylor
Chief

BST/rb

Enclosures

WV MUNICIPAL BOND COMMISSION
Suite 300 - L & S Building
812 Quarrier Street, Charleston, WV 25301
(304) 348-3971

NEW ISSUE REPORT FORM
Date of Report: March 13, 1997

ISSUE: $385,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A

ADDRESS: 191 Main Street, New Martinsville, WV 26155 COUNTY: Wetzel

PURPOSE OF ISSUE: New Money X
Refunding ____ Refunds issue(s) dated: _____

ISSUE DATE: March 13, 1997 CLOSING DATE: March 13, 1997

ISSUE AMOUNT: $ 385,000 RATE: 0% interest, 1% Administrative Fee

1st DEBT SERVICE DUE: June 1, 1999 1st PRINCIPAL DUE: June 1, 1999

1st DEBT SERVICE AMOUNT: $4,812.50 PAYING AGENT: WV Municipal Bond Commission

ISSUERS
BOND COUNSEL: Jackson & Kelly
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

UNDERWRITERS
BOND COUNSEL: _____
Contact Person: _____
Phone: _____

CLOSING BANK: Bank One, Wheeling-Steubenville, NA
Contact Person: Donald S. Knowlton, Manager
Phone: (304) 455-4500/Dep. Bank

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Richard P. Snyder
Position: Mayor
Phone: (304) 455-9120

OTHER: Bank One, WV, NA
Contact Person: Teresa L. Davis
Function: Registrar
Phone: (304) 348-5667

DEPOSITS TO MBC AT CLOSE:
By ____ Wire
____ Check

____ Accrued Interest: $_____
____ Capitalized Interest: $_____
____ Reserve Account: $_____
____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By ____ Wire
____ Check
____ IGT

____ To Escrow Trustee: $_____
____ To Issuer: $_____
____ To Cons.Invest.Fund $_____
____ To Other: _____ $_____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____

Transfers Required: _____

60560

WV MUNICIPAL BOND COMMISSION
Suite 300 - L & S Building
812 Quarrier Street, Charleston, WV 25301
(304) 348-3971

NEW ISSUE REPORT FORM
Date of Report: March 13, 1997

ISSUE: $6,720,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B

ADDRESS: 191 Main Street, New Martinsville, WV 26155 COUNTY: Wetzel

PURPOSE OF ISSUE: New Money X
Refunding X Refunds issue(s) dated: October 26, 1995

ISSUE DATE: March 13, 1997 CLOSING DATE: March 13, 1997

ISSUE AMOUNT: $6,720,000 RATE: 0% interest

1st DEBT SERVICE DUE: June 1, 1999 1st PRINCIPAL DUE: June 1, 1999

1st DEBT SERVICE AMOUNT: $44,210.53 PAYING AGENT: WV Municipal Bond Commission

ISSUERS
BOND COUNSEL: Jackson & Kelly
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

UNDERWRITERS
BOND COUNSEL: _____
Contact Person: _____
Phone: _____

CLOSING BANK: Bank One, Wheeling-Steubenville, NA
Contact Person: Donald S. Knowlton, Manager
Phone: (304) 455-4500/Dep. Bank

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Richard P. Snyder
Position: Mayor
Phone: (304) 455-9120

OTHER: Bank One, WV, NA
Contact Person: Teresa L. Davis
Function: Registrar
Phone: (304) 348-5667

DEPOSITS TO MBC AT CLOSE:
By ____ Wire
____ Check

____ Accrued Interest: $_____
____ Capitalized Interest: $_____
____ Reserve Account: $_____
____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By ____ Wire
X Check
____ IGT

____ To Escrow Trustee: $_____
____ To Issuer: $_____
____ To Cons.Invest.Fund $_____
X To Other: Series 1995 $ 602,524

NOTES: Check in the amount of $602,524 to be applied to the Series 1995 Bonds of the City of New Martinsville to pay in full.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____

Transfers Required: _____

60560

WV MUNICIPAL BOND COMMISSION
Suite 300 - L & S Building
812 Quarrier Street, Charleston, WV 25301
(304) 348-3971

NEW ISSUE REPORT FORM
Date of Report: March 13, 1997

ISSUE: $420,000 City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C

ADDRESS: 191 Main Street, New Martinsville, WV 26155 COUNTY: Wetzel

PURPOSE OF ISSUE: New Money X
Refunding ____ Refunds issue(s) dated: ____

ISSUE DATE: March 13, 1997 CLOSING DATE: March 13, 1997

ISSUE AMOUNT: $ 420,000 RATE: 1.00%

1st DEBT SERVICE DUE: June 1, 2019 1st PRINCIPAL DUE: June 1, 2019

1st DEBT SERVICE AMOUNT: $6,381.34 PAYING AGENT: WV Municipal Bond Commission

ISSUERS
BOND COUNSEL: Jackson & Kelly
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

UNDERWRITERS
BOND COUNSEL: ____
Contact Person: ____
Phone: ____

CLOSING BANK: Bank One, Wheeling-Steubenville, NA
Contact Person: Donald S. Knowlton, Manager
Phone: (304) 455-4500/Dep. Bank

ESCROW TRUSTEE: ____
Contact Person: ____
Phone: ____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Richard P. Snyder
Position: Mayor
Phone: (304) 455-9120

OTHER: Bank One, WV, NA
Contact Person: Teresa L. Davis
Function: Registrar
Phone: (304) 348-5667

DEPOSITS TO MBC AT CLOSE:
By ____ Wire
____ Check

____ Accrued Interest: $____
____ Capitalized Interest: $____
____ Reserve Account: $____
____ Other: ____ $____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By ____ Wire
____ Check
____ IGT

____ To Escrow Trustee: $____
____ To Issuer: $____
____ To Cons.Invest.Fund $____
____ To Other: ____ $____

NOTES: ____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: ____

Transfers Required: ____

60560

West Virginia Infrastructure & Jobs Development Council

Public Members:
Russell L. Isaacs, Chairman
Cottageville
James D. Williams, Vice-Chairman
St. Albans
Lloyd P. Adams, P.E.
Wheeling
James L. Harrison, Sr.
Princeton

1320 One Valley Square
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304)558-4609

Susan J. Riggs, Esquire
Executive Secretary

January 10, 1997

The Honorable Richard P. Snyder
Mayor, City of New Martinsville
Municipal Building
191 Main Street
New Martinsville, WV 26155

Re: City of New Martinsville
Wastewater Project 95S-034
Bid Overrun

Dear Mayor Snyder:

The West Virginia Infrastructure and Jobs Development Council (Council), at its January 8, 1997 meeting, reviewed the City of New Martinsville's (City) request for additional funding necessary to fund a cost overrun due to bids higher than the budget estimate for its wastewater project (project). By letter dated November 12, 1996, the Council provided to the City a binding commitment to fund the project at a total project cost of $7,083,000. The City's request states that it needs an additional $693,000 due to the cost overrun.

The Council reviewed the funding previously proposed for this project in order to determine how the cost overrun could be funded without increasing the City's proposed customer rates. The Council concluded that it would provide the City additional Infrastructure Fund loan assistance of approximately $1,940,000 and additional Infrastructure Fund grant assistance of approximately $278,395. The enclosed Schedule A details the terms and conditions of the project financing as now revised. Please note that the financing package includes defeasance of the City's State Revolving Fund design loan of approximately $615,000.

All other terms and conditions of the Council's November 12, 1996 binding commitment letter remain in force. If you have any questions regarding this matter, please contact Susan J. Riggs at the above telephone number.

Sincerely,

Russell L. Isaacs

RLI/bjh
Enclosure
cc: Craig D. Richards, P.E.

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

City of New Martinsville
Wastewater Project
January 10, 1997

REVISED SCHEDULE A
After Bids Received

A. Approximate Amount: $7,140,000 - Loan
$1,161,395 - Grant

B. If Loan:

1. Maturity Date: 40 years from date of loan closing
2. Loan Advancement Date(s): Monthly upon receipt of proper requisition.
3. Special Conditions (if any):
   (i) For $6,720,000, the debt service commencement date will be the first quarter following completion of construction, which date must be identified prior to loan closing, and the interest rate will be 0%.
   (ii) For the remaining $420,000, the debt service commencement date will be the first month after final payment of the State Revolving Fund (SRF) Loan and the interest rate will not exceed 1%.

C. If Grant:

1. a. Grant Advancement Date(s): Monthly upon receipt of proper requisition and after complete advancement of the SRF Loan and the Infrastructure Fund loan.
   b. Monthly percentage: Not to exceed 50% of the grant amount.

2. Special Conditions (if any)

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

D. Other Funding Sources:

1. State Revolving Fund loan:
   a. Amount: $ 385,000
   b. Interest Rate: 1%
   c. Maturity Date: 20 years
   D. Special Conditions:

E. Proposed User Rates:

Average: $28.18/4500 gallons

RECEIVED DEC 1 9 ...

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: November 27, 1996

FINAL
12-17-96

CASE NO. 96-0765-S-CN

CITY OF NEW MARTINSVILLE WATER
AND SEWER DEPARTMENT, a municipal
corporation.

Application for a certificate of convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations.

RECOMMENDED DECISION

On July 5, 1996, the City of New Martinsville Water and Sewer Department (New Martinsville), a municipal corporation, New Martinsville, Wetzel County, filed an application with the Public Service Commission, pursuant to West Virginia Code (Code)§24-2-11, for a certificate of public convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations, and for approval of financing incidental to providing such service.

On July 5, 1996, the Commission directed New Martinsville to publish the Notice of Filing, once, in a newspaper duly qualified by the Secretary of State, published and generally circulated in Wetzel County. The Notice of Filing provided that, if no substantial protests were filed within thirty (30) days, the Commission may waive formal hearing and grant the certificate, based upon its review of the evidence submitted with the application. On August 2, 1996, New Martinsville filed a publication affidavit indicating that the Notice of Filing had been published as directed on July 17, 1996, in the *Wetzel Chronicle*, a newspaper published and generally circulated in Wetzel County. No protests have been filed.

On July 24, 1996, Staff Attorney Keith A. George, Esquire, filed the Initial Joint Staff Memorandum, dated July 24, 1996, in this proceeding,

indicating that, once Commission Staff had reviewed this matter, it would submit a recommendation.

On August 5, 1996, the Commission entered the Commission Referral Order in this proceeding, thereby referring this matter to the Division of Administrative Law Judges (ALJ Division) for decision on or before January 31, 1997. In response thereto, on August 27, 1996, the Administrative Law Judge (ALJ) issued a Procedural Order establishing a procedural schedule to process and resolve this matter, including a November 14, 1996 hearing date.

On August 22, 1996, Staff Attorney George filed the Final Joint Staff Memorandum, dated August 22, 1996, in this proceeding, indicating that Commission Staff needed to review this matter further, and, once it had completed this review, it would submit a final recommendation.

On November 8, 1996, Staff Attorney George filed the Final Joint Staff Memorandum, dated November 8, 1996, in this proceeding, attaching thereto the Utilities Division Final Staff Recommendation, dated November 8, 1996, from Utilities Analyst Randy Lengyel and Technical Analyst James Spurlock, both of the Water and Sewer Section, Utilities Division. Together, these Memoranda comprise Commission Staff's final recommendation.

Commission Staff reported that the proposed project, estimated to cost $8,082,700, would be funded with a $793,395 Infrastructure Council (IC) grant; a $6,200,000 IC loan; a $615,000 State Revolving Fund (SRF) loan; a $385,000 construction loan; and an $89,605 Advance Planning Assistance (APA) grant from the West Virginia Division of Environmental Protection (DEP). New Martinsville has received commitment letters from each of the funding sources. New Martinsville passed a rate ordinance on July 29, 1996, to cover the additional operation and maintenance expenses and the additional debt service requirements which New Martinsville will incur as a result of the project. The primary purpose of the proposed project is to comply with DEP Order No. 3430 mandating New Martinsville to construct the project in order to comply with its wastewater discharge permit. The project also will address several other aspects of New Martinsville's sewer collection system, including its inflow and infiltration problems.

Commission Staff opined that public convenience and necessity require the proposed project; that the project's design is reasonable; and that the proposed financing is reasonable. Commission Staff has recommended granting the application, provided that New Martinsville is directed to obtain prior Commission approval before proceeding with the project if the scope or the financing of the project are changed.

On November 12, 1996, the ALJ cancelled the procedural schedule established by the August 27, 1996 Procedural Order, including the November 14, 1996 hearing date.

DISCUSSION

The Administrative Law Judge (ALJ) has considered all of the above, and, since Commission Staff has recommended granting the application without a hearing, the ALJ holds that he will consider the parties to have waived

their rights under Code §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing.

The ALJ holds that, since New Martinsville published the Notice of Filing on July 17, 1996, in the *Wetzel Chronicle*, granting a 30-day protest period; since no one filed a protest to the proposed project; since the primary purpose of the proposed project is to comply with DEP Order No. 3430 mandating New Martinsville to construct the project in order to comply with its wastewater discharge permit; since the project also will address several other aspects of New Martinsville's sewer collection system, including its inflow and infiltration problems; and since Commission Staff opined that the project's design is reasonable, public convenience and necessity require the proposed project and the ALJ will grant the application. Since the proposed project, estimated to cost $8,082,700, would be funded with a $793,395 IC grant; a $6,200,000 IC loan; a $615,000 SRF loan; a $385,000 construction loan; and an $89,605 APA grant from DEP; since New Martinsville has received commitment letters from each of the funding sources; since New Martinsville passed a rate ordinance on July 29, 1996, to cover the additional operation and maintenance expenses and the additional debt service requirements which New Martinsville will incur as a result of the project; and since Commission Staff has opined that the proposed financing for the project is reasonable, the ALJ holds that he will approve the proposed financing for the project. Finally, since Commission Staff has opined that, should the scope or the financing for the proposed project change for any reason, New Martinsville should obtain Commission approval prior to commencing the project, the ALJ will direct New Martinsville to obtain prior Commission approval before constructing the project if the project's scope or financing changes for any reason.

FINDINGS OF FACT

1. The City of New Martinsville Water and Sewer Department filed an application with the Commission, pursuant to Code §24-2-11, for a certificate of public convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations, and for approval of financing incidental to providing such service. (See, Application, filed July 5, 1996).

2. New Martinsville filed a publication affidavit indicating that the Notice of Filing had been published as directed on July 17, 1996, in the *Wetzel Chronicle*, a newspaper published and generally circulated in Wetzel County. (See, Publication Affidavit, filed August 2, 1996).

3. No protests have been filed. (See, Commission's file).

4. The proposed project, estimated to cost $8,082,700, would be funded with a $793,395 IC grant; a $6,200,000 IC loan; a $615,000 SRF loan; a $385,000 construction loan; and an $89,605 APA grant from the DEP. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

5. New Martinsville has received commitment letters from each of the funding sources. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

6. New Martinsville passed a rate ordinance on July 29, 1996, to cover the additional operation and maintenance expenses and the additional debt service requirements which New Martinsville will incur as a result of the project. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

7. The primary purpose of the proposed project is to comply with DEP Order No. 3430 mandating New Martinsville to construct the project in order to comply with its wastewater discharge permit. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

8. The project also will address several other aspects of New Martinsville's sewer collection system, including its inflow and infiltration problems. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

9. Commission Staff opined that the project's design is reasonable and that the proposed financing is reasonable. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

10. Commission Staff has recommended granting the application, provided that New Martinsville is directed to obtain prior Commission approval before proceeding with the project if the scope or the financing of the project changes. (See, Final Joint Staff Memorandum, with attachment, filed November 8, 1996).

CONCLUSIONS OF LAW

1. For all of the reasons set forth in Finding of Fact Nos. 2, 3, 7, 8 and 9, it is reasonable to conclude that public convenience and necessity require the proposed project.

2. Since public convenience and necessity require the proposed project, it is reasonable to grant the application.

3. For all of the reasons set forth in Finding of Fact Nos. 4, 5, 6 and 9, it is reasonable to approve the proposed financing for the project.

4. For all of the reasons set forth in Finding of Fact No. 10, it is reasonable to direct New Martinsville to obtain prior Commission approval, should the scope or the financing for the project change for any reason, before commencing construction of the project.

ORDER

IT IS, THEREFORE, ORDERED that the application filed with the Commission on July 5, 1996, by the City of New Martinsville Water and Sewer Department, pursuant to Code §24-2-11, for a certificate of public convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force

main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations, be, and it hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, in an amount not to exceed $8,082,700, to be funded with a $793,395 IC grant; a $6,200,000 IC loan; a $615,000 SRF loan; a $385,000 construction loan; and an $89,605 APA grant from the DEP, be, and it hereby is, approved.

IT IS FURTHER ORDERED that, should the scope or the financing of the proposed project change for any reason, New Martinsville hereby is directed to first obtain Commission approval before commencing construction of the project.

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

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

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

Ronnie Z. McCann
Deputy Chief Administrative Law Judge

RZM:s

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
3-10-97
by Commission Order

Entered: March 3, 1997

CASE NO. 96-0765-S-CN (REOPENED)

CITY OF NEW MARTINSVILLE WATER
AND SEWER DEPARTMENT, a municipal
corporation.

Application for a certificate of convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations.

RECOMMENDED DECISION

On July 5, 1996, the City of New Martinsville Water and Sewer Department (New Martinsville), a municipal corporation, New Martinsville, Wetzel County, filed an application with the Public Service Commission, pursuant to West Virginia Code (Code)§24-2-11, for a certificate of public convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations, and for approval of financing incidental to providing such service.

On July 5, 1996, the Commission directed New Martinsville to publish the Notice of Filing, once, in a newspaper duly qualified by the Secretary of State, published and generally circulated in Wetzel County. The Notice of Filing provided that, if no substantial protests were filed within thirty (30) days, the Commission may waive formal hearing and grant the certificate, based upon its review of the evidence submitted with the application. On August 2, 1996, New Martinsville filed a publication affidavit indicating that the Notice of Filing had been published as directed on July 17, 1996, in the *Wetzel Chronicle*, a newspaper published and generally circulated in Wetzel County. No protests have been filed.

On July 24, 1996, Staff Attorney Keith A. George, Esquire, filed the Initial Joint Staff Memorandum, dated July 24, 1996, in this proceeding, indicating that, once Commission Staff had reviewed this matter, it would submit a recommendation.

On August 5, 1996, the Commission entered the Commission Referral Order in this proceeding, thereby referring this matter to the Division of Administrative Law Judges (ALJ Division) for decision on or before January 31, 1997. In response thereto, on August 27, 1996, the Administrative Law Judge (ALJ) issued a Procedural Order establishing a procedural schedule to process and resolve this matter, including a November 14, 1996 hearing date.

On August 22, 1996, Staff Attorney George filed the Final Joint Staff Memorandum, dated August 22, 1996, in this proceeding, indicating that Commission Staff needed to review this matter further, and, once it had completed this review, it would submit a final recommendation.

On November 8, 1996, Staff Attorney George filed the Final Joint Staff Memorandum, dated November 8, 1996, in this proceeding, attaching thereto the Utilities Division Final Staff Recommendation, dated November 8, 1996, from Utilities Analyst Randy Lengyel and Technical Analyst James Spurlock, both of the Water and Sewer Section, Utilities Division. Together, these Memoranda comprise Commission Staff's final recommendation.

Commission Staff reported that the proposed project, estimated to cost $8,082,700, would be funded with a $793,395 Infrastructure Council (IC) grant; a $6,200,000 IC loan; a $615,000 State Revolving Fund (SRF) loan; a $385,000 construction loan; and an $89,605 Advance Planning Assistance (APA) grant from the West Virginia Division of Environmental Protection (DEP). New Martinsville has received commitment letters from each of the funding sources. New Martinsville passed a rate ordinance on July 29, 1996, to cover the additional operation and maintenance expenses and the additional debt service requirements which New Martinsville will incur as a result of the project. The primary purpose of the proposed project is to comply with DEP Order No. 3430 mandating New Martinsville to construct the project in order to comply with its wastewater discharge permit. The project also will address several other aspects of New Martinsville's sewer collection system, including its inflow and infiltration problems.

Commission Staff opined that public convenience and necessity require the proposed project; that the project's design is reasonable; and that the proposed financing is reasonable. Commission Staff recommended granting the application, provided that New Martinsville was directed to obtain prior Commission approval before proceeding with the project if the scope or the financing of the project were changed.

On November 12, 1996, the ALJ cancelled the procedural schedule established by the August 27, 1996 Procedural Order, including the November 14, 1996 hearing date.

Pursuant to all of the above, on November 27, 1996, the ALJ entered a Recommended Decision granting the application for a certificate of public convenience and necessity. The ALJ also approved the proposed financing for the project. Finally, the ALJ directed that, should the scope or the financing for the proposed project change for any reason, New Martinsville shall first obtain Commission approval before commencing construction of the project. On December 17, 1997, the November 27, 1996 Recommended Decision became the Commission's Final Order.

On January 13, 1997, New Martinsville petitioned the Commission to reopen the instant certificate proceeding for the purpose of modifying the Commission's December 17, 1996 Final Order by approving increased financing for the project, i.e., from $8,082,700, to $8,776,000, or an 8.6% increase, due to New Martinsville having received construction bids which are $693,300 higher than the projected construction cost.

On February 10, 1997, the Commission entered the Commission Referral Order reopening this proceeding and referring it to the ALJ Division for decision on or before August 11, 1997.

On February 11, 1997, Staff Attorney James V. Kelsh, Esquire, filed the Final Joint Staff Memorandum, dated January 30, 1997, attaching thereto the Final Internal Memorandum, dated January 16, 1997, from Utilities Analyst Randy Lengyel and Technical Analyst Ingrid Ferrell, both of the Water and Wastewater Division. Together, these Memoranda comprise Commission Staff's final recommendation in this matter.

Commission Staff reported that the proposed new funding package for the project consisted of a $793,395 IC grant; a $6,200,000 IC loan; a $615,000 SRF design loan; a $385,000 SRF construction loan; and an $89,605 APA grant, i.e., the same as the Commission approved in the November 27, 1996 Recommended Decision which became final on December 17, 1996. However, New Martinsville now intends to borrow more money from the IC or other appropriate sources, due to the 8.6% project construction cost increase. New Martinsville has obtained letters of commitment for the entire financing package as now anticipated. The scope of the project has not changed. Commission Staff has recommended that the Commission grant the instant petition without further public notice and without hearing. Commission Staff again recommended that, if the scope or the financing for the proposed project changes again for any reason, New Martinsville obtain separate Commission approval before commencing construction.

DISCUSSION

The Administrative Law Judge (ALJ) has considered all of the above, and, since Commission Staff has recommended granting the petition without public notice and without a hearing, the ALJ holds that he will consider the parties to have waived their rights under Code §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing.

The ALJ holds that, since New Martinsville now has received actual bids on the proposed project, and it now estimates that the project will cost an increased $693,300, or 8.6% more than originally approved by the Commission; since New Martinsville has petitioned the Commission to modify its December 17, 1996 Final Order by approving increased financing totaling $8,776,000, to be funded with a $793,395 IC grant, a $6,200,000 IC loan, a $615,000 SRF planning loan, a $385,000 SRF construction loan, an $89,605 APA grant from DEP and by an additional loan from the IC or other appropriate funding source; since New Martinsville has received commitment letters from each of the funding sources; and since Commission Staff has opined that the new proposed financing for the project is reasonable and should be approved without further public notice or hearing, the ALJ holds that he will grant

the petition and approve the proposed financing for the project in an amount not to exceed $8,776,000, according to the actual bids received. Also, since Commission Staff has opined that, should the scope or the financing for the proposed project change for any reason, New Martinsville should obtain Commission approval prior to commencing the project, the ALJ will direct New Martinsville to obtain prior Commission approval before constructing the project if the project's scope or financing changes for any reason.

FINDINGS OF FACT

1. The City of New Martinsville Water and Sewer Department filed an application with the Commission, pursuant to Code §24-2-11, for a certificate of public convenience and necessity to abandon the existing North Plant, to construct a new wastewater treatment plant, to construct 22,000 feet of 10-inch force main, to retrofit the existing North Plant lift station to pump wastewater to the new treatment plant, to replace 5,700 feet of existing gravity sewer, to construct six overflow structures equipped with flap gates, to construct 540 feet of sewer joint testing and sealing, to construct 920 feet of sewer liner and to upgrade the emergency power equipment at three lift stations, and for approval of financing incidental to providing such service. (See, Application, filed July 5, 1996).

2. The ALJ entered a Recommended Decision granting the certificate application, approving the proposed financing in the total amount not to exceed $8,082,700 and directing New Martinsville to obtain separate Commission approval before commencing construction should the scope or the financing for the project change for any reason. (See, Recommended Decision, entered November 27, 1996, final December 17, 1996).

3. New Martinsville received construction bids on the project, and, based upon these bids, it now estimates that the total project will cost an additional $693,300, or an 8.6% increase. The total project now will cost $8,776,000. (See, Petition, filed January 13, 1997).

4. New Martinsville petitioned the Commission to reopen the instant certificate case to modify the Commission's December 17, 1996 Final Order by approving financing totaling $8,776,000, including increased borrowing. (See, Petition, filed January 13, 1997).

5. The scope of the proposed project has not changed. (See, Final Joint Staff Memorandum, with attachment, filed February 11, 1997).

6. Commission Staff has recommended granting the petition without further public notice and without hearing. (See, Final Joint Staff Memorandum, with attachment, filed February 11, 1997).

7. Commission Staff has recommended that, should the scope of the financing for the proposed project change for any reason, New Martinsville must first obtain separate Commission approval prior to commencing construction. (See, Final Joint Staff Memorandum, with attachment, filed February 11, 1997).

CONCLUSIONS OF LAW

1. For all of the reasons set forth in Finding of Fact Nos. 2, 3, 4, 5 and 6, it is reasonable to grant the petition and approve the proposed financing in the amount not to exceed $8,776,000.

2. For all of the reasons set forth in Finding of Fact No. 7, it is reasonable to direct New Martinsville to obtain prior Commission approval, should the scope or the financing for the project change for any reason, before commencing construction of the project.

ORDER

IT IS, THEREFORE, ORDERED that the petition filed with the Commission on January 13, 1997, by the City of New Martinsville Water and Sewer Department, to modify the financing for the proposed project, i.e., to approve financing in the amount not to exceed $8,776,000, be, and it hereby is, approved.

IT IS FURTHER ORDERED that, should the scope or the financing of the proposed project change for any reason, New Martinsville hereby is directed to first obtain Commission approval before commencing construction of the project.

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

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

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

Ronnie Z. McCann
Deputy Chief Administrative Law Judge

RZM:s

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

WAIVER OF NOTICE OF REDEMPTION

The undersigned, Daniel B. Yonkosky, Director of the West Virginia Water Development Authority (the "Authority"), sole owner of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1995 (the "Series 1995 Bonds"), hereby certifies as follows:

1. The Authority hereby consents to the current refunding of the Series 1995 Bonds; and

2. The Authority hereby waives the prior written consent regarding the redemption of the Series 1995 Bonds required pursuant to Section 4.1(b)(xv) of the Loan Agreement entered into by and among the City of New Martinsville, the Authority and the West Virginia Division of Environmental Protection on August 8, 1995.

WITNESS my signature on behalf of the Authority this 13th day of March, 1997.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: Daniel B. Yonkosky
Daniel B. Yonkosky, Director

61779

CITY OF NEW MARTINSVILLE
WATERWORKS AND SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1997 A, SERIES 1997 B
AND SERIES 1997 C

CERTIFICATE OF PAYMENT OF PRIOR BONDS

The undersigned, Daniel B. Yonkosky, Director of the West Virginia Water Development Authority (the "Authority"), sole owner of the City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1995 (the "Prior Bonds"), dated October 26, 1995, in the principal amount of $615,100, hereby certifies that on this day $602,524 was wired to and received by the West Virginia Municipal Bond Commission ("Commission") and that such sum, together with other funds on deposit at the Commission, is sufficient to pay the entire outstanding principal amount of and interest accrued on the Prior Bonds to the date hereof and hereby discharges the liens, pledges and encumbrances securing the Prior Bonds.

Dated this 13th day of March, 1997.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: Daniel B. Yonkosky
Daniel B. Yonkosky, Director

61782

WEST VIRGINIA
MUNICIPAL BOND COMMISSION

Suite 300
812 Quarrier Street
Charleston, WV 25301
(304) 558-3971 / 72
FAX (304) 558-1280

JAMES H. PAIGE III
Secretary of Tax and Revenue
Chairman

LARRIE BAILEY
State Treasurer

GLEN B. GAINER III
State Auditor

LARRY CHAPMAN
Member

JOHN ROACH
Member

R. WITTER HALLAN
Executive Director

February 25, 1997

Jackson & Kelly
Samme Gee, Esq
1600 Laidley Tower
P O Box 553
Charleston WV 25322

VIA FAX: 340-1080

RE: City of New Martinsville 1995 Water & Sewer Revenue Bonds

Dear Ms Gee:

The Commission will pay a regular debt service on the above issue on March 1, 1997 to Department of Environmental Protection. It is my understanding that the City of New Martinsville will refund & call its 1995 Water & Sewer Issue on March 13, 1997. At that time the Commission will need the following funds:

12 days Interest	$ 401.68
Principal Called	602,524.00
Municipal Bond Commission Fee	1,507.31
	$604,432.99

Sincerely yours,

R Witter Hallan
Executive Director

RWH:wb

JACKSON & KELLY
ATTORNEYS AT LAW
1600 LAIDLEY TOWER
P. O. BOX 553
CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130
WRITER'S DIRECT DIAL NO.

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-6088

412 MARKET STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1660 LINCOLN STREET
DENVER, COLORADO 80264
TELEPHONE 303-837-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

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4.1(a)

March 13, 1997

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

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

Re: City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 A

Gentlemen:

We are bond counsel to the City of New Martinsville (the "Local Government"), a municipal corporation.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated January 22, 1997, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Local Government, the West Virginia Division of Environmental Protection and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated March 13, 1997 (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $385,000, issued in the form of one bond registered as to principal to the Authority, with principal payable March 1, June 1, September 1, and December 1 of each year, beginning June 1, 1999, and bear no interest and are as set forth in "Schedule Y," attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purpose of paying a portion of the costs of the construction of certain additions, betterments and improvements for the existing public sewerage facilities of the combined waterworks and sewerage system of the Local Government (the "Project") and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond ordinance duly passed by the Local Government on February 18, 1997, effective March 3, 1997, as supplemented on March 3, 1997 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

3. The Local Government is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreements and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary resolutions in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the gross revenues of the System referred to in the Local Act on a parity with each other and with the Local Government's Series 1997 B and Series 1997 C Bonds issued simultaneously herewith and secured by a first lien on and pledge of the gross revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. The Local Bonds and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision, or agency thereof.

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

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

Very truly yours,

Jackson & Kelly

26381

JACKSON & KELLY
ATTORNEYS AT LAW
1600 LAIDLEY TOWER
P. O. BOX 553
CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130
WRITER'S DIRECT DIAL NO.

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

8000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-6066

412 MARKET STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1660 LINCOLN STREET
DENVER, COLORADO 80264
TELEPHONE 303-837-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

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March 13, 1997

4.1(b)

West Virginia Infrastructure and Jobs
Development Council
1320 One Valley Square
Charleston, West Virginia 25301

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

Re: City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 B

Gentlemen:

We are bond counsel to the City of New Martinsville (the "Local Government"), a municipal corporation.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated March 13, 1997, including all schedules and exhibits attached thereto, by and among the Local Government, the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") (the "Loan Agreement") and (ii) the issue of a series of revenue bonds of the Local Government, dated March 13, 1997 (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $6,720,000, issued in the form of one bond registered as to principal to the Authority, with principal payable March 1, June 1, September 1 and December 1 of each year, beginning June 1, 1999, and bear no interest and are as set forth in "Schedule Y," attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purpose of refunding the Series 1995 Bonds, paying a portion of the costs of the construction of certain additions, betterments and improvements for the existing public sewerage facilities of the combined waterworks and

sewerage system of the Local Government (the "Project") and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond ordinance duly passed by the Local Government on February 18, 1997, effective March 3, 1997, as supplemented on March 3, 1997 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

3. The Local Government is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to refund the Series 1995 Bonds and to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary resolutions in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the gross revenues of the System referred to in the

Local Act on a parity with each other and the Local Government's Series 1997 A and Series 1997 C Bonds issued simultaneously herewith and secured by a first lien on and pledge of the gross revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. The Local Bonds and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision, or agency thereof.

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

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

Very truly yours,

Jackson & Kelly

61825

JACKSON & KELLY
ATTORNEYS AT LAW
1600 LAIDLEY TOWER
P. O. BOX 553
CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

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CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-8088

412 MARKET STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1660 LINCOLN STREET
DENVER, COLORADO 80264
TELEPHONE 303-837-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

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March 13, 1997

4.1(c)

West Virginia Infrastructure and Jobs
Development Council
1320 One Valley Square
Charleston, West Virginia 25301

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

Re: City of New Martinsville Waterworks and Sewerage System Revenue Bonds, Series 1997 C

Gentlemen:

We are bond counsel to the City of New Martinsville (the "Local Government"), a municipal corporation.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the loan agreement dated March 13, 1997, including all schedules and exhibits attached thereto, by and among the Local Government, the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") (the "Loan Agreement") and (ii) the issue of a series of revenue bonds of the Local Government, dated March 13, 1997 (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $420,000, issued in the form of one bond registered as to principal and interest to the Authority, with both principal and interest payable March 1, June 1, September 1 and December 1 of each year, beginning June 1, 2019, and shall bear interest at the rate of one percent (1.00%) per annum, as set forth in "Schedule Y," attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Local Bonds are issued for the purpose of paying a portion of the costs of the construction of certain additions, betterments and improvements for the existing public sewerage facilities of the combined waterworks and sewerage system of the Local Government (the "Project") and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 8, Article 20, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond ordinance duly passed by the Local Government on February 18, 1997, effective March 3, 1997, as supplemented on March 3, 1997 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

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

3. The Local Government is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary resolutions in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the gross revenues of the System referred to in the Local Act on a parity with each other and the Local Government's Series 1997 A and Series 1997 B Bonds issued simultaneously herewith, and secured by a first lien on and pledge of the gross revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. Under existing laws, regulations, public rulings, and judicial decisions, interest on the Local Bonds is excludable from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. It should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (just defined for federal income tax purposes), such interest is taken into account in determining the adjusted current earnings. The opinions set forth above are subject to the condition that the Local Government comply, on a continuing basis, with all covenants, certifications, expectations and representations set forth in the Ordinance, the Certificate as to Non-Arbitrage, and other certificates relating to tax-exemption and all requirements of Code that must be satisfied subsequent to the issuance of the Local Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. Failure to comply with certain of such Code provisions or covenants, certifications, expectations, or representations may cause the interest on the Local Bonds to be includable in gross income for federal income tax purposes retroactive to the date of issuance of the Local Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Local Bonds.

7. The Local Bonds and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision, or agency thereof.

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

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

Very truly yours,

Jackson & Kelly

61827

OFFICE OF THE CITY ATTORNEY
CITY OF NEW MARTINSVILLE
POST OFFICE DRAWER 68
256 RUSSELL AVENUE
NEW MARTINSVILLE, WV 26155

BROOKS K. BARKWILL
CITY ATTORNEY

TELEPHONE: (304) 455-1751
FAX: (304) 455-6314

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March 3, 1997

West Virginia Infrastructure and Jobs
Development Council
1320 One Valley Square
Charleston, West Virginia 25301

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

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

Jackson & Kelly
P. O. Box 553
Charleston, West Virginia 25322

In Re: City of New Martinsville $385,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 A and $6,720,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 B and $420,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 C

Ladies and Gentlemen:

I am City Attorney for the City of New Martinsville, West Virginia (the "City"). As such counsel, I have examined copies of the approving opinion of Jackson & Kelly, as bond counsel, relating to the above-captioned bonds of the City (the "Bonds"), the Loan Agreement by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP), and the City, dated January 22, 1997, for the Series 1997 A Bonds, the Loan Agreements by and between the City and the Authority each dated March 13, 1997, for the Series 1997 B Bonds and Series 1997 C Bonds (collectively, the "Loan Agreements"), and a Bond and Note Ordinance duly passed by the Council (the "Council") of the City on February 18, 1997,

effective March 3, 1997, as supplemented by a Supplemental Resolution adopted March 3, 1997 (collectively, the "Ordinance"), and other documents relating to the Bonds. Terms used in said opinions, the Loan Agreements and Ordinance, and not otherwise defined herein, have the same meanings herein.

I am of the opinion that:

1. The Loan Agreements have each been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Authority, constitute valid and binding agreements of the City in accordance with their terms.

2. The officers and members of the Common Council were duly and properly elected or appointed and are thereby authorized to act on behalf of the City.

3. The Ordinance has been duly enacted by the Common Council of the City and is in full force and effect.

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

5. The City has received all the necessary permits, licenses, approvals and authorizations regarding the construction of the Project.

6. The City duly enacted a sewer rate ordinance on July 29, 1996, setting rates and charges for the services of the System. The time for appeal of such sewer rate ordinance has expired prior to the date hereof without any appeal, and such rates are currently in effect.

7. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bonds or the collection or pledge of the Gross Revenues therefor.

Very truly yours,

Brooks K. Barkwill, City Attorney

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JACKSON & KELLY
ATTORNEYS AT LAW
1600 LAIDLEY TOWER
P. O. BOX 553
CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8600

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-6088

412 MARKET STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1660 LINCOLN STREET
DENVER COLORADO 80264
TELEPHONE 303-837-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

Jackson & Kelly is a member of Lex Mundi, a global association of more than 120 independent law firms.

March 13, 1997

4.3

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

West Virginia Infrastructure and Jobs
Development Council
1320 One Valley Square
Charleston, West Virginia 25301

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

City of New Martinsville
191 Main Street
New Martinsville, West Virginia 26155-1211

Jackson & Kelly
P. O. Box 553
Charleston, West Virginia 25322

Re: City of New Martinsville $385,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 A, $6,720,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 B and $420,000 Waterworks and Sewerage System Revenue Bonds, Series 1997 C

Ladies and Gentlemen:

We have served as special counsel to the City of New Martinsville (the "City") in regard to certain matters concerning the Public Service Commission of West Virginia (the "Commission"). We were active in obtaining the City's Order for a certificate of convenience and necessity and approval of the financing. Pursuant to the above-noted document, we are of the opinion that:

The City has received from the Commission a Recommended Decision dated November 27, 1996, which became the Final Order on December 17, 1996, in Case No. 96-0765-S-CN, granting the City a Certificate of Convenience and Necessity, the appeal period for which has expired, and the Order Modifying the Recommended Decision dated March 3, 1997, which became the Final Order on March 10, 1997, with respect to the Approval of Financing.

This opinion may be relied upon as if addressed to all counsel.

Very truly yours,

Jackson & Kelly

Counsel for Public Service
Commission Matters

61797