

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

Closing Date: June 18, 2004

TRANSCRIPT OF PROCEEDINGS

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# State of West Virginia



## Certificate

*I, Joe Manchin, III, Secretary of State of the  
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13 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*

**JUNE 10, 2004**

*Joe Manchin III*  
Secretary of State

If a majority of the votes cast at such election shall be in favor of disconnection, and if the trustees of such sanitary district shall, by ordinance, disconnect such territory, thereupon the county court of the county in which the original petition for the formation of such sanitary district was filed, shall enter an appropriate order in the records of the said county court and thereafter such territory shall henceforth be deemed disconnected from such sanitary district. (1933, Ex. Sess., c. 24, § 14.)

**Editor's notes.** — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

ARTICLE 13.

SEWAGE WORKS AND STORMWATER WORKS.

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**Constitutionality.** — See *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717 (1934); *Stevenson v. City of Bluefield*, 39 F. Supp. 462 (S.D.W. Va. 1941); *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Obligations incurred by a city under the authority of this article permitting the issuance of revenue bonds for the construction of sewers are not to be deemed "debts" within the constitutional inhibition. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

**In general.** — The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Conflict of laws.** — There is no conflict between this article, authorizing a city to incur expenses which are to be payable solely from the proceeds of revenue bonds, and the general statutory limitations on the expenditure of money and incurring of obligations with respect to funds produced by tax levies. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

**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.

**Limitations.** — Where a city made an agreement with the federal works administrator under the War Mobilization and Reconversion Act of 1944 with regard to advances of money to the city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, the limitation imposed by this article would be read into the agreement, since the parties are presumed to know the extent of the city's authority to make a binding contract. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

**Nonresidents.** — Municipality may not compel nonresidents to connect with a municipal sewer extended without its corporate limits. 48 *Op. Att'y Gen.* 19 (1958).

**Ordinance held valid.** — An ordinance of a municipal corporation, creating a sanitary board and authorizing such sanitary board to enter into contracts for the construction of a sewage system, was within the police power of the State delegated to municipalities by this chapter. *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

### § 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

(a) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation:

(1) A sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined system pursuant to section one-b [§ 8-20-1b], article twenty, chapter eight of this code; and

(2) A stormwater collection system and control system, including all lines, pumping stations and all other facilities and appurtenances necessary or useful and convenient for the collection and control of stormwater, and an associated stormwater management program.

(b) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property.

(c) Any municipality may serve and supply the facilities of such sewerage system and a stormwater system and associated stormwater management program within the corporate limits of the municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, however, That the municipality may not serve or supply the facilities of such sewerage system or stormwater system within the corporate limits of any other municipality without the consent of the governing body thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

(e) No municipal corporation or sanitary district may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways. (1933, Ex. Sess., c. 25, § 1; 1955, c. 132; 1986, c. 118; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, added subsection designations, substituted "the" for "such" throughout; in (a)(1), deleted "waterworks and sewerage" preceding "system", deleted "shall have authority" from the end; added (a)(2); in (b), added "Any municipality... empowered", deleted "and any such" from the end; in (c), added "Any", inserted "and a stormwater system and associated stormwater management program", substituted "may not serve" for "shall not serve", inserted "or stormwater system", added the proviso; in (d), deleted "such" preceding "municipality" and "construction"; and added (e).

**Use of territory in adjoining state autho-**

**rized.** — By this section and § 16-13-22 the legislature intended, insofar as it could, to confer upon such municipalities as might find its exercise convenient, the right to make necessary and appropriate arrangements for the disposal of their sewage, even where that course involved the use of territory in an adjoining state. *Bernard v. City of Bluefield*, 117 W. Va. 556, 186 S.E. 298 (1936).

**Quoted** in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Cited** in *City of Beckley v. Craighead*, 125 W. Va. 484, 24 S.E.2d 908 (1943); *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

**§ 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.**

(a) The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen [§ 16-13-18] of this article.

(b) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Board" means the sanitary board as set up in section eighteen [§ 16-13-18] of this article.

(2) "Governing body" means the mayor and council or other legally constituted governing body of any municipality.

(3) "Municipality" means any municipal corporation, incorporated city, town, village or sanitary district in the state of West Virginia.

(4) "Sewage works" means a works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof.

(5) "Stormwater system" or "stormwater works" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, That, as used in this article, "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(7) "Works" means sewage works and stormwater works either separately or collectively. (1933, Ex. Sess., c. 25, § 2; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, added subsection designations; in present (a), deleted “such” preceding “works”, inserted “and, in addition, for the collection and control of stormwater”, deleted “The term ‘works’” from the end; and rewrote (b) to include the definitions of “sewerage works”, “stormwater system” or “stormwater works”, “stormwater management program”, and “works”.

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Stated in Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm’n, 204 W. Va. 279, 512 S.E.2d 201 (1998).

Cited in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956); Delardas v. Morgantown Water Comm’n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

**§ 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.**

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids.

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be

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exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article. (1933, Ex. Sess., c. 25, § 3; 1989, c. 133; 2001, cc. 143, 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, deleted “such” throughout the section; in the third undesignated paragraph, substituted “the sum of ten thousand dollars” for “the sum of five thousand dollars”; in the fourth undesignated paragraph, substituted “may consider expedient” for “may deem expedient”, inserted “stormwater conduits” and added “including... improvement activities” at the end; and made other, minor changes.

**Editor’s notes.** — Acts 2001, c. 143, effective July 10, 2001, also proposed to amend this section; however, the amendments therein have been deemed superceded by those found in Acts 2001, c. 212, which are set out above. The superceded amendment, set out below, would have substituted “the sum of ten thousand dollars” for “the sum of five thousand dollars”.

Chapter 143 read:

“The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the

board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article.”

**Immunity.** — A contractor under contract with the sanitary board of a municipality for construction of a sewage treatment and disposal system is not entitled to the governmental immunities of the municipality incident to the construction project. *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

**Third party.** — Where a contract between a municipal sanitary board and a contractor, providing for the construction of a sanitary sewage system, provides inter alia that “existing surface, overhead or subsurface structures damaged or destroyed by reason of the contractor’s operations shall be promptly repaired or replaced in a satisfactory manner at the cost and expense of the contractor,” and the contractor by job order requests enters into a contract with an existing water company to remove certain of the latter’s water pipes which interfere with the construction of the sewage system, the contractor, in a notice of motion for judgment proceeding instituted by the water company, is liable for the expense so incurred. *West Vir-*

ginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Stated in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

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**§ 16-13-4. Payment of preliminary expenses of surveys, etc.**

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All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of costs and of revenue, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this article, may be met and paid in the following manner. Said board may from time to time certify such items of expense to the clerk or recorder of said municipality, directing him to pay the several amounts thereof, and thereupon said clerk or recorder shall at once draw a warrant or warrants upon the treasurer of said municipality, which warrant or warrants shall be paid out of the general funds of said municipality not otherwise appropriated, without a special appropriation being made therefor by the governing body; or, in case there are no general funds of such municipality not otherwise appropriated, the clerk or recorder shall recommend to the governing body the temporary transfer from other funds of such municipality of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such governing body shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such municipality: Provided, however, That the fund or funds of such municipality from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses, shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided. (1933, Ex. Sess., c. 25, § 4.)

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**Advances.** — Money used in preliminary engineering work prior to actually beginning construction of a sewage disposal system need not be handled by the sanitary board in accordance with the provisions of §§ 16-13-1, 16-13-18 and this section. The sanitary board is an agency of the city. This article merely requires that the construction and maintenance of the project be under the supervision and control of the sanitary board. A method is provided whereby the sanitary board may meet its own necessary preliminary expenses; but the city, in the early stages of the project, during that period in which the city has not even decided to go ahead with the work, and when there is no sanitary board in existence, is not prevented by any provision in the article from obtaining advances for plan preparation by any procedure which it may see fit to adopt. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va.

1956), commented on in 60 W. Va. L. Rev. 105 (1957).

The United States was held entitled to recover from a city the amount of three advances of money made to the city by the federal works agency for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, and the city sanitary board was ordered to issue a requisition to the trustees, into whose hands proceeds of future bond issues came, to repay such advances out of any funds in its hands comprising proceeds of revenue bond issues. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

**Repayment.** — A municipality is authorized to incur obligations for the purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from the proceeds of revenue

bonds, and not in any way from tax levies. Supp. 866 (S.D.W. Va. 1956), commented on in *United States v. City of Charleston*, 149 F. 60 W. Va. L. Rev. 105 (1957).

### § 16-13-5. Ordinance necessary before acquisition or construction of works.

Before any municipality shall construct or acquire any works under this article, the governing body shall upon petition of the board, enact an ordinance or ordinances which shall: (a) Set forth a brief and general description of the works and, if the same are to be constructed, a reference to the preliminary report which shall heretofore have been prepared and filed by an engineer chosen by the board as aforesaid; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the municipality shall be issued pursuant to this article in such an amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary in the premises. (1933, Ex. Sess., c. 25, § 5.)

Quoted in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956).

Stated in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

### § 16-13-6. Publication and hearing upon ordinance.

After such ordinance shall have been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the first date of publication of such abstract and notice which shall not be prior to the last date of publication of such abstract and notice, and present protests. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto. (1933, Ex. Sess., c. 25, § 6; 1967, c. 105; 1981, 1st Ex. Sess., c. 2.)

### § 16-13-7. Acquisition by condemnation or purchase.

Every such municipality shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal, deemed necessary or convenient for the construction of any such works, or for extensions, improvements, or additions thereto, and in connection

therewith may have and exercise all the rights, powers and privileges of eminent domain granted to municipal corporations under the laws relating thereto. Title to property condemned shall be taken in the name of the municipality. Proceedings for such appropriation of property shall be under and pursuant to the provisions of chapter fifty-four [§§ 54-1-1 et seq.], of the Code of West Virginia, one thousand nine hundred thirty-one, and acts amendatory and supplemental thereto: Provided, That the municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property. but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this article. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section five [§ 16-13-5] hereof, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section five hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof. (1933, Ex. Sess., c. 25, § 7.)

**§ 16-13-8. Cost of works.**

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof. (1933, Ex. Sess., c. 25, § 8.)

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**Advances.** — Advances from the United States to a city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system represent a part of the cost of the works which should have been repaid out of the first proceeds received from the sale of the first issue of revenue bonds. Such repayment would not in any way increase the cost of the works; it was the very first item of expense incurred in connection with the works. Under the agreement between the city and the United States, it was a liability from the moment construction of the sewage treatment and disposal plant was begun. No disadvantage would result to bondholders as a result of the payment of this just debt out of the proceeds of a future revenue bond issue. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

**Preliminary expenses.** — It is foreseen, as shown in this section, that a city may probably incur expenses in "determining the feasibility or practicability of the enterprise." Such determination would of course be made prior to the issuance of any revenue bonds, and probably before the creation of a sanitary board. It might often result in a rejection of the project altogether, in which event no revenue bonds would be issued, and any obligation incurred by the city might prove to be uncollectible. On the other hand, if the project be undertaken by the city, whatever loans may have been made on the faith of the revenue bonds would or should be included in the cost of the works and repaid out of the proceeds of the bonds. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

### § 16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be payable solely from the fund herein provided for the payment, and the bonds may not, in any respect, be a corporate indebtedness of the municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of the bonds shall be determined by ordinance or ordinances of the municipality. (1933, Ex. Sess., c. 25, § 9; 1949, c. 93; 2001, c. 212.)

**Cross references.** — See notes to § 16-13-8.

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, substituted "any of the works referred to in this article" for "the works", and substituted "the bonds may not" for "the bonds shall not".

**Applicability.** — The provisions of this article become a part of the contract between the municipality and the bondholders as effectually as if written verbatim in the bonds. The bondholders are bound by their contract in this instance just as firmly as in any other legal contract. Consequently, the bonds do not create a corporate indebtedness of the municipality. *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717 (1934); *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

**Contracts between municipalities.** — Under the provisions of §§ 16-13-19 and 16-13-23a, a city and a town could enter into a contract whereby the city agreed to construct a sewage disposal facility and the town agreed to contribute to the cost of the construction of the facility in return for the right to use the facility, and the fact that the town was unable to sell revenue bonds because it was not allowed to have part ownership in the treatment plant or interceptor sewers did not relieve the town of its contractual obligation when the city offered to buy the revenue bonds issued by the town. Since the contracts were authorized by statute and were thus not ultra vires, even if the contracts were not formally approved by ordinance, the municipalities were estopped from asserting any invalidity of the contracts on such ground. *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

**§ 16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.**

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, either coupon or registered, shall set forth any registration and conversion privileges, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the State. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State. Said bonds shall be exempt from all taxation, state, county and municipal. Such bonds shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers, before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than thirteen per centum per annum to the purchaser upon the amount paid therefor, and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 10; 1970, c. 11; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

**§ 16-13-11. Additional bonds to extend or improve works.**

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bonds upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 11.)

**§ 16-13-12. Additional bonds for extension, etc., of works to have equal priority with original bonds.**

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise. (1933, Ex. Sess., c. 25, § 12.)

**§ 16-13-13. Application of revenue from bonds; lien.**

All moneys received from any bonds issued pursuant to this article, after reimbursements and repayment to said municipality of all amounts advanced for preliminary expenses as provided in section four [§ 16-13-4] of this article, shall be applied solely to the payment of the cost of the work, extensions, improvements or betterments, or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1933, Ex. Sess., c. 25, § 13.)

**Quoted** in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956).

**§ 16-13-14. Securing bonds by trust indenture.**

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may

contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may det (1933, Ex. Sess., c. 25, § 14.)

**§ 16-13-15. Sinking fund; transfer of balance of net revenues.**

At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for the payment thereof at such time; (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenue of the works. Prior to the issuance of the bonds the board may by ordinance be given the right to use or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the

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outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto. (1933, Ex. Sess., c. 25, § 15; 1933, 2nd Ex. Sess., c. 48; 1986, c. 118.)

**§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.**

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or

to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-O 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 the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments.

All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of thirty days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid.

The board collecting such rates, fees or charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable

interest and § 16; 1933,

Effect of 2001, c. 212, "fees" preceded first paragraph inserted (b); added "The sentence; in the shall be corrected the seventh following "F changes.

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interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, inserted "fees" preceding "charges" throughout; in the first paragraph, deleted "such" from the end; inserted (b); in the second paragraph of (b), added "The governing body" and the last sentence; in the third paragraph of (b), substituted "shall be considered" for "shall be deemed"; in the seventh paragraph of (b), deleted "however" following "Provided"; and made other, minor changes.

**Rules of Civil Procedure.** — As to abolition of procedural distinctions between law and equity, see R.C.P. 2.

**Applicability.** — Although the public service commission concluded that cities providing only sewer service are not covered by this section, which applies to municipalities that provide both water and sewer service, the district court implicitly rejected the commission's interpretation. *City of Charleston v. Public Serv. Comm'n*, 57 F.3d 385 (4th Cir. 1995), cert. denied, 516 U.S. 974, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

**Discrimination not shown.** — Charges made against the users of a city sewage system were based upon the amount of water used upon the premises as indicating the extent to which the sewers were used. The charges were subject to a deduction of the amount of water

retained on the premises, such amount to be determined by a meter installed by the consumer and used to record gallonage of water that had come on the property but had not been disposed of through the sewers. It was held that the method under which the charges were assessed was neither capricious nor unfair although certain users had been unable to install meters used to measure their deductions. *Houchins v. City of Beckley*, 127 W. Va. 306, 32 S.E.2d 286 (1944).

**Jurisdiction.** — The fact that this section speaks of the enforcement of the lien in a "civil action" should not be construed as placing that jurisdiction in our courts of law simply because the word "action," strictly applied, does not usually refer to chancery practice. *City of Beckley v. Craighead*, 125 W. Va. 484, 24 S.E.2d 908 (1943).

Municipal sewer system is subject to jurisdiction of public service commission, so municipality is required to file its rates with the commission for approval in accordance with §§ 24-2-1 et seq. 45 Op. Att'y Gen. 642 (1954).

**Applied** in *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717 (1934).

**Quoted** in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Cited** in *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

## § 16-13-17. Government units subject to established rates.

The municipality and any county government, state government and federal government served by the services of the works shall be subject to the same fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1933, Ex. Sess., c. 25, § 17; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted "Government units" for "Municipality" in the section heading; inserted "fees" preceding "charges" throughout; inserted "and any county... works", substituted "as provided in this article" for "as hereinbefore provided", in-

serted "county, state or federal government", substituted "shall be considered" for "shall be deemed", substituted "the revenues" for "such revenues"; and added the last sentence.

**Quoted** in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

§ 16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided.

Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board.

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (1933, Ex. Sess., c. 25, § 18; 1939, c. 96; 1953, c. 146; 1957, c. 137; 1992, c. 95; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, made the section gender neutral; in the second paragraph, deleted "sewage" preceding "works", in the third paragraph, substituted "The appointees" for "Said appointees", deleted "such" pre-

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ceding "term", substituted "The mayor" for "Such mayor"; and in the last paragraph, deleted "such" preceding "compensation".

**In general.** — The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Construction.** — There is no repugnancy between the provisions of this article and §§ 24-1-1, 24-2-1 or 24-3-1, and for these reasons, the provisions of this article do not operate to repeal any of those sections. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Adjoining state.** — Since the incorporation of its sanitary board and its domestication in the state of Virginia was the only plan by which the power intended to be granted by the legislature to a city to construct a sewage disposal plant outside the State of West Virginia could be legally effectuated, the power to so incorporate its sanitary board was a necessary and incidental right to the main power granted. *Bernard v. City of Bluefield*, 117 W. Va. 556, 186 S.E. 298 (1936).

**Board membership.** — When a municipal corporation has a city manager form of government, the municipality's governing board has the option of appointing either its mayor or its city manager (but not both) to the municipal

sanitary board. 52 Op. Att'y Gen. 217 (1967).

**City treasurer.** — As to scope of duties and responsibilities of city treasurer as they relate to possession of funds of a sanitary board, see 52 Op. Att'y Gen. 497 (1967).

**Consulting engineer.** — Member of city council may not serve as consulting engineer to the sanitary board on city sewer project. 49 Op. Att'y Gen. 60 (1961).

**Extension of service.** — A public utility is under a duty to make reasonable extensions of its services in accordance with its franchise and charter obligations and the needs of the inhabitants within the territory covered by its franchise; and a public service commission may, where its action is not unlawful, arbitrary, or capricious, order an extension of service for the inhabitants of such territory. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Legislative intent.** — The provisions of this article do not revise the subject matter of §§ 24-1-1, 24-2-1 or 24-3-1, and they were not intended as a substitute for any of the provisions of those sections. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

In conferring such power and authority upon a municipality by this article, the legislature did not create, or intend to create, any repugnancy or inconsistency between the provisions of this article and the pertinent provisions of chapter 24, or to repeal any of those provisions of that chapter. *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**Applied** in *Houchins v. City of Beckley*, 127 W. Va. 306, 32 S.E.2d 286 (1944).

**Cited** in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956).

## § 16-13-18a. Publication of financial statement.

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June

thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense. (1957, c. 138; 1967, c. 105.)

**Editor's notes.** — For construction of the justice of the peace as magistrate, see § 50-1-17 and W.Va. Const., art. VIII, § 15.

**§ 16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.**

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into contracts with the owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, That no contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture.

The lessee shall by ordinance have power to establish, change and adjust rates, fees and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates, fees and charges for the service rendered in the municipality where the works are owned and operated, and such rates, fees or charges shall be collectible and shall be a lien as herein provided for rates, fees and charges made by the owner.

The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any contract shall, if so provided in said ordinance or trust indenture, be considered to be a part of the revenues of the

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works as in this article defined and be applied as herein provided for the application of the revenues. (1933, Ex. Sess., c. 25, § 19; 1981, 1st Ex. Sess., c. 2; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted “the” for “such” throughout, inserted “fees” following “rates” throughout; in the first paragraph, inserted “or stormwater works”, substituted “state” for “State”, deleted “such” preceding “contracts”, deleted “such” following

“Provided”, deleted “such” preceding “contract” in the proviso; in the last paragraph, deleted “such” preceding “contract”, and substituted “considered” for “deemed” in the last sentence.

**Applied** in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

### § 16-13-20. Discharge of lien on property acquired.

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full. (1933, Ex. Sess., c. 25, § 20.)

### § 16-13-21. Action on certificates or attached coupons; receivers.

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture. (1933, Ex. Sess., c. 25, § 21.)

**Rules of Civil Procedure.** — As to abolition of procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to extraordinary remedies, see Rule 81(a)(5).

### § 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter

provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1933, Ex. Sess., c. 25, § 22; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts for “ten miles outside”, added the proviso; and 2001, c. 212, effective July 13, 2001, in the first added the last paragraph. paragraph, substituted “twenty miles outside”

**§ 16-13-22a. Grants, loans and advances.**

Any municipality is authorized and empowered 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 or construction of said sewage works and the construction of 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 sewage works 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 to the contrary 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. (1949, c. 93; 1961, c. 107; 1980, c. 59; 1981, 1st Ex. Sess., c. 2; 1986, c. 118.)

**Stated** in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1956).

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**§ 16-13-22b. Contracts for abatement of pollution.**

When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment. (1949, c. 93.)

**§ 16-13-22c. Refunding bonds.**

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds. (1949, c. 93.)

**§ 16-13-22d. Subordination of bonds.**

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust indenture pertaining thereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1949, c. 93.)

**§ 16-13-22e. Operating contract.**

Any such municipality may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the facilities and properties of said sewerage system, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons, firms or corporations. Such municipality shall have power to provide in the resolution 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, are outstanding and unpaid. (1955, c. 132.)

**§ 16-13-22f. Exemption of bonds from taxation.**

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all the moneys, revenues and other income of such municipality derived from such works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof. (1955, c. 132; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts “works” for “sewerage system” twice, and substituted “state” for “State”.

**§ 16-13-22g. Covenants with bondholders.**

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company within or without the state, for the security of the bonds, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds, or the revenues derived from the sewerage system or stormwater system, may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, operation or control of such sewerage systems or stormwater system, including any part thereof heretofore or hereafter constructed or acquired or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system or stormwater system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system or stormwater system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system or stormwater system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system or stormwater system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such sewerage system or stormwater system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system or stormwater system, and the rank or priority, as to lien and source and security for payment from the revenues of the sewerage system or stormwater system, between bonds payable from the revenues;

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(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 defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual operation, maintenance and repair of such sewerage system or stormwater 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 sewerage system or stormwater system, or any part thereof, and the use and disposition of the proceeds of any insurance;

(i) The keeping of books of account, relating to such undertakings 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;

(j) Such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to the municipalities the power 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 such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the constitution of the state of West Virginia. (1955, c. 132; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted “the” for “such” throughout, inserted “or stormwater system” following “sewerage system” throughout, substituted “considered” for “deemed” throughout; in the first paragraph, substituted “the bonds” for “said bonds”; in (f), deleted “such” preceding “defaults”; in (j), deleted “such” preceding “other covenants”, and made other, minor changes.

**§ 16-13-23. Article deemed full authority for construction, etc., of works and issue of bonds; alternative method; powers of state department of health unaffected.**

This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works 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 or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale

of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article. (1933, Ex. Sess., c. 25, § 23.)

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

**§ 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.**

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing sewer system and/or stormwater system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

Such rates, fees or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage or stormwater, and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system.

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the municipal bond commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

After the completion of the construction such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works or entire stormwater works.

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No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication of notice as a Class II-O 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 is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

If any rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality.

Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with the order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: Provided, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, That the

jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted “the” for “such” throughout, substituted “the” for “said” throughout, inserted “fees” following “rates” throughout; in the first paragraph, inserted “and/or stormwater system” following “existing sewer system”, inserted “or stormwater system” following “such sewer system”; in the second paragraph, inserted “or stormwater” following “sewage”, inserted “or

stormwater facilities” following “sewer facilities”; in the fourth paragraph, added “or entire stormwater works” to the end; in the sixth paragraph, deleted “such” following “fixing” and “publication of”; in the eighth paragraph, deleted “such” preceding “rates” twice; and in the last paragraph, added the proviso.

**Applied** in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

**§ 16-13-24. Article to be construed liberally.**

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

**Quoted** in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

**ARTICLE 13A.**

**PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.**

- Sec. 16-13A-1. Legislative findings.
- 16-13A-1a. Jurisdiction of the public service commission.
- 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
- 16-13A-1c. General purpose of districts.
- 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
- 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

- Sec. 16-13A-3a. Removal of members of public service board.
- 16-13A-4. Board chairman; members' compensation; procedure; district name.
- 16-13A-5. General manager of board.
- 16-13A-6. Employees of board.
- 16-13A-7. Acquisition and operation of district properties.
- 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- 16-13A-9a. Limitations with respect to foreclosure.

- Sec. 16-13A-10. B
- 16-13A-11. A
- 16-13A-12. I
- 16-13A-13. R
- 16-13A-14. I
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**ARTICLE I  
INCORPORATION; FORM OF GOVERNMENT**

**SECTION 1.1 INCORPORATION; NAME OF BODY POLITIC AND CORPORATE.**

The inhabitants of the City of South Charleston, West Virginia, within the corporate limits as now established and as hereafter established in the manner prescribed by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of "the City of South Charleston."

**SECTION 1.2 FORM OF GOVERNMENT.**

The municipal government provided by this Charter shall be known as the "strong-mayor plan" which provides for a form of government as follows:

- (1) A Mayor, City Clerk and Municipal Judge elected by the voters of the City;
- (2) A City Council elected by wards by the voters of the City;
- (3) The Council shall be the governing body;
- (4) The Mayor shall be the administrative and executive authority;
- (5) Officers and employees are appointed by the Mayor or by his order in accordance with this Charter or the provisions of general law.

**ARTICLE II  
POWER OF CITY**

**SECTION 2.1 GENERALLY.**

This City, incorporated under this Municipal Home Rule Charter, shall have all the powers granted to municipal corporations and to cities of its class by the Constitution and laws of the State of West Virginia, including but not limited to the powers granted by Chapter 8 and Chapter 8A of the Official Code of West Virginia of 1931, as amended, together with all the implied powers necessary to carry into execution all the powers granted. The City may acquire property within or without its corporate limits for any City purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, hold, manage and control such property as its interests may require; and, except as prohibited by the Constitution of this State or restricted by general law or this Charter, the City shall and may exercise all municipal powers, functions, rights, privileges and immunities of every kind and character whatsoever.

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The City shall have every power to tax, license, franchise and charge which it had immediately prior to the adoption of this Charter, and every power to impose, levy and collect every tax, license, franchise, fee and charge, of any nature whatsoever, now or hereafter authorized by the statutes of the State of West Virginia. The City shall continue to impose, levy and collect every tax, license, franchise, fee and charge which is being imposed by the City immediately prior to the effective date of this Charter, until the same is revised, modified or repealed by Council.

The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated herein or appropriate to the exercise of such powers, it is intended that the City shall have and may exercise all powers which, under the Constitution of the State of West Virginia, or any amendments thereto, or under the laws of the State of West Virginia now or hereafter enacted, it would be competent for this Charter specifically to enumerate.

### ARTICLE III MUNICIPAL OFFICERS GENERALLY

#### SECTION 3.1 MAYOR, CITY CLERK, MUNICIPAL JUDGE AND MEMBERS OF COUNCIL AS MUNICIPAL OFFICERS; ELECTION AND TERM OF CERTAIN OFFICERS GENERALLY.

The municipal officers of the City of South Charleston shall consist of a Mayor, City Clerk, Municipal Judge and members of the City Council. The first officers elected under these Charter amendments shall be elected by the qualified voters of the City, as hereinafter provided, and shall serve for a term of three years commencing on July 1, 1968, and continuing until the thirtieth day of June, 1971, or as soon thereafter as their respective successors shall have been elected or appointed and qualified.

Except for the municipal officers first elected under these Charter amendments, at the general election held on the first Tuesday in June in the year 1968, said municipal officers shall be elected by the qualified voters of the City, as hereinafter provided, for a term commencing on the first day of July in each election year provided for herein and continuing for a period of four years, or until such time thereafter as their respective successors shall have been elected or appointed and qualified.

Editor's note.--The "Charter amendments" here referred to are those affected by Ordinance No. 1040.

#### SECTION 3.2 QUALIFICATIONS OF ELECTIVE OFFICERS; LIMITATION ON ELECTIVE OFFICERS HOLDING OTHER PUBLIC OFFICE, ETC.

An elective officer shall be a qualified elector and shall have been a resident of the City for a period of thirty days prior to his election. A member of the Council representing a particular ward also shall have been a resident thereof for a term of thirty days prior to his election and shall remain a resident of the ward from which he is elected during his term of office.

An elective officer shall hold no other public office or public employment or be a member of any City executive committee of any political party; provided, however, that a notary public, member of the National Guard or Naval or Military Reserve, or public school or college teacher or administrator shall not be deemed to hold public office or public employment within the meaning of this section. (Ord. 2000. Passed 1-3-02.)

### **SECTION 3.3 OFFICERS IN ADDITION TO ELECTIVE OFFICERS; SALARIES OF OFFICERS.**

In addition to the municipal officers mentioned in Section 3.1 of this Charter, there shall be a City Treasurer, City Attorney, City Recreation Director, Chief of Police, Chief of Fire Department, and Chief of Department of Public Works. The City also may have such other officers and agents as the Council, in its discretion, may create. All appointive officers shall serve at the will and pleasure of the Mayor except as otherwise provided in this Charter. More than one appointive office may be filled by a single appointee subject to the approval of Council.

All the officers named in this and Section 3.1 shall be paid proper salaries which shall be fixed by the Council except as otherwise provided in this Charter.

### **SECTION 3.4 PROCEDURE FOR FILLING VACANCIES IN ELECTIVE OFFICES.**

Whenever a vacancy for any cause whatever shall occur in any elective office, the Council, by a majority vote of its duly elected or appointed members present at a regular meeting held not less than fifteen or more than thirty days following the occurrence of such vacancy, shall elect a qualified person for such office who shall hold office until the next City election and until his successor shall have been elected and qualified; provided, however, that any vacancy in the office of Council member shall be filled by a person of the same political affiliation as the Council member whose office is vacant. In the event the Council shall fail to elect a qualified person to the office of Council member within thirty days after the occurrence of such vacancy, the Mayor shall appoint a qualified person therefor.

## **ARTICLE IV MAYOR**

### **SECTION 4.1 POWERS AND DUTIES GENERALLY.**

The Mayor shall be the chief administrative officer and the head of the administrative branch of the City Government. He shall be responsible for the proper administration of all affairs of the City, except as otherwise specifically provided by law or this Charter, and to that end subject to the personnel provisions of this Charter, he shall have power and shall be required to:

- (1) Appoint, supervise, promote and remove all officers and employees of the City except as otherwise provided by this Charter;

- (2) Appoint, promote and remove, in accordance with civil service laws, all employees who are subject to the civil service laws of the State of West Virginia;
- (3) Appoint, subject to the approval of the Council, the members of any board or commission which Council may create or establish pursuant to this Charter;
- (4) Prepare the budget annually, submit it to Council and be responsible for its administration after adoption;
- (5) Prepare and submit to Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding fiscal year;
- (6) Prepare and submit to Council a monthly statement of all receipts, disbursements and unpaid accounts in sufficient detail to show the exact financial condition of the City, and such statement shall be made available for public inspection;
- (7) Keep Council advised of the future needs of the City and make such recommendations as may seem to him desirable; and
- (8) Perform such other duties as may be prescribed by this Charter and such duties not inconsistent with this Charter as may be required of him by Council.

#### **SECTION 4.2 APPOINTMENT OF CERTAIN OFFICERS.**

The Mayor shall appoint a City Treasurer, City Attorney, City Recreation Director, Chief of Police, Chief of the Department of Public Works, and, subject to the civil service laws, Chief of the Fire Department.

### **ARTICLE V COUNCIL**

#### **SECTION 5.1 SALARY OF COUNCILMEN.**

The monthly salary of Councilmen shall be not less than twenty dollars.

#### **SECTION 5.2 MAYOR AS PRESIDING OFFICER AND MEMBER OF COUNCIL; PRESIDENT OF COUNCIL; WHO TO PRESIDE IN ABSENCE OF MAYOR AND PRESIDENT OF COUNCIL.**

The Mayor shall be the presiding officer of the Council and be a member thereof, with the right to vote on all questions the same as any other member of the Council. The Council shall, at its first meeting after each election, select one of its body as President of Council, who shall, in the absence of the Mayor, preside as chairman of the meeting of the Council, and in the absence of both the Mayor and President of Council at any meeting of the Council, a member of the Council shall be elected to preside over such meeting. The President of Council shall appoint all committees of Council.

#### **SECTION 5.3 POWERS OF COUNCIL.**

All powers of the City and the determination of all matters of policy shall be vested in the Council. Without limitation of the foregoing, the Council shall have power to:

- (1) Adopt the budget of the City;
- (2) Create and establish boards and commissioners as required;

- (2) Inspect or supervise the inspection of all deliveries of supplies, materials and equipment, and determine their quality, quantity and conformity with specifications.

#### **SECTION 8.6 WHERE COMPETITIVE BIDDING REQUIRED.**

Before the City Purchasing Agent may make any purchase of or contract for supplies, materials or equipment in excess of five thousand dollars (\$5,000), he shall give ample opportunity for competitive bidding, under such general rules and regulations, and with such exceptions, as Council may prescribe; provided, however, that Council shall not except individual contracts, purchases or sales from the requirement of competitive bidding; and provided further, that no purchase of or contract for supplies, materials or equipment in excess of five thousand dollars (\$5,000) shall be made by separate purchases or contracts of a lesser amount so as to evade the requirements of competitive bidding prescribed by this section. (Ord. 1991. Passed 6-21-01.)

#### **SECTION 8.7 CONTRACTS FOR CAPITAL IMPROVEMENTS AND REPAIRS.**

Any capital improvement or repairs costing more than five thousand dollars (\$5,000) or any series of capital improvements or repairs constituting essentially a single project and costing in the aggregate more than five thousand dollars (\$5,000), shall be executed by contract except where such improvement is authorized by Council to be executed directly by the Mayor in conformity with detailed plans, specifications and estimates. All such contracts shall be awarded to the lowest and best responsible bidder after such public notice and competition as Council may prescribe and after a public opening of bids; provided, however, that the Council shall have the power to reject all bids for good cause assigned in writing or set forth in the records of the Council and advertise again. Alterations in any contract may be made when authorized by Council upon the written recommendation of the Mayor.

Council, in its discretion, may by resolution increase or decrease the amount of any capital improvements or repairs, or any series of capital improvements or repairs constituting essentially a single project, which shall be subject to the provisions of this article. (Ord. 1991. Passed 6-21-01)

#### **SECTION 8.8 REQUISITION, ETC., PREREQUISITE TO PURCHASES AND CONTRACTS.**

All purchases made and contracts executed by the City Purchasing Agent shall be pursuant to a written requisition from the chief of the office, department or agency whose appropriation will be charged, and no contract or order shall be issued to any vendor unless and until the City Treasurer certifies that there is to the credit of such office, department or agency a sufficient unencumbered appropriation balance to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued.

### **ARTICLE IX CITY ATTORNEY**

#### **SECTION 9.1 QUALIFICATIONS.**

The City Attorney shall be an attorney at law and a member of good standing of the West Virginia State Bar.

#### **SECTION 9.2 POWERS AND DUTIES.**

The City Attorney shall perform all duties and exercise all powers which shall be conferred upon him by ordinance or resolution of Council.

**ARTICLE X  
DEPARTMENT OF PUBLIC WORKS**

**SECTION 10.1 ESTABLISHMENT OF DEPARTMENT OF PUBLIC WORKS;  
CHIEF OF PUBLIC WORKS GENERALLY.**

There shall be a Department of Public Works, the head of which shall be the Chief of Public Works who shall be appointed by the Mayor. The Building Inspector and supervisor of garage, street and other service employees shall be responsible to the Chief of Public Works unless otherwise prescribed by the Mayor.

**SECTION 10.2 POWERS AND DUTIES OF CHIEF OF PUBLIC WORKS.**

The Chief of Public Works shall, subject to the supervision and control of the Mayor:

- (1) Supervise the repair and maintenance of all streets, avenues, alleys, sidewalks and other public ways;
- (2) Supervise the inspection of all building construction and electrical plumbing, sewerage, elevator and related installations, as required by ordinance;
- (3) Supervise the cleaning of streets, removal of ice, snow, leaves and debris, and the collection and disposal of all refuse and garbage;
- (4) Supervise all City garages and repair facilities, and be responsible for the maintenance and repair of all City operated automotive, construction, mechanical, industrial, electrical, communications and similar equipment; and
- (5) Provide or supervise custodial services for all buildings and grounds owned, leased, operated or maintained by this City, except as otherwise provided by law.

**ARTICLE XI  
PERSONNEL**

**SECTION 11.1 DISCRIMINATION AGAINST CITY EMPLOYEES, ETC.,  
BECAUSE OF POLITICAL AFFILIATION, ETC.; OATH MAY  
BE REQUIRED OF CITY EMPLOYEES.**

No person in the employ of the City or seeking employment with the City shall be discriminated against because of his race, color, creed or political affiliation. Council may, by appropriate resolution or ordinance, require all employees of the City to take the oath prescribed in Section 16.10 of this Charter.

**SECTION 11.2 PERSONNEL RULES AND REGULATIONS FOR CITY  
EMPLOYEES.**

Except as otherwise provided by general law and by civil service rules or regulations established pursuant thereto, Council shall, as soon as practicable after the effective date of this Charter and upon the recommendation of the Mayor, adopt, by ordinance or resolution, personnel rules and regulations for all City employees which shall include but not be limited to:

- (1) Job classification and reclassification;
- (2) Examinations;
- (3) Salary and wage schedules;
- (4) Hours of work;
- (5) Promotions, demotions, transfers and dismissals;

**SECTION 13.2 COMPACT AND CONTIGUOUS WARDS; SPECIFIC REQUIREMENTS TO ENSURE COMPACTNESS OF WARDS.**

Each ward shall be composed of contiguous territory and shall be compact. To ensure that each ward is compact, the Council, in each apportionment of the City's wards, shall comply with each of the following requirements, to the extent that compliance with the provisions of Sec. 13.1 permits:

- (a) At least one third of the City's wards shall be composed of territory located solely on the north (Kanawha River) side of Kanawha Turnpike.
  - (b) At least one third of the City's wards shall be composed of territory located solely on the south (hill) side of Kanawha Turnpike.
  - (c) No ward containing residential neighborhoods located between the Kanawha River and MacCorkle Avenue (U.S. Route 60) shall extend to the south (hill) side of Kanawha Turnpike.
  - (d) The entire section of Montrose Drive between Kanawha Turnpike and Glendale Avenue shall serve as a boundary line between wards.
  - (e) The entire section of Joplin Creek between Kanawha Turnpike and Weberwood Drive shall serve as a boundary line between wards.
- (Init. Ord. Passed 6-7-83)

**ARTICLE XIV  
NOMINATIONS AND ELECTIONS**

**SECTION 14.1 WHEN PRIMARY AND GENERAL ELECTIONS TO BE HELD; TERM OF CITY OFFICIALS ELECTED UNDER CHARTER, ETC.**

The first primary election under this Charter amendment for the nomination of candidates for election to the municipal offices provided for in this Charter shall be held on the third Saturday in April beginning after the year 1999. Subsequent primary elections shall be held on the third Saturday in April in each fourth year thereafter.

The first general election under this Charter amendment shall be held on the first Saturday in June in the year 1995. Subsequent general elections shall be held on the first Saturday in June in each fourth year thereafter.

The term of office of all municipal officers elected under this Charter and these Charter amendments, except members of the City Executive Committees, shall be for a term commencing on the first day of July in each election year provided for herein and continuing for a period of four years, or until such time thereafter as their respective successors shall have been elected or appointed and qualified.

The terms of office of all municipal officers and of members of the City executive committees elected under this Charter amendment shall be for a period of four years. (Ord. 1960. Passed 4-15-99.)

**SECTION 14.2 NOMINATION OF CANDIDATES BY PRIMARY ELECTION, ETC.; WHO CONSIDERED A QUALIFIED PARTY; LIMITATIONS ON VOTING IN PRIMARY ELECTION; CITY EXECUTIVE COMMITTEES OF POLITICAL PARTIES; QUALIFICATIONS FOR COUNCILMAN, ETC.**

Nominations for office shall be made by primary election to be held on the dates set forth in Section 14.1 In the event no nominee files for any office, or should any nominee resign or be prevented by death or disability from running for any office, a candidate therefor may be named by the Executive Committee of his respective party, and such candidate shall be certified by the chairman of such Executive Committee to the City Clerk at least thirty days prior to the general election. Any qualified person may become a candidate for any office in the primary election by filing therefor with the City Clerk and paying to the said City Clerk such filing fee as may be set out by the Council and by completing and filing with said City Clerk a statement in substantially the following form:

**STATEMENT OF CANDIDATE**

"STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, (write your name as you wish it to appear on ballot), hereby certify that I am a candidate for the nomination for the office of ....., to represent the ....., Party, and desire my name printed on the official ballot of said party to be voted at the primary election to be held on the ..... day of ....., 19.....; that I am a legally qualified voter of Ward ....., City of South Charleston, County of Kanawha, State of West Virginia; that my residence is number ..... of ..... Street in the City of South Charleston in Kanawha County in said State; that I am eligible to hold the said office; that I am a member of and affiliated with said political party; that I am a candidate for said office in good faith.

.....  
Candidate

**PART I.**

**THE CHARTER.**

*Editor's note.--There is here set out, as amended, the ordinance containing the Charter of the City of South Charleston, West Virginia, which was adopted by the voters of the city at the election held on April 9, 1963.*

*The catchlines given to the various sections of the Charter have, for editorial purposes, been revised. They should not be construed to restrict, limit or affect the contents of the sections.*

*Amended sections are indicated by historical citations following the sections in question.*

**Article I. Incorporation; Form of Government.**

- § 1.1. Incorporation; name of body politic and corporate.
- § 1.2. Form of government.

**Article II. Powers of City.**

- § 2.1. Generally.

**Article III. Municipal Officers Generally.**

- § 3.1. Mayor, city clerk, municipal judge and members of council as municipal officers; election and term of certain officers generally.
- § 3.2. Qualifications of elective officers; limitation on elective officers holding other public office, etc.
- § 3.3. Officers in addition to elective officers; salaries of officers.
- § 3.4. Procedure for filling vacancies in elective offices.

**Article IV. Mayor.**

- § 4.1. Powers and duties generally.
- § 4.2. Appointment of certain officers.

**Article V. Council.**

- § 5.1. Salary of councilmen.
- § 5.2. Mayor as presiding officer and member of council; president of council; who to preside in absence of mayor and president of council.
- § 5.3. Powers of council.
- § 5.4. Removal of officers from office.
- § 5.5. Vacancy in office of councilman.

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- § 5.6. Creation, etc., of boards, commissions, offices, etc.
- § 5.7. Induction of council into office; meetings of council; quorum.
- § 5.8. Council as judge of election, etc., of members.
- § 5.9. Rules and order of business; journal and minutes of meetings.
- § 5.10. Enactment and enacting clauses of ordinances.
- § 5.11. Codification of general and permanent ordinances; supplements to Code.
- § 5.12. Independent audit of accounts, etc.

**Article VI. City Clerk.**

- § 6.1. Duties.

**Article VII. Municipal Court.**

- § 7.1. Establishment and jurisdiction of municipal court.
- § 7.2. Age requirement for, and compensation of, municipal judge.
- § 7.3. Appointment, term and compensation of clerk of municipal court.
- § 7.4. Acting municipal judge.
- § 7.5. Powers and duties of municipal judge.
- § 7.6. Who may issue warrants for offenses in violation of city ordinances.
- § 7.7. Rules and records of municipal judge.
- § 7.8. Appeal from judgment of municipal court.

**Article VIII. City Treasurer.**

- § 8.1. Qualifications of city treasurer.
- § 8.2. Powers and duties generally of city treasurer.
- § 8.3. Supervision and control of accounting.
- § 8.4. Payment to city treasurer of fines, etc., received by officer or employee.
- § 8.5. City purchasing agent generally.
- § 8.6. Where competitive bidding required.
- § 8.7. Contracts for capital improvements and repairs.
- § 8.8. Requisition, etc., prerequisite to purchases and contracts.

**Article IX. City Attorney.**

- § 9.1. Qualifications.
- § 9.2. Powers and duties.

**Article X. Department of Public Works.**

- § 10.1. Establishment of department of public works; chief of public works generally.
- § 10.2. Powers and duties of chief of public works.

## The Charter

### Article XI. Personnel.

- § 11.1. Discrimination against city employees, etc., because of political affiliation, etc.; oath may be required of city employees.
- § 11.2. Personnel rules and regulations for city employees.
- § 11.3. Determination and administration of personnel policy; limitation on appointment, etc., of city employees by council and dealings of council with city employees.
- § 11.4. Social Security to be provided; workmen's compensation.
- § 11.5. City employees as candidates for city offices.

### Article XII. Budget.

- § 12.1. Fiscal year; budget year; accounting year.
- § 12.2. Submission of budget; finance and budget committee of council; citizens' advisory committee as to budget and fiscal affairs.
- § 12.3. Budget, etc., as public record; preparation of copies of budget for distribution.
- § 12.4. Public hearing on submitted budget and publication of notice thereof.
- § 12.5. Revision of budget after public hearing.
- § 12.6. Approval of budget generally; quorum of council for approval, etc., of budget, etc.
- § 12.7. Procedure as to estimates and levies.
- § 12.8. Adoption of budget generally; vote on adoption of budget, etc.
- § 12.9. Term of effectiveness of budget; certification and filing of budget; availability of copies of budget.
- § 12.10. Effective date of budget; budget to establish appropriations.
- § 12.11. Budget as financial plan; limitation on total of proposed expenditures; contents of budget generally.
- § 12.12. Beginning balance.
- § 12.13. Anticipated revenues and miscellaneous revenues generally.
- § 12.14. What to be included in miscellaneous revenues.
- § 12.15. Limitation on inclusion of miscellaneous revenue as anticipated revenue.
- § 12.16. Limitation on inclusion of new revenue as anticipated revenue.
- § 12.17. Comparison of items of anticipated revenue with other years.
- § 12.18. Items for which budget to make provision.
- § 12.19. Comparison of items of proposed expenditures with other years.
- § 12.20. Allotment of appropriations for work programs of departments, etc.
- § 12.21. Further provisions as to work programs and allotments for departments, etc.; authorization of expenditures for departments, etc.
- § 12.22. Transfer of unencumbered balance of appropriations.
- § 12.23. Lapsing of appropriations.
- § 12.24. Appropriations prerequisite to certain contracts, etc.
- § 12.25. Budget to be headed by budget summary.

South Charleston City Code

Article XIII. Wards.

- § 13.1. Division of city into wards generally; authority of council as to ward boundaries; abolition and consolidation of wards; new wards consequent upon extension of limits; division of wards.
- § 13.2. Division of city into six wards; representation of wards upon council generally; listing of wards and corresponding precincts; limitation on additional council members, etc.

Article XIV. Nominations and Elections.

- § 14.1. When primary and general elections to be held; term of city officials elected under Charter, etc.
- § 14.2. Nomination of candidates by primary election, etc.; who considered a qualified party; limitations on voting in primary election; city executive committees of political parties; qualifications for councilman, etc.
- § 14.3. City election commission.
- § 14.4. Where primary and general elections held; appointment of election officials.
- § 14.5. Uniform election board for each voting precinct.
- § 14.6. Procedure as to registration records, ballots, etc.; canvassing of election and declaration, etc., of result.
- § 14.7. Decision on tie vote for elective office.
- § 14.8. Procedure as to contested elections.
- § 14.9. Applicability of general election laws.
- § 14.10. Absentee voting.

Article XV. Initiative, Referendum and Recall.

- § 15.1. Power of initiative.
- § 15.2. Power of referendum.
- § 15.3. Form and contents of, and signatures to, initiative or referendum petition; committee of petitioners.
- § 15.4. Filing, examination and certification of initiative or referendum petitions.
- § 15.5. Amendment of initiative or referendum petition.
- § 15.6. Approval of ordinance by electors prerequisite to its going into effect when referendum petition has been certified.
- § 15.7. Consideration by council of certified initiative or referendum petition.
- § 15.8. Submission of certain ordinances to electors generally.
- § 15.9. Ballots and voting when certain ordinances are submitted to electors.
- § 15.10. Effect of results of election when certain ordinances are submitted to electors.
- § 15.11. Publication, alteration or repeal of certain ordinances.
- § 15.12. Recall--Power of electors.

- § 15.13. Same--Election under petition.
- § 15.14. Same--Filling council vacancy in case of.
- § 15.15. Same--Limitations.

Article XVI. General Provisions.

- § 16.1. Claims against the city.
- § 16.2. Immunity of elective officers.
- § 16.3. Limitation on compensation of city officers or employees.
- § 16.4. Qualifications and responsibilities of the chief of police.
- § 16.5. Qualifications and responsibilities of the chief of fire department.
- § 16.6. Inspection by citizens of records and accounts of departments, etc., of city.
- § 16.7. Financial interest of council member, etc., in contract, etc.
- § 16.8. Use of local labor in performance of certain contracts.
- § 16.9. Bond required of certain city officers and personnel.
- § 16.10. Oath and qualification of certain officers.
- § 16.11. Article and section titles.
- § 16.12. Separability clause.

Article XVII. Succession in Government.

- § 17.1. Effective date of Charter; continuation in office of mayor, municipal judge, council members, etc.
- § 17.2. Continuation in office of persons holding administrative positions; continuity of city departments, etc., generally.
- § 17.3. Further provisions as to continuity of city departments, etc.
- § 17.4. When certain acts to be done.
- § 17.5. Transfer of records and property.
- § 17.6. Pending actions and proceedings.
- § 17.7. Assurance of continuity of local government in national emergency.
- § 17.8. Continuation of ordinances, etc., conflicting with Charter.

Article I. Incorporation; Form of Government.

Sec. 1.1. Incorporation; name of body politic and corporate.

The inhabitants of the City of South Charleston, West Virginia, within the corporate limits as now established and as hereafter established in the manner prescribed by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of "The City of South Charleston."

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The municipal government provided by this Charter shall be known as the "strong-mayor plan" which provides for a form of government as follows:

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- (2) A city council elected by wards by the voters of the city;
- (3) The council shall be the governing body;
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- (5) Officers and employees are appointed by the mayor or by his order in accordance with this Charter or the provisions of general law.

**Article II. Powers of City.****Sec. 2.1. Generally.**

This city, incorporated under this Municipal Home Rule Charter, shall have all the powers granted to municipal corporations and to cities of its class by the Constitution and laws of the State of West Virginia, including but not limited to the powers granted by chapter 8 and chapter 8A of the Official Code of West Virginia of 1931, as amended, together with all the implied powers necessary to carry into execution all the powers granted. The city may acquire property within or without its corporate limits for any city purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, hold, manage and control such property as its interests may require; and, except as prohibited by the Constitution of this state or restricted by general law or this Charter, the city shall and may exercise all municipal powers, functions, rights, privileges and immunities of every kind and character whatsoever.

The city shall have every power to tax, license, franchise and charge which it had immediately prior to the adoption of this Charter, and every power to impose, levy and collect every tax, license, franchise, fee and charge, of any nature whatsoever, now or hereafter authorized by the statutes of the State of West Virginia. The city shall continue to impose, levy and collect every tax, license, franchise, fee and charge which is being imposed by the city immediately prior to the effective date of this Charter, until the same is revised, modified or repealed by council.

The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated herein or appropriate to the exercise of such powers, it is intended that the city shall have and may exercise all powers which, under the Constitution of the State of West Virginia, or any amendments thereto, or under the laws of the State of West Virginia now or hereafter enacted, it would be competent for this Charter specifically to enumerate.

Article III. Municipal Officers Generally.

Sec. 3.1. Mayor, city clerk, municipal judge and members of council as municipal officers; election and term of certain officers generally.

The municipal officers of the City of South Charleston shall consist of a mayor, city clerk, municipal judge and members of the city council. The first officers elected under these Charter amendments shall be elected by the qualified voters of the city, as hereinafter provided, and shall serve for a term of three years commencing on July 1, 1968, and continuing until the thirtieth day of June, 1971, or as soon thereafter as their respective successors shall have been elected or appointed and qualified.

Except for the municipal officers first elected under these Charter amendments, at the general election held on the first Tuesday in June in the year 1968, said municipal officers shall be elected by the qualified voters of the city, as hereinafter provided, for a term commencing on the first day of July in each election year provided for herein and continuing for a period of four years, or until such time thereafter as their respective successors shall have been elected or appointed and qualified. (Ord. No. 1040.)

*Editor's note.--The "Charter amendments" here referred to are those effected by Ordinance No. 1040.*

Sec. 3.2. Qualifications of elective officers; limitation on elective officers holding other public office, etc.

An elective officer shall be a qualified elector and shall have been a resident of the city for a period of three years prior to his election. A member of the council representing a particular ward also shall have been a resident thereof for a term of one year prior to his election and shall remain a resident of the ward from which he is elected during his term of office.

An elective officer shall have been assessed with and shall have paid taxes in the city upon a valuation of at least \$100 worth either of real estate or personal property for the assessment year preceding his election.

An elective officer shall hold no other public office or public employment or be a member of any city executive committee or any political party; provided, however, that a notary public, member of the National Guard or Naval or Military Reserve, or public school or college teacher or administrator shall not be deemed to hold public office or public employment within the meaning of this section. (Ord. No. 1040, § 3.)

Sec. 3.3. Officers in addition to elective officers; salaries of officers.

In addition to the municipal officers mentioned in section 3.1 of this Charter, there shall be a city treasurer, city attorney, city recreation director, chief of police, chief of fire department, and chief of department of public works. The city also may have such other officers and agents as the council, in its discretion, may create. All appointive officers shall serve at the will and pleasure of the mayor except as otherwise provided in this Charter. More than one appointive office may be filled by a single appointee subject to the approval of council.

All the officers named in this and section 3.1 shall be paid proper salaries which shall be fixed by the council except as otherwise provided in this Charter.

Sec. 3.4. Procedure for filling vacancies in elective offices.

Whenever a vacancy for any cause whatever shall occur in any elective office, the council, by a majority vote of its duly elected or appointed members present at a regular meeting held not less than fifteen or more than thirty days following the occurrence of such vacancy, shall elect a qualified person for such office who shall hold office until the next city election and until his successor shall have been elected and qualified; provided, however, that any vacancy in the office of council member shall be filled by a person of the same political affiliation as the council member whose office is vacant. In the event the council shall fail to elect a qualified person to the office of council member within thirty days after the occurrence of such vacancy, the mayor shall appoint a qualified person therefor.

Article IV. Mayor.

Sec. 4.1. Powers and duties generally.

The mayor shall be the chief administrative officer and the head of the administrative branch of the city government. He shall be responsible for the proper administration of all affairs of the city, except as otherwise specifically provided for by law or this Charter, and to that end subject to the personnel provisions of this Charter, he shall have power and shall be required to:

- (1) Appoint, supervise, promote and remove all officers and employees of the city except as otherwise provided by this Charter;

(2) Appoint, promote and remove, in accordance with civil service laws, all employees who are subject to the civil service laws of the State of West Virginia;

(3) Appoint, subject to the approval of the council, the members of any board or commission which council may create or establish pursuant to this Charter;

(4) Prepare the budget annually, submit it to council and be responsible for its administration after adoption;

(5) Prepare and submit to council as of the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding fiscal year;

(6) Prepare and submit to council a monthly statement of all receipts, disbursements and unpaid accounts in sufficient detail to show the exact financial condition of the city, and such statement shall be made available for public inspection;

(7) Keep council advised of the future needs of the city and make such recommendations as may seem to him desirable; and

(8) Perform such other duties as may be prescribed by this Charter and such duties not inconsistent with this Charter as may be required of him by council.

Sec. 4.2. Appointment of certain officers.

The mayor shall appoint a city treasurer, city attorney, city recreation director, chief of police, chief of the department of public works, and, subject to the civil service laws, chief of the fire department.

Article V. Council.

Sec. 5.1. Salary of councilmen.

The monthly salary of councilmen shall be not less than twenty dollars.

Sec. 5.2. Mayor as presiding officer and member of council; president of council; who to preside in absence of mayor and president of council.

The mayor shall be the presiding officer of the council and be a member thereof, with the right to vote on all questions the same as any other member of the council. The council shall, at its first meeting after each election, select one of its body as president of council, who shall, in the absence of the

mayor, preside as chairman of the meeting of the council, and in the absence of both the mayor and president of council at any meeting of the council, a member of the council shall be elected to preside over such meeting. The president of council shall appoint all committees of council.

Sec. 5.3. Powers of council.

All powers of the city and the determination of all matters of policy shall be vested in the council. Without limitation of the foregoing, the council shall have power to:

- (1) Adopt the budget of the city;
- (2) Create and establish boards and commissioners as required;
- (3) Adopt policies, rules and regulations for all city employees, except as otherwise provided in this Charter;
- (4) Inquire into the conduct of any office, department or agency of the city and make investigations as to municipal affairs; and
- (5) Provide for an independent audit.

Sec. 5.4. Removal of officers from office.

Any member of the council, and any city official, either elected or appointed, may be removed from his office by the council for any of the following causes: Official misconduct, incompetence, habitual drunkenness, neglect of duty, or gross immorality. The charges against any such officer shall be reduced to writing and entered of record by the council, and a summons shall thereupon be issued by the city clerk containing a copy of the charges and requiring the officer named therein to appear and answer the same on a day to be named therein, which summons may be served in the same manner as a summons commencing an action may be served, and the service must be made at least five days before the return day thereof. It shall require the affirmative vote of two-thirds of all the members elected to council to remove any such official. The decision of council in any such case shall be subject to review by the courts.

The mayor, or any other city official having the power of appointment, shall have the absolute right in his discretion to remove any of his appointees and appoint another qualified person in his place, but such removal shall be in writing and served upon said official so removed, and all the rights and powers of such official shall cease and end from the time of such notice.

Sec. 5.5. Vacancy in office of councilman.

If a councilman ceases to possess any of the qualifications of a councilman, or ceases to be a resident of the ward from which he is elected, his office shall become vacant and shall be so declared by council. Such vacancy shall be filled as provided in this Charter.

Sec. 5.6. Creation, etc., of boards, commissions, offices, etc.

Council, by ordinance, may create, change and abolish boards, commissions, offices, departments or agencies, except as provided by state statutes. Council, by ordinance or resolution, may assign additional functions or duties to boards, commissions, offices, departments or agencies established by it or by this Charter, but may not discontinue or assign to any other board, commission, office, department or agency any function or duty assigned by this Charter to a particular board, commission, department, office or agency.

Sec. 5.7. Induction of council into office; meetings of council; quorum.

The first council elected under this Charter and each newly elected council shall hold its first meeting at 7:30 P.M. on the first day of July next following its election. At the first meeting of each council, the first order of business shall be the induction of the councilmen and other elective officers into office. The council shall hold regular meetings on the first and third Thursdays of each month, and the hour and place of such meetings shall be fixed by the council in the rules adopted by it.

Special meetings may be held at any time upon such notice as council may by rule prescribe, upon call of the mayor or any three councilmen. Such notice shall state the time, place, and object of the meeting.

All meetings of council shall be open to the public. For the purpose of transacting business, a majority of the members of council shall constitute a quorum, except as otherwise provided in section 12.6 of this Charter, but a smaller number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as it may by rules provide.

Sec. 5.8. Council as judge of election, etc., of members.

Council shall be the judge of the election and qualifications of its members and for such purpose shall have the power to subpoena witnesses and require the production of records, but the decision of council in any such case shall be subject to review by the courts.

Sec. 5.9. Rules and order of business; journal and minutes of meetings.

Council shall determine its own rules and order of business. It shall keep a journal of its proceedings and the journal shall be open to public inspection. The minutes of every regular or special meeting of council shall be approved at the next regular meeting. After being approved, the minutes shall be signed by the mayor and city clerk.

Sec. 5.10. Enactment and enacting clauses of ordinances.

All ordinances shall be enacted according to the requirements of general law. The enacting clause of an ordinance shall be: "Be it ordained by the Council of the City of South Charleston."

Sec. 5.11. Codification of general and permanent ordinances; supplements to Code.

Council shall cause all the ordinances of the City of South Charleston of a general and permanent nature to be codified and indexed every four years, and the same shall be printed in a manner approved by the council as "The Code of the City of South Charleston, West Virginia," and in addition thereto, such Code shall be kept up-to-date by yearly supplements.

Sec. 5.12. Independent audit of accounts, etc.

In addition to the annual audit conducted by the state tax commissioner, council may employ certified public accountants to make an independent audit of accounts and other evidences of financial transactions of the city government.

Article VI. City Clerk.

Sec. 6.1. Duties.

The city clerk shall serve as ex officio clerk of the council, shall give notice of its meetings, shall keep the journal of its proceedings, shall authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions and shall perform such other duties as shall be required by this Charter, by ordinance or by resolution of council, or by general law.

Article VII. Municipal Court.

Sec. 7.1. Establishment and jurisdiction of municipal court.

There shall be a municipal court which shall have criminal jurisdiction over violations of city ordinances and the criminal jurisdiction of a justice of the peace of the State of West Virginia with respect to offenses committed within any territory in or beyond the city over which the city has police jurisdiction under provisions of general law.

Sec. 7.2. Age requirement for, and compensation of, municipal judge.

The municipal judge shall be thirty years of age prior to the beginning of his term of office. The municipal judge shall receive a compensation for his services which shall be determined by the council and the amount of such compensation shall not be increased or diminished during his term of office.

Sec. 7.3. Appointment, term and compensation of clerk of municipal court.

The municipal judge may appoint a clerk of the municipal court who shall serve at the will and pleasure of the municipal judge and shall receive such compensation as may be determined by the council.

Sec. 7.4. Acting municipal judge.

In the event of the temporary absence or disability of the municipal judge, the clerk of the municipal court, the city clerk or the mayor may serve as municipal judge during such absence or disability.

Sec. 7.5. Powers and duties of municipal judge.

The municipal judge shall preside over the municipal court and, with respect to offenses over which the municipal court has jurisdiction, the municipal judge shall have all the powers and duties which a justice of the peace has with regard to violations of the criminal laws of the State of West Virginia. The municipal judge shall have power to issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the court. The municipal judge shall try and determine all cases over which the court has jurisdiction, and within the limits prescribed by ordinance or by general law shall have the power to punish by fine or imprisonment, or both. Before trying any person charged with any violation of any state law or ordinance, a warrant specifying the offense or violation charged, shall be issued as herein provided, and the municipal judge shall render judgment in any case as the laws of the state or the ordinance of the city relative thereto may require. The municipal judge shall have power to summons persons or subpoena witnesses for the trial of any case before him, to compel the attendance of police officers of the city, to require the chief of police to enforce all judgments or orders entered by him in the exercise of his powers as municipal judge, and to issue executions for all fines, penalties and costs imposed by him. The proceedings for the recovery of fines or for the enforcement of penalties fixed by any ordinance or law shall, so far as applicable, conform to the provisions of general law governing civil proceedings before a justice of the peace of the State of West Virginia. It shall be his duty to hold such daily sessions as the business of the court may require.

Sec. 7.6. Who may issue warrants for offenses in violation of city ordinances.

The mayor, city clerk, clerk of the municipal court, chief of police, or in the absence of the chief of police, the captains of police and lieutenants of police shall each have authority to issue warrants for all offenses which are in violation of the ordinances of the City of South Charleston, West Virginia.

Sec. 7.7. Rules and records of municipal judge.

In the discharge of his duties and in the trial of cases the municipal judge shall follow the rules prescribed by law for criminal proceedings before a justice of the peace of the State of West Virginia. The municipal judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him, and of all trials, fines or sentences imposed or judgments entered by him in a permanent book to be known as the municipal court docket. A record of all entries made in such docket shall be signed by the municipal judge or one filling his office on the date of such entry.

Sec. 7.8. Appeal from judgment of municipal court.

If any person is sentenced to imprisonment, or any person or corporation is assessed with a fine of ten dollars or more, such person or corporation shall be allowed an appeal from said judgment of the municipal judge to the court having jurisdiction over appeals from justices of the peace courts, upon the execution of an appeal bond, with surety deemed sufficient by the municipal judge, conditioned that the appellant will appear before the appellate court on the first day of the next term thereof to answer to the offense with which he is charged and to perform and satisfy any judgment which may be entered against him by the appellate court on such appeal. In no case shall a fine of less than ten dollars be assessed by the municipal judge if the defendant, his agent or attorney object thereto. When the judgment on appeal is against the appellant for any sum of money, judgment shall be rendered by the appellate court against the appellant and those who signed the appeal bond as surety thereon. Before said municipal judge shall accept any natural person as surety upon any bond or recognizance, under the provisions of this section, such surety shall furnish a certified statement of the clerk of the county court of any county in this state, in which such surety owns real estate and shall also file an affidavit, the form of which may be prescribed by the municipal judge, showing the bonds and recognizances upon which he is then surety and the amount of each bond or recognizance. If the amount of such bond or recognizances, together with other bonds and recognizances as shown by the affidavit aforesaid exceeds in amount the assessed value of the surety's property, as shown by the certificate of the clerk of the county court, or if any such bond or recognizances theretofore given by such surety be forfeited and unsatisfied, then such surety shall be disqualified; and if any bond or recognizance be accepted and it subsequently appears that the surety thereon is disqualified, then such bond shall be declared void by the municipal judge, and the person

whose appearance in the appellate court and whose payment of fine and costs are thereby secured, may be forthwith apprehended and committed to jail until a proper bond or recognizance is given; provided, however, that whenever any surety is offered less than one hour before the county clerk's office is closed, such surety shall make an affidavit that he owns real estate in Kanawha County to an assessed value above encumbrance thereon, of at least double the amount of bond required. Any person making, or procuring to be made, a false statement in any such affidavit, with intent to deceive said municipal judge, shall be guilty of perjury. If an appeal be taken, the warrant of arrest, the transcript of the judgment, the appeal bond and other papers of the case shall be forthwith delivered by the municipal judge to the clerk of the appellate court which shall proceed to try the case in accordance with law.

Article VIII. City Treasurer.

Sec. 8.1. Qualifications of city treasurer.

The city treasurer shall have knowledge of accounting and taxation and shall have had experience in budgeting and financial control.

Sec. 8.2. Powers and duties generally of city treasurer.

The city treasurer shall have authority and shall be required, subject to the provisions of general law, to:

- (1) Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to ensure that budget appropriations are not exceeded.
- (2) Maintain a general accounting system for the city and each of its offices, departments and agencies; keep books for and exercise financial budgetary control over each office, department and agency; keep separate accounts for the items of appropriation contained in the city budget, each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it and the unencumbered balance; and require reports of receipts and disbursements from each office, department and agency of the city to be made daily or at such intervals as he may deem expedient;
- (3) Submit to the mayor and council a monthly statement of all receipts, disbursements and unpaid accounts in sufficient detail to show the exact financial condition of the city;
- (4) Prepare for the mayor and council, as of the end of each fiscal year, a complete financial statement and report;
- (5) Supervise and be responsible for all special assessments for the city and give such notice of special assessments as may be required by law;

Sec. 8.4. Payment to city treasurer of fines, etc., received by officer or employee.

All fines and fees received by any officer or employee which belong to the city shall be paid daily to the city treasurer.

Sec. 8.5. City purchasing agent generally.

There shall be established in the office of the city treasurer a city purchasing agent who shall be subject to the supervision and control of the city treasurer. The office of city purchasing agent may be combined with the office of city treasurer. The purchasing agent, pursuant to rules and regulations established by ordinance, shall contract for and purchase all supplies, materials, equipment and service required by each office, department or agency of the city. The city purchasing agent may, by agreement with the state director of purchases, purchase through the state department of purchases or he may make agreements with one or more other municipalities, counties and county boards of education, for centralized purchasing for all governmental units which are parties to such an agreement. The purchasing agent shall also have power and shall be required, subject to the provisions of general law, to:

(1) Obtain and enforce specifications with respect to supplies, materials and equipment required by the city; and

(2) Inspect or supervise the inspection of all deliveries of supplies, materials and equipment, and determine their quality, quantity and conformity with specifications.

Sec. 8.6. Where competitive bidding required.

Before the city purchasing agent may make any purchase of or contract for supplies, materials or equipment in excess of one thousand dollars, he shall give ample opportunity for competitive bidding, under such general rules and regulations, and with such exceptions, as council may prescribe; provided, however, that council shall not except individual contracts, purchases or sales from the requirement of competitive bidding; and provided further, that no purchase of or contract for supplies, materials or equipment in excess of one thousand dollars shall be made by separate purchases or contracts of a lesser amount so as to evade the requirements of competitive bidding prescribed by this section.

Sec. 8.7. Contracts for capital improvements and repairs.

Any capital improvement or repairs costing more than one thousand dollars or any series of capital improvements or repairs constituting essentially a single project and costing in the aggregate more than one thousand dollars, shall be executed by contract except where such improvement is authorized by council to be executed directly by the mayor in conformity with detailed plans, specifications and estimates. All such contracts shall be awarded to

the lowest and best responsible bidder after such public notice and competition as council may prescribe and after a public opening of bids; provided, however, that the council shall have the power to reject all bids for good cause assigned in writing or set forth in the records of the council and advertise again. Alterations in any contract may be made when authorized by council upon the written recommendation of the mayor.

Council, in its discretion, may by resolution increase or decrease the amount of any capital improvements or repairs, or any series of capital improvements or repairs constituting essentially a single project, which shall be subject to the provisions of this article.

Sec. 8.8. Requisition, etc., prerequisite to purchases and contracts.

All purchases made and contracts executed by the city purchasing agent shall be pursuant to a written requisition from the chief of the office, department or agency whose appropriation will be charged, and no contract or order shall be issued to any vendor unless and until the city treasurer certifies that there is to the credit of such office, department or agency a sufficient unencumbered appropriation balance to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued.

Article IX. City Attorney.

Sec. 9.1. Qualifications.

The city attorney shall be an attorney at law and a member of good standing of the West Virginia State Bar.

Sec. 9.2. Powers and duties.

The city attorney shall perform all duties and exercise all powers which shall be conferred upon him by ordinance or resolution of council.

Article X. Department of Public Works.

Sec. 10.1. Establishment of department of public works; chief of public works generally.

There shall be a department of public works, the head of which shall be the chief of public works who shall be appointed by the mayor. The building inspector and supervisor of garage, street and other service employees shall be responsible to the chief of public works unless otherwise prescribed by the mayor.

Sec. 10.2. Powers and duties of chief of public works.

The chief of public works shall, subject to the supervision and control of the mayor:

- (1) Supervise the repair and maintenance of all streets, avenues, alleys, sidewalks and other public ways;
- (2) Supervise the inspection of all building construction and electrical plumbing, sewerage, elevator and related installations, as required by ordinance;
- (3) Supervise the cleaning of streets, removal of ice, snow, leaves and debris, and the collection and disposal of all refuse and garbage;
- (4) Supervise all city garages and repair facilities, and be responsible for the maintenance and repair of all city operated automotive, construction, mechanical, industrial, electrical, communications and similar equipment; and
- (5) Provide or supervise custodial services for all buildings and grounds owned, leased, operated or maintained by this city, except as otherwise provided by law.

Article XI. Personnel.Sec. 11.1. Discrimination against city employees, etc., because of political affiliation, etc.; oath may be required of city employees.

No person in the employ of the city or seeking employment with the city shall be discriminated against because of his race, color, creed or political affiliation. Council may, by appropriate resolution or ordinance, require all employees of the city to take the oath prescribed in section 16.10 of this Charter.

Sec. 11.2. Personnel rules and regulations for city employees.

Except as otherwise provided by general law and by civil service rules or regulations established pursuant thereto, council shall, as soon as practicable after the effective date of this Charter and upon the recommendation of the mayor, adopt, by ordinance or resolution, personnel rules and regulations for all city employees which shall include but not be limited to:

- (1) Job classification and reclassification;
- (2) Examinations;

- (3) Salary and wage schedules;
- (4) Hours of work;
- (5) Promotions, demotions, transfers and dismissals;
- (6) Efficiency ratings; and
- (7) Leaves of absence.

Council may amend such personnel rules and regulations from time to time upon recommendation of the mayor.

Sec. 11.3. Determination and administration of personnel policy; limitation on appointment, etc., of city employees by council and dealings of council with city employees.

Council shall determine all matters of personnel policy and the mayor shall administer such policy. Neither council nor any of its members shall direct, or in any manner interfere with or obstruct the appointment or removal of any city employee except an employee whom council is authorized to employ and remove under the provisions of this Charter. Except for the purpose of inquiry, council and its members shall deal with the administrative service solely through the mayor and neither council nor any member thereof shall give orders to any subordinate of the mayor, either publicly or privately.

Sec. 11.4. Social Security to be provided; workmen's compensation.

Council shall provide Social Security coverage for all eligible city officers and employees. The city shall subscribe to, and pay premiums into, the workmen's compensation fund for the protection of all city employees.

Sec. 11.5. City employees as candidates for city offices.

Other than elected officials of the city, no person who is a candidate for nomination or election to any public office or who holds a public office shall, at the same time, be an employee of the city.

Article XII. Budget.

Sec. 12.1. Fiscal year; budget year; accounting year.

The fiscal year of the city shall begin on the first day of July of each year and shall end on the last day of June of the following calendar year. Such fiscal year shall also constitute the budget and accounting year. As used in this Charter, the term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

Sec. 12.2. Submission of budget; finance and budget committee of council; citizens' advisory committee as to budget and fiscal affairs.

At the time the council is required by general law to hold its first meetings to ascertain the fiscal condition of the city and to make its levy estimates, the mayor shall submit to council a budget in the form and with the contents provided by sections 12.11 to 12.19, inclusive, of this Charter.

There shall be a finance and budget committee of the council which shall consist of three members, who shall be appointed by the president of council. This committee may make such recommendations to council as it may deem advisable, relating to the budget and fiscal affairs of the city.

The mayor, in his discretion, may appoint a citizen's advisory committee to consider and make such recommendations as it deems advisable, relating to the budget and fiscal affairs of the city.

Sec. 12.3. Budget, etc., as public record; preparation of copies of budget for distribution.

The budget and all supporting schedules attached thereto shall be a public record in the office of the city clerk open to public inspection. The mayor shall cause sufficient copies of the budget to be prepared for distribution to interested persons prior to the public hearing provided for in section 12.4 of this Charter.

Sec. 12.4. Public hearing on submitted budget and publication of notice thereof.

The council shall hold a public hearing on the budget submitted by the mayor at any time not less than ten days prior to the date council is required by general law to enter its final levy order. All interested persons shall be given an opportunity to be heard for or against any item or expenditure. Council shall cause a notice of the time and place of such public hearing to be published not less than five days prior to the holding thereof in two newspapers of opposite political affiliation having a general circulation in the city.

Sec. 12.5. Revision of budget after public hearing.

After the conclusion of such public hearing, and on or before the date council is required by general law to enter its final levy order, council may revise such budget as it deems advisable, subject to the provisions of general law.

Sec. 12.6. Approval of budget generally; quorum of council for approval, etc., of budget, etc.

The budget for each budget year shall be approved by council by the affirmative votes of at least a majority of all the elected or appointed members of council on or before the date it is required by general law to enter its final levy order.

For the purposes only of approving and adopting its budget and entry of its final levy order, two-thirds of all the elected or appointed members of the council shall constitute a quorum.

The budget shall be submitted to the state tax commissioner for his approval as required by the provisions of general law.

Sec. 12.7. Procedure as to estimates and levies.

Council shall, in the manner provided by general law and based strictly on the items contained in the budget previously approved, make its levy estimates, hear objections to the proposed levies, and, after reconsidering the estimates and levies in light of such objections, if any, enter its levy order. If any objections to the proposed estimates and levies are sufficient in law and require changes in the budget previously approved, such changes shall be made in the budget, and the budget shall be amended to that extent.

Council, however, shall not enter its levy order until it has been approved by the state tax commissioner as required by the provisions of general law.

Sec. 12.8. Adoption of budget generally; vote on adoption of budget, etc.

At the same time council shall enter its final levy order, it shall adopt the budget on which such levy order is based. The adoption of the budget by council and entry of its final levy order shall be by the affirmative votes of at least a majority of all the elected or appointed members of council.

Sec. 12.9. Term of effectiveness of budget; certification and filing of budget; availability of copies of budget.

Upon adoption, the budget shall be in effect for the budget year. A copy of the budget, as adopted, shall be certified by the mayor and city clerk and filed in the office of the city treasurer. The budget so certified shall be printed, mimeographed, or otherwise reproduced and sufficient copies thereof shall be made available for the use of all offices, departments and agencies of the city and for the use of interested persons and civic organizations.

Sec. 12.14. What to be included in miscellaneous revenues.

Miscellaneous revenues shall include anticipated revenues from the collection of taxes other than property taxes, the amount of state aid to be received, the amount by which the city is expected to benefit from taxes other than property taxes collected by the state or county, the amounts estimated to be received from services and sales, fines and forfeitures, and any other special or non-recurring sources.

Sec. 12.15. Limitation on inclusion of miscellaneous revenue as anticipated revenue.

No miscellaneous revenue from any source shall be included as anticipated revenue in the budget in an amount in excess of the average of the amount actually realized in cash from the same source in the next preceding fiscal year, and that actually realized during the current fiscal year to the time of preparing the budget plus that to be received in the remaining months of the year estimated as accurately as may be, unless the mayor shall determine that the facts clearly warrant the expectation that such excess amount will actually be realized in cash during the budget year and shall certify such determination in writing to council.

Sec. 12.16. Limitation on inclusion of new revenue as anticipated revenue.

No revenue from a new source not previously stated in the budget shall be included unless the mayor shall determine that the facts clearly warrant the expectation that such revenue will be actually realized in cash during the budget year in the amount stated and shall certify such determination in writing to council.

Sec. 12.17. Comparison of items of anticipated revenue with other years.

In parallel columns opposite each item of anticipated revenue there shall be placed the amount of such item in the budget of the last completed fiscal year, the amount of such item actually received during such year, the amount of such item in the budget of the current fiscal year and the amount of such item actually received to the time of preparing the budget plus receipts for the remainder of the current fiscal year estimated as accurately as may be.

Sec. 12.18. Items for which budget to make provision.

To the extent permitted by general law, the budget shall make provision for the following items:

- (1) Interest, amortization and redemption charges on the public debt for which the faith and credit of the city is pledged;
- (2) Other statutory expenditures;

- (3) The payment of all unsatisfied judgments;
- (4) Administration, operation and maintenance of each office, department or agency of the city itemized by character and object of expenditure;
- (5) Contingent expense, in an amount not exceeding five per centum of the total amount stated pursuant to subsection (4) of this section;
- (6) Expenditures proposed for capital projects; and
- (7) Capital reserve fund if council has established such fund as provided by general law.

Sec. 12.19. Comparison of items of proposed expenditures with other years.

In parallel columns opposite each item of proposed expenditure, there shall be placed the amount of such item in the budget of the last completed fiscal year, the amount of such item actually expended during such year, the amount of such item in the budget of the current year and the amount of such item actually expended to the time of preparing the budget plus the expenditure for the remainder of the current fiscal year estimated as accurately as may be.

Sec. 12.20. Allotment of appropriations for work programs of departments, etc.

Immediately following approval of the budget, the head of each office, department or agency shall submit to the mayor proposed allotments of the appropriations for the work programs of such office, department or agency, by quarterly periods, for the entire budget year. The mayor shall review the proposed allotments in the light of the work programs of the office, department or agency concerned, and may revise, alter or change such allotments before approving the same.

Sec. 12.21. Further provisions as to work programs and allotments for departments, etc.; authorization of expenditures for departments, etc.

The mayor shall file a copy of the work program allotments with the city treasurer, who shall authorize all expenditures for the offices, departments and agencies to be made from the appropriations on the basis of approved allotments and not otherwise. An approved allotment may be revised during the budget year in the same manner as the original allotment was made. If, at any time during the budget year, the mayor shall ascertain that the available revenues, plus the beginning balance, for the year will be less than the total appropriations, he shall reconsider the work programs and allotments of the several offices, departments and agencies and revise the allotments so as to forestall the making of expenditures in excess of such revenues.

Sec. 12.22. Transfer of unencumbered balance of appropriations.

The mayor may at any time transfer any unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department or agency, subject to the approval of the state tax commissioner. At the request of the mayor and within the last three months of the budget year, council may by resolution transfer any unencumbered appropriation balance or portion thereof from one office, department or agency to another, subject to provisions of general law. No transfer, however, shall be made from the appropriations required by subsections (1), (2) and (3) of section 12.18 of this Charter.

Sec. 12.23. Lapsing of appropriations.

All appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully encumbered.

Sec. 12.24. Appropriations prerequisite to certain contracts, etc.

Neither council nor any office, department or agency shall, during any budget year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, for any purpose, in excess of the amount appropriated for the general budget classification of such expenditure. Any contract, verbal or written, made in violation of this section shall be null and void. Any officer or employee of the city who shall violate this section shall, in addition to any penalties imposed by ordinance or by general law, be removed from his office or employment. Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for services for a period exceeding the budget year in which such contract is made, when such contract is permitted by law and funds have been budgeted for payments required by such contract during the current budget year.

Sec. 12.25. Budget to be headed by budget summary.

At the head of the budget there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, and by principal expenditures of each office, department and agency in such a manner as to present to the taxpayers a simple and clear summary of the detailed estimates of the budget.

Article XIII. Wards.Sec. 13.1. Division of city into wards generally; authority of council as to ward boundaries; abolition and consolidation of wards; new wards consequent upon extension of limits; division of wards.

The city shall be divided into wards, the future boundaries of which may be determined by the council. Subject to general law, the council may establish new wards and divide and change the boundaries of wards; provided, however, that each ward must be composed of contiguous territory. In fixing ward boundaries, the council shall take into consideration the boundaries of the voting precincts as determined by the county court of Kanawha County. Each new ward shall be entitled to choose one new member of the council unless the number of registered voters exceeds one thousand five hundred in which case two council members shall be elected.

If at any time the registered voters of any ward shall be less than seven hundred fifty it shall cease to be a ward, and council, by ordinance, shall consolidate such ward with the smallest ward adjacent thereto. The councilman holding office at the time of such consolidation shall continue to hold office until the expiration of his term of office with the status of councilman at large.

Whenever by the extension of the corporate boundaries of the city a new ward is created as part of the city, such new ward shall have representation in the council, and within thirty days after the ordinance creating such new ward takes effect, the council shall proceed to elect one qualified resident thereof as a member of said council to hold office until the next general election. In order for new territory to qualify as a new ward, it must consist of not less than one thousand two hundred registered voters. Otherwise, said new territory shall become a part of the smallest ward adjacent thereto.

The council shall not divide any ward into two wards unless the ward to be so divided contains at least three thousand registered voters.

Sec. 13.2. Division of city into six wards; representation of wards upon council generally; listing of wards and corresponding precincts; limitation on additional council members, etc.

Upon the effective date of this Charter, the city shall be divided into six wards with council representation as follows: One councilman for wards of one thousand five hundred registered voters or less; two councilmen for wards of

more than one thousand five hundred registered voters. The six wards, and the corresponding precincts as presently established by the county court of Kanawha County, shall be as follows:

- First ward..... Precincts nos. 185, 186, 191 and 307
- Second Ward..... Precincts nos. 187, 188, 189 and 190
- Third ward..... Precincts nos. 192, 193 and 195
- Fourth ward..... Precincts nos. 196, 197 and 198
- Fifth ward..... Precincts nos. 194, 200 and 308
- Sixth ward ..... Precincts nos. 199, 201 and 309

No additional council member or members shall be appointed or elected by council and no vacancy shall exist therein as a result of the above ward representation until the first election to be held under this Charter in the year 1964 at which time such additional council member or members shall be nominated and elected at the first primary and general election to be held in the year 1964 under article XIV of this Charter.

Article XIV. Nominations and Elections.

Sec. 14.1. When primary and general elections to be held; term of city officials elected under Charter, etc.

The first primary election under these Charter amendments for the nomination of candidates for election to the municipal offices provided for in this Charter shall be held on the third Tuesday in April in the year 1968.

The next primary election for nomination of candidates for election to the municipal offices provided for in this Charter shall be held on the third Tuesday in April in the year 1971 and subsequent primary elections shall be held on the third Tuesday in April in each fourth year thereafter.

The first general election under these Charter amendments shall be held on the first Tuesday in June in the year 1968. The next general election shall be held on the first Tuesday in June in the year 1971 and subsequent general elections shall be held on the first Tuesday in June in each fourth year thereafter.

The term of office of all municipal officers first elected under these Charter amendments at the general election held on the first Tuesday in June, 1968, except city executive members, shall be for a period of three years commencing upon July 1, 1968, and continuing until the thirtieth day of June, 1971, or as soon thereafter as their respective successors shall have been elected or appointed and qualified.

Except for the municipal officers first elected under these Charter amendments at the general election held on the first Tuesday in June in the year 1968, the term of office of all municipal officers elected under this Charter and these Charter amendments, except members of the city executive

committees, shall be for a term commencing on the first day of July in each election year provided for herein and continuing for a period of four years, or until such time thereafter as their respective successors shall have been elected or appointed and qualified.

The terms of office of members of the city executive committees first elected under these Charter amendments at the primary election held on the third Tuesday in April in the year 1968 shall be for a period of three years and thereafter for a period of four years. (Ord. No. 1040, § 3.)

*Editor's note.--The "Charter amendments" here referred to are those effected by Ordinance No. 1040.*

Sec. 14.2. Nomination of candidates by primary election, etc.; who considered a qualified party; limitations on voting in primary election; city executive committees of political parties; qualifications for councilman, etc.

Nominations for office shall be made by a primary election to be held on the dates set forth in section 14.1. In the event no nominee files for any office, or should any nominee resign or be prevented by death or disability from running for any office, a candidate therefor may be named by the executive committee of his respective party, and such candidate shall be certified by the chairman of such executive committee to the city clerk at least ten days prior to the general election. Any qualified person may become a candidate for any office in the primary election by filing therefor with the city clerk at least thirty days prior to the date of such primary election and paying to the said city clerk such filing fee as may be set out by the council and by completing and filing with said city clerk a statement in substantially the following form:

STATEMENT OF CANDIDATE

"STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, (write name as you wish it to appear on ballot), being first duly sworn, say that I reside at ..... Street, in the ..... Ward of the City of South Charleston, County of Kanawha, State of West Virginia; that at the date of the forthcoming general election, I will have resided therein for a period of more than three years prior to the said general election, (and if a candidate for ward councilman, I will have resided in the said ward for a period of one year prior to the said general election); that I am a candidate for nomination to the office of (mayor, city clerk, municipal judge, executive committee, councilman for the .....), to be voted for at the primary election to be held on the third Tuesday in April, 19.... and I hereby

request that my name be printed upon the official primary ballot for nomination at such primary election for such office, as a member of the ..... Party.

.....  
(Signature of Candidate)

Subscribed and sworn to (or affirmed) before me by (Name of Candidate), on this ..... day of ....., 19....

My commission expires .....

.....  
(Notary Public or any other officer authorized to take oaths under the laws of the State of West Virginia

State title of officer here.....)"

Qualified parties as prescribed by state statutes shall be considered as qualified parties in a city municipal election.

Each voter shall cast his ballot in the primary election only for the candidates of the party with which the voter is registered.

The city executive committees of the two political parties which cast the largest and second largest number of votes in the state at the last preceding general election of the State of West Virginia shall each consist of one male person and one female person from each of the wards of the city. The members of said committees shall be elected at the city primary election and their terms of office, after the 1971 primary election, shall be for a period of four years beginning after the results of such primary election are duly certified. Vacancies in a committee shall be filled, and members to represent newly created wards, shall be elected by the committee to serve until the next city primary election.

Only citizens entitled to vote and residents and voters of their respective wards and districts and having the proper qualifications hereinbefore provided shall be eligible to be elected to the office of councilman and executive committee from their respective wards and districts, and each councilman and member of the executive committee so elected from a ward shall continue to be a resident of the ward from which he is elected during the entire term of his office. (Ord. No. 1040.)

Sec. 14.3. City election commission.

The city clerk, while holding such office, and two qualified electors appointed by council, one to be designated by each of the city executive committees of the two political parties which cast the largest and second largest number of votes in the state at the last preceding general election of the State of West Virginia, shall constitute the election commission of the city. Council shall make its appointments to the election commission not less than forty-five days before the first primary election to be held under this Charter and each subsequent council shall make its appointments to the election commission within a year after such council takes office, and the election commissioners so appointed shall hold office at the will and pleasure of council. It shall be the duty of the election commission to prepare the ballot for the election and to cause the same and all other election supplies and materials to be made available for the election. It shall be the duty of the city executive committees to nominate qualified electors to serve as precinct election officials during a municipal election. The city executive committees shall submit their nominations to council not less than thirty days prior to the holding of the election in which the election officials are to serve.

Not less than ten days prior to any election, the city clerk shall cause a sample ballot showing the names of all the candidates seeking nomination or election to any office to be published in two newspapers of opposite political affiliation having general circulation in the city.

The members of the election commission shall receive such compensation as may be determined by council not to exceed one hundred dollars for each election.

Sec. 14.4. Where primary and general elections held; appointment of election officials.

The council shall meet in special session not less than twenty days prior to the holding of any election, and fix the place or places within the city where such election shall be held and at such meeting the council, after determining that the qualified electors nominated by the city executive committees are duly qualified as prescribed by general law, shall appoint the qualified persons nominated by the city executive committees. In the event council shall determine that any person nominated is not qualified to serve as an election official, or in the event any person appointed by council shall refuse to serve as an election official, council shall proceed to fill the vacancy with a qualified person of the same political affiliation as the original appointee.

Sec. 14.5. Uniform election board for each voting precinct.

A uniform election board, consisting of three commissioners and two clerks, shall be appointed as aforesaid to serve in each voting precinct of the city during a municipal election; provided, however, that council may appoint as aforesaid two such election boards for any precinct in the city in which more than four hundred registered voters reside.

The commissioners and clerks shall receive such compensation as may be determined by council, not to exceed the compensation payable under general law to precinct election officials serving during a general election.

Sec. 14.6. Procedure as to registration records, ballots, etc.; canvassing of election and declaration, etc., of result.

At least three days before the date of a municipal election, the city clerk shall procure from the clerk of the county court of Kanawha County the necessary registration records and shall deliver them, together with the ballots and other election supplies, to designated election officials in each precinct. The election officials shall as soon as possible after the closing of the polls on election day return to the city clerk the ballots, tally sheets, certificates of the result of the election, registration records, poll books, ballot boxes and other election supplies. On the first Monday following the election, council shall canvass the returns of the election and declare and certify the result within five days thereafter.

Sec. 14.7. Decision on tie vote for elective office.

Whenever two or more persons receive an equal number of votes for any elective office, such tie shall be decided by the council in existence at the time the election is held; provided, that the council in office at the time of the institution of such contest proceeding shall hold over and remain in office for the purpose of passing upon and deciding such contest, and for such purposes only; and nothing herein provided shall be construed to interfere with the duties, powers and authority of the new or incoming council.

Sec. 14.8. Procedure as to contested elections.

All contested elections shall be heard and determined by the council in existence at the time the election is held, and the contest shall be made and conducted in the manner as provided for in contests for county and district officers, and the council by their proceedings in such cases shall, as nearly as practicable, conform with the like proceedings of the county court in such cases.

Sec. 14.9. Applicability of general election laws.

Except as otherwise provided in this Charter, municipal elections shall be conducted and the results determined and certified in accordance with the provisions of general law governing the conduct of general elections so far as such law is applicable. If not inconsistent with this Charter, the duties imposed by such general laws upon county clerks and circuit clerks shall devolve upon the city clerk, the duties imposed by such laws upon county courts shall devolve upon council and the duties imposed by such laws upon the ballot commission shall devolve upon the election commission.

Sec. 14.10. Absentee voting.

Council shall, by ordinance, provide for absentee voting in all municipal elections.

Article XV. Initiative, Referendum and Recall.

Sec. 15.1. Power of initiative.

The qualified electors shall have power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. Any initiated ordinance may be submitted to council by a petition signed by qualified electors of the city equal in number to at least ten per centum of the registered voters at the last general municipal election.

Sec. 15.2. Power of referendum.

Except as prohibited by general law, the qualified electors shall have power to approve or reject at the polls any ordinance passed by council, or any ordinance submitted by council to a vote of the qualified electors, such power being known as the referendum. Ordinances submitted to council by initiative petition and passed by council without change shall be subject to the referendum in the same manner as other ordinances. Within thirty days after the enactment by council of any ordinance which is subject to a referendum, a petition signed by qualified electors equal in number to at least ten per centum of the registered voters at the last general municipal election may be filed with the city clerk requesting that such ordinance be either repealed or submitted to a vote of the qualified electors.

Sec. 15.3. Form and contents of, and signatures to, initiative or referendum petition; committee of petitioners.

All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer of a petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place, and his precinct number, if known. There shall appear on each petition the names and addresses of the same five electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and only he, personally circulated the foregoing paper, that it bears a stated number of signatures, that all the signatures appended thereto were made in his presence, and that he believes them to be the genuine signatures of the persons whose names they purport to be.

Sec. 15.4. Filing, examination and certification of initiative or referendum petitions.

All petition papers comprising an initiative or referendum petition shall be assembled and filed with the city clerk as one instrument. Within twenty days after a petition is filed, the city clerk shall determine whether there is attached to each paper of the petition a proper statement of the circulator and whether the petition is signed by a sufficient number of qualified electors. The city clerk shall declare any petition paper entirely invalid which does not have attached thereto an affidavit signed by the circulator thereof. If a petition paper is found to be signed by more persons than the number of signatures certified by the circulator, the last signatures in excess of the number certified shall be disregarded. If a petition paper is found to be signed by fewer persons than number certified, the signatures shall be accepted unless void on other grounds. After completing his examination of the petition, the city clerk shall certify the result thereof to council at its next regular meeting. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

Sec. 15.5. Amendment of initiative or referendum petition.

An initiative or referendum petition may be amended at any time within ten days after the notification of insufficiency has been sent to the committee of the petitioners by the city clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The city clerk shall, within five days after such an amendment is filed, examine the amended petition and, if the petition is still insufficient, he shall file his certificate to that effect in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

Sec. 15.6. Approval of ordinance by electors prerequisite to its going into effect when referendum petition has been certified.

When a referendum petition, or amended referendum petition as defined in section 15.5 of this Charter, has been certified as sufficient by the city clerk, the ordinance specified in the petition shall not go into effect, or, if it has gone into effect, further action thereunder shall be suspended until and unless such ordinance is approved by the electors, as hereinafter provided.

Sec. 15.7. Consideration by council of certified initiative or referendum petition.

Whenever council receives a certified initiative or referendum petition from the city clerk, it shall proceed at once to consider such petition. A pro-

posed initiated ordinance shall be read and provision shall be made for a public hearing upon the proposed ordinance. Council shall take final action on the ordinance not later than sixty days after the date on which such ordinance was submitted to council by the city clerk. A referred ordinance shall be reconsidered by council and its final vote upon such reconsideration shall be upon the question, "Shall the ordinance specified in the referendum petition be repealed?"

Sec. 15.8. Submission of certain ordinances to electors generally.

If council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor, or if council fail to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the qualified electors not less than thirty days nor more than one year from the date council takes its final action thereon, but if no regular election is to be held within such period, council shall provide for a special election to be held within ninety days from the date on which council took its final action thereon.

Sec. 15.9. Ballots and voting when certain ordinances are submitted to electors.

Ordinances submitted to vote of the qualified electors in accordance with the initiative and referendum provisions of this Charter shall be submitted by ballot title, which shall be prepared in all cases by the city attorney. The ballot title may be different from the legal title of any such initiated or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance. The ballot used in voting upon any ordinance, if a paper ballot, shall have below the ballot title the following propositions, one above the other, in the order indicated: "For the Ordinance" and "Against the Ordinance." Immediately at the left of each proposition there shall be a square in which by making a cross (X) the qualified elector may vote for or against the ordinance. Any number of ordinances may be voted on at the same election and may be submitted on the same ballot, but any paper ballot used for voting thereon shall be for that purpose only. If voting machines are used, the ballot title of any ordinance shall have below it the same two propositions, one above the other or one preceding the other in the order indicated, and the qualified elector shall be given an opportunity to vote for either of the two propositions and thereby to vote for or against the ordinance.

Sec. 15.10. Effect of results of election when certain ordinances are submitted to electors.

If a majority of the qualified electors voting on a proposed initiated ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the city. A referred ordinance which is not approved by a majority of the qualified electors voting thereon shall thereupon be deemed repealed. If conflicting or-

ordinances are approved by the qualified electors at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Sec. 15.11. Publication, alteration or repeal of certain ordinances.

An initiated and referred ordinance adopted or approved by the qualified electors shall be published, and such ordinance shall not be altered or repealed within six months from its effective date by the council nor thereafter except by vote of three-fourths of all members of the council. The council may submit the question of the amendment or repeal of such ordinance to the voters as provided in section 15.8 of this Charter.

Sec. 15.12. Recall--Power of electors.

The qualified electors shall have the power to recall any elective officer whether elected by popular vote or selected to fill a vacancy, and may exercise such power by filing with the city clerk a petition signed by qualified electors of the city equal in number to at least twenty per centum of the registered voters at the last general municipal election. The petition shall be signed and verified in the manner required for an initiative petition, shall contain a demand for the removal of the elective officer, and shall contain a general statement of the reasons for which the removal is sought.

Sec. 15.13. Same--Election under petition.

The city clerk shall, in the manner provided in sections 15.4 and 15.5 for initiative and referendum petitions, certify to council the sufficiency of the recall petition. Thereafter, council shall cause a special election to be held in not less than forty-five days nor more than ninety days from the date of such certification unless the general municipal election shall occur within one hundred twenty days from such date. The published notice of such special election shall contain the reasons for demanding the recall in not more than two hundred words and a justification by the elective officer within the same limits; provided, however, that if the petition seeks to recall more than one councilman, each councilman may provide a justification of not more than one hundred words. Ballots shall be in the following form:

"Shall ..... be removed from the elective office of  
..... of the City of South Charleston?  
[ ] For the recall of .....  
[ ] Against the recall of ....."

Upon certification by council of the results of the election, if a majority of those voting on the question have favored recall, the office of the elective officer so recalled shall be vacant. Provisions of this Charter with respect to general municipal elections shall determine election procedure insofar as applicable; provided, however, that only persons who are qualified electors of the official involved shall be eligible to vote for his recall.

Sec. 15.14. Same--Filling council vacancy in case of.

When a vacancy occurs as the result of a recall election or when an elective officer resigns after a recall petition certified by the city clerk to be sufficient is presented to council, the vacancy shall be filled in accordance with the provisions of section 3.4 of this Charter; provided, however, that in the event of the simultaneous recall of two or more councilmen, the remaining members of council shall immediately cause a special election to be held in not less than forty-five days nor more than ninety days from the date of certification of the results of the recall election unless the general municipal election shall occur within one hundred twenty days.

Sec. 15.15. Same--Limitations.

No recall petition shall be filed against an elective officer within six months after he takes office, and no elective officer shall be subjected to more than one recall election during a term of office.

Article XVI. General Provisions.

Sec. 16.1. Claims against the city.

No action shall be maintained against the City of South Charleston for damages for a personal injury, death or injury to property alleged to have been sustained by reason of the negligence of the city or of any officer, agent or employee thereof, unless a written verified statement of the nature of the claim and of the time and place at which such injury or property damage is alleged to have occurred, or death caused, shall have been filed with the city clerk within thirty days after the cause of action shall have accrued. The cause of action shall be deemed to have accrued at the date of the damage to property or the sustaining of the injury, except that where death results therefrom, the time for the personal representative to give notice shall run from the date of death. An action at law for damages for personal injuries or death or injury to property shall not be commenced until the expiration of thirty days after the filing of the notice as provided in this section.

Sec. 16.2. Immunity of elective officers.

Officers of the city shall be immune from suit for any acts done in their official capacity, to the extent provided for in the statutes and laws of the State of West Virginia, as interpreted by the decisions of the supreme court of appeals of West Virginia.

Sec. 16.3. Limitation on compensation of city officers or employees.

No officer or employee of the city shall be entitled to receive compensation for more than one position in the city government even though he performs the duties of two or more positions therein unless specifically approved by council.

Sec. 16.4. Qualifications and responsibilities of the chief of police.

The chief of police shall be a person of proved executive and administrative ability, with experience and training in law enforcement. Subject to the direction and control of the mayor, the chief of police shall be responsible for the supervision and administration of the police department, and shall require of all police officers the proper discharge of their duties. He shall see to the protection of property and the preservation of peace, order and public safety throughout the city, and to that end he shall cause all violators of the city ordinances and of general law to be apprehended and brought to trial before the municipal court or other proper tribunal. Under the direction of the mayor, he shall also perform such other duties as may be required of him by this Charter, by general law, or by city ordinances or order of the mayor not inconsistent with this Charter or with general law.

Sec. 16.5. Qualifications and responsibilities of the chief of fire department.

Subject to the civil service statutes, the chief of the fire department shall be a person of proved executive and administrative ability, with experience and training in the suppression and prevention of fires. Subject to the direction and control of the mayor, the chief of the fire department shall be responsible for the supervision and administration of the fire department, and shall require of all firemen the proper discharge of their duties. He shall make such inspections of buildings and property throughout the city as may be necessary to discover fire hazards, shall take all proper measures to eliminate such hazards, and shall keep an accurate record of all fires, inspections and fire hazards within the city. Under the direction of the mayor, he shall also perform such other duties as may be required of him by this Charter, by general law, or by city ordinances or order of the mayor not inconsistent with this Charter or with general law.

Sec. 16.6. Inspection by citizens of records and accounts of departments, etc., of city.

All records and accounts of every office, department or agency of the city shall be open to inspection by any citizen, any representative of a civic organization or any representative of the press at all reasonable times and under reasonable regulations established by council, except records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish; provided, however, that in carrying out the provision of this section, the tax return, or any part thereof, of any individual, firm or corporation shall not be made public nor shall statistics or information concerning the personal affairs of any individual or the business of any single firm or corporation be disclosed.

Sec. 16.7. Financial interest of council member, etc., in contract, etc.

No member of council or city employee shall take any official action on any contract or other matter in which he has any direct or indirect financial interest other than the common public interest. Any wilful violation of this section shall constitute malfeasance in office, and any member of council or employee of the city found guilty shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the city shall render the contract voidable.

Sec. 16.8. Use of local labor in performance of certain contracts.

Council may require that the specifications of a contract for the construction of any public work or the installation of any street or sewer provide that the person with whom such contract is entered into shall employ as laborers or personnel thereon persons who reside in the city if such laborers or personnel of the requisite skill be available within the city at the customary and prevailing scale of wages in the city for like or similar work.

Sec. 16.9. Bond required of certain city officers and personnel.

Before entering upon the duties of their employment, the mayor, municipal judge, city treasurer, city clerk, and such other personnel of the city as council may require so to do, shall give bond for the faithful performance of their duties, payable to the State of West Virginia in such amount and with such corporate surety as may be approved by council. Council may provide for obtaining a blanket bond covering all city employees, designating specific employees whose bond shall be in excess of the amount of the blanket bond. The premiums on such bond or bonds shall be paid by the city after it has been ascertained that the premiums are not in excess of the premium scheduled filed by the bonding company with the insurance commissioner of West Virginia. All bonds shall be subject to approval of the city attorney as to form and substance, and, when so approved, shall be endorsed with his signature.

Sec. 16.10. Oath and qualification of certain officers.

Each elective and appointive officer shall, before entering upon his duties, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city clerk:

"I solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of South Charleston, and will faithfully discharge the duties of ..... to the best of my skill and judgment."

When an officer or employee of the city shall have filed such oath with the city clerk and shall have given bond as required by law, he shall be considered as having qualified for the position to which he was elected or appointed; provided, however, that if any person so elected or appointed shall not qualify in the manner herein prescribed within twenty days after he shall have been officially declared elected or appointed thereto, said position shall by reason thereof become vacant.

Sec. 16.11. Article and section titles.

The article and section titles or headings in this Charter are intended for convenience only and shall be construed as mere catchwords to indicate the contents of the article or section and shall not be deemed or taken to be a part of the article or section.

Sec. 16.12. Separability clause.

If any article, section, subsection, paragraph, sentence or clause of this Charter is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality or application of any other portion of this Charter.

Article XVII. Succession in Government.

Sec. 17.1. Effective date of Charter; continuation in office of mayor, municipal judge, council members, etc.

This Charter shall become effective on the first day of July, 1963. The mayor, municipal judge and members of council holding office at the time this Charter takes effect shall continue in such offices and shall exercise such powers and duties as are given to such offices by this Charter. The city recorder holding office at the time this Charter takes effect shall hold the office of city clerk under this Charter and shall exercise such powers and duties as are given to such office by this Charter. Said mayor, municipal judge, city clerk, and members of council shall so serve until July 1, 1964, at which time their terms of office shall cease.

Sec. 17.2. Continuation in office of persons holding administrative positions; continuity of city departments, etc., generally.

All persons holding administrative positions in the city government at the time this Charter takes effect shall continue in such positions and in the performance of their duties until dismissed or removed as provided in this Charter. The powers conferred and the duties imposed upon any office, department or agency of the city by general law shall, if such office, department or agency be abolished by this Charter, or under its authority, be thereafter exercised and discharged by the office, department or agency designated by council unless otherwise provided in this Charter.

Sec. 17.3. Further provisions as to continuity of city departments, etc.

Any office, department or agency provided for in this Charter with a name or with powers and duties the same or substantially the same as those of an office, department or agency heretofore existing shall be deemed to be a continuation of such heretofore existing office, department or agency. Any provision in any law, rule, regulation, contract, grant or other document relating to such heretofore existing office, department or agency shall, so far as not inconsistent with the provisions of this Charter, apply to such office, department or agency provided for by this Charter.

Sec. 17.4. When certain acts to be done.

All acts required by this Charter to be done prior to the month and day on which the first council elected under this Charter holds its first meeting shall, if feasible, be done, in the first fiscal year, as soon as practicable after such first meeting.

Sec. 17.5. Transfer of records and property.

All records, property and equipment whatsoever of any office, department or agency or part thereof, all the powers and duties of which are assigned to any other office, department or agency by this Charter, shall be transferred and delivered to the office, department or agency to which such powers and duties are so assigned. If part of the powers and duties of any office, department or agency or part thereof are by this Charter assigned to another office, department or agency, all records, property and equipment relating exclusively thereto shall be transferred and delivered to the office, department or agency to which such powers and duties are so assigned.

Sec. 17.6. Pending actions and proceedings.

No action or proceeding, civil or criminal, pending at the time this Charter takes effect, brought by or against the city or any office, department or agency or officer thereof, shall be affected or abated by the adoption of this Charter or by anything herein contained; and no such action or proceeding shall abate by reason of the fact that functions, powers and duties of any office, department or agency or officer party thereto may by or under this Charter be assigned or transferred to another office, department or agency or officer, but in that event the same may be prosecuted or defended by the head of the office, department or agency to which such functions, powers and duties have been assigned or transferred by or under this Charter.

Sec. 17.7. Assurance of continuity of local government in national emergency.

The council shall adopt appropriate legislation to assure continuity of the local government in the event of a national emergency as prescribed by state and federal statutes.

Sec. 17.8. Continuation of ordinances, etc., conflicting with Charter.

All existing ordinances and resolutions and all existing administrative rules, regulations and practices that are inconsistent or in conflict with this Charter shall, unless sooner repealed or modified, continue in full force and effect for a period of sixty days and at the end of that period shall, to the extent of such inconsistency or conflict, be of no further force or effect.

ORDINANCE NO. 1040

AN ORDINANCE AND RESOLUTION AMENDING THE CHARTER OF THE CITY OF SOUTH CHARLESTON, A MUNICIPAL CORPORATION, IN KANAWHA COUNTY, WEST VIRGINIA, AS THE SAME IS CONSTITUTED UNDER THE STRONG-MAYOR PLAN CHARTER ADOPTED BY THE VOTERS OF THE CITY OF SOUTH CHARLESTON ON APRIL 9, 1963, PURSUANT TO THE PROVISIONS OF CHAPTER 8-A, OF THE OFFICIAL CODE OF WEST VIRGINIA OF 1931, AS AMENDED, AND SPECIFICALLY BY AMENDING AND RE-ENACTING SEC. 3.1, ELECTIVE OFFICERS, AND SEC. 3.2, QUALIFICATIONS OF ELECTIVE OFFICERS, OF ARTICLE III, MUNICIPAL OFFICERS, BY PROVIDING THAT THE FIRST OFFICERS ELECTED UNDER SAID PROPOSED CHARTER AMENDMENTS SHALL SERVE FOR A TERM OF THREE YEARS, BEGINNING JULY 1, 1968, AND ENDING JUNE 30, 1971, AND BEGINNING IN THE YEAR 1971, SAID ELECTIVE OFFICERS SHALL BE ELECTED FOR A TERM OF FOUR YEARS; AND BY REDUCING THE RESIDENTIAL REQUIREMENTS OF ELECTIVE OFFICERS FROM FIVE YEARS TO THREE YEARS; AND BY AMENDING AND RE-ENACTING SEC. 14.1, PRIMARY AND GENERAL ELECTIONS; TERM OF OFFICE OF CITY OFFICIALS, AND SEC. 14.2, NOMINATIONS OF CANDIDATES BY PRIMARY ELECTION; QUALIFIED PARTIES; VACANCY ON EXECUTIVE COMMITTEES AND COUNCIL; ELIGIBILITY FOR EXECUTIVE COMMITTEES AND COUNCIL OF ARTICLE XIV, NOMINATIONS AND ELECTIONS, BY PROVIDING FOR THE NOMINATION OF THE FIRST OFFICERS TO BE NOMINATED UNDER THESE PROPOSED CHARTER AMENDMENTS AND REDUCING THE REQUIREMENTS OF BEING A RESIDENT IN THE FORM, STATEMENT OF CANDIDATE, FROM FIVE YEARS TO THREE YEARS, AND BY PROVIDING FOR A HEARING ON SAID PROPOSED CHARTER AMENDMENTS, PUBLICATION OF NOTICE OF SUCH HEARING, AND AUTHORIZING TRANSCRIPTS OF THE AMENDING PROCEDURE TO BE CERTIFIED TO THE CLERK OF THE HOUSE OF DELEGATES AND CLERK OF THE COUNTY COURT OF KANAWHA COUNTY, AND PROVIDING THE EFFECTIVE AND OPERATIVE DATE OF SAID CHARTER AMENDMENTS.

WHEREAS, the Charter Board of the City of South Charleston, West Virginia, after due consideration, made a recommendation to the Council of the City of South Charleston that certain amendments be made to the Charter of said City; and

WHEREAS, the Council of said City has considered said proposed amendments to said Charter and deem it expedient to amend the Charter of the City of South Charleston as proposed by said Charter Board of the City of South Charleston,

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE COUNCIL OF THE CITY OF SOUTH CHARLESTON:

FIRST: That the City of South Charleston, a municipal corporation, Kanawha County, West Virginia, is a Class II City as defined by Section 4, Article 1, Chapter 8-A, of the Official Code of West Virginia of 1931, as amended, said City having a population between ten thousand and fifty thousand persons;

SECOND: That the Council of the City of South Charleston is authorized and empowered, as a Class II City, pursuant to Section 15-A, Article 2, Chapter 8-A, Official Code of West Virginia of 1931, as amended, to amend its said Charter; and

THIRD: That the Charter of the City of South Charleston, as adopted by the electors of said City on April 9, 1963, pursuant to the provisions of Chapter 8-A of the Official Code of West Virginia of 1931, as amended, and as otherwise amended and effected by the Acts of the Legislature relating to municipalities, be amended, each of said proposed amendments in full, as follows:

FIRST PROPOSED AMENDMENT

That Section 3.1, Elective Officers, of Article III, Municipal Officers of the Charter of the City of South Charleston be amended and re-enacted to read as follows:

ARTICLE III

MUNICIPAL OFFICERS

Sec. 3.1. Elective Officers. The municipal officers of the City of South Charleston shall consist of a mayor, city clerk, municipal judge and members of the city council. The first officers elected under these charter amendments shall be elected by the qualified voters of the City, as hereinafter provided, and shall serve for a term of three years, commencing on July 1, 1968, and continuing until the 30th day of June, 1971, or as soon thereafter as their respective successors shall have been elected or appointed and qualified.

Except for the municipal officers first elected under these charter amendments, at the general election held on the first Tuesday in June in the year 1968, said municipal officers shall be elected by the qualified voters of the City, as hereinafter provided, for a term commencing on the first day of July in each election year provided for herein and continuing for a period of four years, or until such time thereafter as their respective successors shall have been elected or appointed and qualified.

SECOND PROPOSED AMENDMENT

That Section 3.2, Qualifications of Elective Officers, of Article III, Municipal Officers of the Charter of the City of South Charleston be amended and re-enacted to read as follows:

ARTICLE III

MUNICIPAL OFFICERS

Sec. 3.2. Qualifications of Elective Officers. An elective officer shall be a qualified elector and shall have been a resident of the city for a period of three years prior to his election. A member of the council representing a particular ward also shall have been a resident thereof for a term of one year prior to his election and shall remain a resident of the ward from which he is elected during his term of office.

An elective officer shall have been assessed with and shall have paid taxes in the city upon a valuation of at least \$100 worth either of real estate or personal property for the assessment year preceding his election.

Charleston, all as required by law.

SEVENTH: That in the event said proposed amendments are adopted by the Council of the City of South Charleston, the mayor and city clerk shall be authorized and directed to make certified transcripts of the whole proceedings by which the Charter of the City of South Charleston has been amended as hereinabove set forth, and to transmit said proceedings to the Clerk of House of Delegates, as keeper of the rolls, and also to the Clerk of the County Court of Kanawha County, West Virginia, to be recorded.

This ordinance was introduced and read for the first time at a regular meeting of the council held on February 1, 1968, and will come up for second reading and adoption at a regular meeting of council to be held on March 7, 1968.

/s/ L.O. McIlwain  
Mayor

/s/ Robert L. Reed  
City Clerk

ORDINANCE NO. 1670

INTRODUCED IN COUNCIL

PASSED BY COUNCIL

June 4, 1987

INTRODUCED BY

REFERRED TO

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AN ORDINANCE PROPOSING AN AMENDMENT TO THE CITY CHARTER OF THE CITY OF SOUTH CHARLESTON, WEST VIRGINIA, WHICH AMENDMENT WOULD LENGTHEN THE TIME PERIOD BETWEEN THE LAST DAY TO FILE FOR OFFICE IN A PRIMARY ELECTION AND THE DATE OF SUCH PRIMARY ELECTION.

WHEREAS, the South Charleston City Charter, Section 14.2, permits filing for office in a primary election up to thirty days before said primary, and

WHEREAS, this short time period between the filing cut-off date and the primary election allows inadequate time for ballot preparation (particularly absentee ballot preparation), and conflicts with State election laws, particularly West Virginia Code, Chapter 3, Article 5, Section 7, and

WHEREAS, West Virginia Code, Chapter 8, Article 4, Section 8, provides for a charter amendment through a public hearing procedure, and

WHEREAS, City Council is of the opinion to utilize such procedure in order to facilitate ballot preparation for future City elections,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH CHARLESTON, WEST VIRGINIA AS FOLLOWS:

1. That the following amendment to the City Charter of the City of South Charleston, West Virginia, be published as a Class II-0 legal advertisement in both the Charleston Gazette and Charleston Daily Mail, and that a public hearing be held upon the proposed amendment on Thursday, June 4, 1987, all as required by West Virginia Code Chapter 8, Article 4, Section 4.

Sec. 14.2. Nomination of candidates by primary election, etc.;  
who considered a qualified party; limitations on  
voting in primary election; city executive committees  
of political parties; qualifications for councilman, etc.

Nominations for office shall be made by a primary election to be held on the dates set forth in section 14.1. In the event no nominee files for any office, or should any nominee resign or be prevented by

4 death or disability from running for any office, a candidate therefor  
42 may be named by the executive committee of his respective party, and  
43 such candidate shall be certified by the chairman of such executive  
44 committee to the city clerk at least thirty days prior to the general  
45 election. Any qualified person may become a candidate for any office  
46 in the primary election by filing therefor with the city clerk and  
47 paying to the said city clerk such filing fee as may be set out by the  
48 council and by completing and filing with said city clerk a statement  
49 in substantially the following form:

50  
51 STATEMENT OF CANDIDATE

52  
53 "STATE OF WEST VIRGINIA,  
54 COUNTY OF KANAWHA, to-wit:

55  
56 I, (write your name as you wish it to appear on ballot), hereby  
57 certify that I am a candidate for the nomination for the office of  
58 ....., to represent the ....., Party, and desire my  
59 name printed on the official ballot of said party to be voted at the  
60 primary election to be held on the .... day of .....,  
61 19...; that I am a legally qualified voter of Ward ....., City of  
62 South Charleston, County of Kanawha, State of West Virginia; that my  
63 residence is number .... of ..... Street in the City of South  
64 Charleston in Kanawha County in said State; that I am eligible to hold  
65 the said office; that I am a member of and affiliated with said  
66 political party; that I am a candidate for said office in good faith.

67  
68 .....  
69 Candidate

70  
71 Signed and acknowledged before me this ..... day of  
72 ....., 19....

73  
74 .....  
75 Signature and official title  
76 of person before whom signed

77  
78 Such certificate shall be filed with the City Clerk not earlier  
79 than the second Monday in January next preceding the primary election  
80 day, and not later than the first Saturday of February next preceding  
81 the primary election day, and must be received before midnight,  
82 eastern standard time, of that day or, if mailed, shall be postmarked  
83 before that hour.

84  
85 Qualified parties as prescribed by state statutes shall be  
86 considered as qualified parties in a city municipal election.

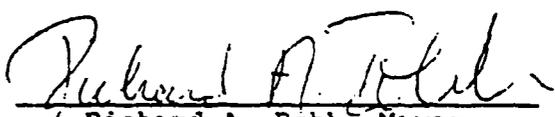
87  
88 Each voter shall cast his ballot in the primary election only for  
89 the candidates of the party with which the voter is registered.  
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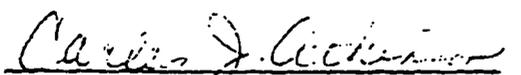
The city executive committees of the two political parties which cast the largest and second largest number of votes in the state at the last preceding general election of the State of West Virginia shall each consist of one male person and one female person from each of the wards of the city. The members of said committees shall be elected at the city primary election and their terms of office, after the 1971 primary election, shall be for a period of four years beginning after the results of such primary election are duly certified. Vacancies in a committee shall be filled, and members to represent newly created wards, shall be elected by the committee to serve until the next city primary election.

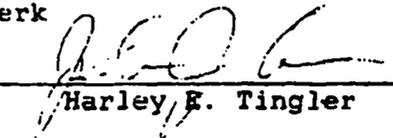
Only citizens entitled to vote and residents and voters of their respective wards and districts and having the proper qualifications hereinbefore provided shall be eligible to be elected to the office of councilman and executive committee from their respective wards and districts, and each councilman and member of the executive committee so elected from a ward shall continue to be a resident of the ward from which he is elected during the entire term of his office. (Ord. No. 1040)

2. This ordinance shall take effect on July 4, 1987, and shall be effective for the primary election of 1991.

  
Richard A. Robb, Mayor

ATTEST:

  
Charles J. Atkinson, City Clerk

This ordinance prepared by  City Attorney  
Harley E. Tingler



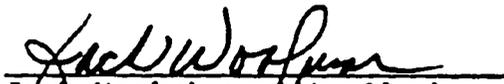
The term of office of all municipal officers elected under this Charter and these Charter amendments, except members of the City Executive Committees, shall be for a term commencing on the first day of July in each election year provided for herein and continuing for a period of four years, or until such time thereafter as their respective successors shall have been elected or appointed and qualified.

The terms of office of all municipal officers and of members of the City executive committees elected under this Charter amendment shall be for a period of four years.

This Ordinance shall be effective immediately upon passage.

  
Richard A. Robb, Mayor

ATTEST:

  
Jack Woolwine, City Clerk

This Ordinance prepared by \_\_\_\_\_ Acting City Attorney.  
Richard A. Robb

ORDINANCE NO. 1878

INTRODUCED IN COUNCIL

July 20, 1995

INTRODUCED BY

Williams

PASSED BY COUNCIL

Sept. 7, 1995

REFERRED TO

\_\_\_\_\_

AN ORDINANCE TO AMEND AND READOPT THE CITY CHARTER OF THE CITY OF SOUTH CHARLESTON BY AMENDING SECTION 8.6, TITLED "WHERE COMPETITIVE BIDDING REQUIRED" AND BY AMENDING SECTION 8.7, TITLED "CONTRACTS FOR CAPITAL IMPROVEMENTS AND REPAIRS."

WHEREAS, West Virginia Code chapter 8, article 4, section 1 provides for amendment by ordinance of the charter of a municipality, and

WHEREAS, the City of South Charleston feels it is in the best interest of the city to amend its charter to allow for purchases up to \$2,500 without requiring competitive bidding,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH CHARLESTON TO AMEND CITY CHARTER SECTIONS 8.6 AND 8.7, SAID SECTIONS TO READ AS FOLLOWS:

**SECTION 8.6 WHERE COMPETITIVE BIDDING REQUIRED.**

Before the City Purchasing Agent may make any purchase of or contract for supplies, materials or equipment in excess of ~~one thousand dollars~~, two thousand, five hundred dollars, he shall give ample opportunity for competitive bidding, under such general rules and regulations, and with such exceptions, as Council may prescribe; provided, however, that Council shall not except individual contracts, purchases or sales from the requirement of competitive bidding; and provided further, that no purchase of or contract for supplies, materials or equipment in excess of ~~one thousand dollars~~ two thousand, five hundred dollars shall be made by separate purchases or contracts of a lesser amount so as to evade the requirements of competitive bidding prescribed by this section.

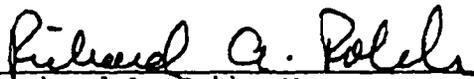
**SECTION 8.7 CONTRACTS FOR CAPITAL IMPROVEMENTS AND REPAIRS.**

Any capital improvement or repairs costing more than ~~one thousand dollars~~ two thousand, five hundred dollars or any series of capital improvements or repairs constituting essentially a single project and costing in the aggregate more than ~~one thousand dollars~~ two thousand, five hundred dollars, shall be executed by contract except where such improvement is authorized

by Council to be executed directly by the Mayor in conformity with detailed plans, specifications and estimates. All such contracts shall be awarded to the lowest and best responsible bidder after such public notice and competition as Council may prescribe and after a public opening of bids; provided, however, that the Council shall have the power to reject all bids for good cause assigned in writing or set forth in the records of the Council and advertise again. Alterations in any contract may be made when authorized by Council upon the written recommendation of the Mayor.

Council, in its discretion, may by resolution increase or decrease the amount of any capital improvements or repairs, or any series of capital improvements or repairs constituting essentially a single project, which shall be subject to the provisions of this article.

This ordinance shall take effect ten days after passage.

  
Richard A. Robb, Mayor

ATTEST:

  
Jack Woolwine, City Clerk

This Ordinance was prepared by Carolyn Atkinson, City Attorney.

its sole discretion, to determine whether a bidder is responsible, based upon past performance and the best information available as of the awarding of the contract or purchase order. (Ord. No. 1159, § 1.)

## Article II. City Council.

*For charter provision as to rules and order of business of the council, see Char., § 5.9.*

*As to prohibition against disturbance of city council meetings, see § 21-12 of this Code.*

### Division 1. Generally.

#### Sec. 2-7. Admission within bar of council chamber.

No persons except members of the council, officers named in the rules and persons invited by the presiding officer of the council or by vote of the council shall be admitted within the bar of the council chamber and the sergeant at arms shall cause this rule to be rigidly enforced.

Any person violating this section shall be guilty of a misdemeanor. (Ord. No. 964, § 41.)

#### Sec. 2-8. Permission required to address council.

Persons other than members of the council and city officers shall not be permitted to address the council, except with permission by the presiding officer.

Any person violating this section shall be guilty of a misdemeanor. (Ord. No. 964, § 42.)

#### Sec. 2-9. Sergeant at arms generally.

There shall be a sergeant at arms who shall be the chief of police or his designate. Such sergeant at arms shall attend meetings of council and act at the direction of the presiding officer. (Ord. No. 964, § 43.)

#### Sec. 2-10. Supervision and use of council chamber.

The council chamber shall be under the supervision and control of the mayor when the council is not in session. Except as herein provided, it shall be used solely by the council and its committees for the transaction of public business of the city. If not required for such use, the mayor may permit its use by agencies of the federal, state or city governments or civic organizations for transaction involving public purposes. Application for such use shall be made to the mayor in such manner as may be prescribed by him. Any permis-

sion so granted may be cancelled or revoked by the mayor forthwith, where necessary for the protection of city property, the preservation of order or other sufficient reason. (Ord. No. 964, § 44.)

**Sec. 2-11. Proposals for projects contemplating state or federal cooperation or financial participation.**

All proposals for projects which contemplate cooperation with, or financial participation by, the state or federal government shall be transmitted to council by the chief of public works, after having been approved as to form by the city attorney. If a city board or commission desires to propose such a project, the proposal shall first be filed with the chief of public works. All proposals shall be in approved form and accompanied by proper plans and specifications conforming to the requirements of respective state or federal government. If council approves the proposal, it shall be by resolution authorizing the chief of public works, city attorney and mayor to make application to the proper authority. (Ord. No. 964, § 45.)

**Sec. 2-12. Enumeration of standing committees.**

The council shall have eleven standing committees, which shall be as follows:

- (1) Executive and police.
- (2) Budget and finance.
- (3) Ordinances.
- (4) Streets, alleys and sidewalks.
- (5) Public grounds and buildings.
- (6) Fire protection.
- (7) Recreation.
- (8) Planning and zoning.
- (9) Civil defense.
- (10) Claims.
- (11) Public health, sewers and sanitation. (Ord. No. 964, § 46.)

Sec. 2-13. Composition of committees.

All committees of the council shall consist of at least three members and such additional members as the president of council, in his discretion, may appoint. All regular standing committees and the chairman of each committee shall be appointed by the president of council. Special committees shall be appointed by the mayor. (Ord. No. 964, § 46.)

Sec. 2-14. Temporary suspension of rules.

Any provision of these rules set out in this division may be temporarily suspended at any meeting of the council by a two-thirds vote of all members elected. The vote on any such suspension shall be taken by "yeas" and "nays" and entered upon the records. (Ord. No. 964, § 47.)

Division 2. Agenda.

Sec. 2-15. When ordinances, etc., to be filed with clerk.

Every ordinance, resolution and document to come before the council for consideration, except as provided in the following sections of this division, shall be filed with the clerk before 2:00 P.M. on the day before the day on which the council meets. (Ord. No. 963, § 1.)

Sec. 2-16. Preparation of agenda.

The clerk shall have ready for delivery at police headquarters, or such other location as may be designated by council, by 4:30 P.M. on the day prior to the day of council meeting, copies of an agenda, which follows the pattern of the order of business and which lists all reports, communications, orders, ordinances, resolutions, contracts, documents or other matters to come before council. (Ord. No. 963, § 2.)

Sec. 2-17. Procedure for amendment of agenda.

No matters shall be considered by the council which have not been properly placed upon the agenda, but provided that the council may amend the agenda and place new matters thereon by a two-thirds vote of the council present at the commencement of the meeting at which such matter is to be considered, and further provided that nothing herein shall operate to prohibit the free discussion of business by the council nor simple orders directing preliminary work. Any matter denied consideration because of a lack of favorable vote by a two-thirds majority of those members present shall be placed on the agenda for the next meeting of the council. This shall be the procedure followed at special and regular meetings of council. (Ord. No. 963, § 3.)

**Sec. 2-18. Order of business.**

The business of all regular and special meetings of the council shall be transacted in the following order, unless the council by a vote of at least two-thirds of the members present shall suspend the rules and change the order:

- (1) Roll call of members.
  - (2) Prayer.
  - (3) Minutes of the preceding meeting.
  - (4) Treasurer's report.
  - (5) Petitions, communications and public hearings.
  - (6) Consideration of any bids.
  - (7) Report of city attorney.
  - (8) Report of city engineer.
  - (9) Report of chief of public works.
  - (10) Consideration of pending old business.
  - (11) Consideration of new business.
  - (12) Miscellaneous business.
  - (13) Adjournment.
- (Ord. No. 963, § 4.)

**Division 3. Meetings.****Sec. 2-19. When and where to hold regular meetings.**

The council shall meet in regular session on the first and third Thursdays of each month at a time to be fixed by the council. When the meeting falls on a national or legal holiday, the regular meeting shall be held at the same hour of the next succeeding secular day not a holiday. The place of meeting shall be the council chamber in the City Building.

The time of meeting of each regular session of the council shall be at 7:30 P.M., Eastern Standard Time, on the first and third Thursdays of each month. (Ord. No. 964, § 1; Ord. No. 1079.)

**Sec. 2-20. Quorum.**

A majority or more members of the council shall constitute a quorum. In case that a less number than a quorum shall convene at a regular or special meeting, the majority of the members present are authorized to send the sergeant at arms or other person for any or all absent members. The chief of police shall serve as the sergeant at arms. (Ord. No. 964, § 10.)

**Sec. 2-21. Adjournment of sessions.**

Any session of the council may be continued or adjourned from day to day, or for more than one day, but no adjournment shall be for a longer period than until the next regular meeting thereafter. (Ord. No. 964, § 3.)

**Sec. 2-22. Conference sessions.**

The regulations relative to conference sessions shall be as follows:

- (a) The council may meet in conference session prior to the regular meeting of the council.
- (b) The mayor may call the council together for a conference session at any time.
- (c) The conference session shall be devoted exclusively to any matters regarding which the interchange of information preliminary to public discussion is deemed to be essential.
- (d) Any matter under discussion shall be regarded as confidential.
- (e) No formal vote shall be taken on any matter under discussion nor shall any council member enter into a commitment with another respecting a vote to be taken subsequently in a public meeting of the council; provided, however, that nothing herein shall prevent a polling of the council or the taking of an informal vote on any matter under discussion. (Ord. No. 964, § 4.)

**Sec. 2-23. Executive sessions.**

The regulations relative to executive sessions shall be as follows:

- (a) An executive session may be convened on call of the mayor or by vote of the council and all members of the council who are in the city shall be notified by phone of the time and place of such meeting.
- (b) An executive session may be called during any regular or special meeting of the council by a majority of the members present at such meeting.

(c) Attendance at the executive session shall be limited to the members of the council; provided, that council may invite the press and other such persons as may be required for advice and information. The roll shall then be called by the clerk, who shall enter in the minutes of the meeting the names of the members present. (Ord. No. 964, § 6.)

Sec. 2-24. Duty of mayor at hour appointed for council to meet.

The mayor, or in his absence the president of the council, shall take the chair at the hour appointed for the council to meet and shall immediately call the members to order. (Ord. No. 964, § 5.)

Sec. 2-25. Preservation of decorum and decision of questions of order.

At council meetings, the presiding officer of the council shall preserve decorum and decide all questions of order, subject to appeal to the council. If a member or other person transgresses the rules of the council, the presiding officer shall call him to order, in which case he shall be seated, unless permitted to explain. (Ord. No. 964, § 9.)

Sec. 2-26. Attendance of certain officers, etc., at council meetings.

The city engineer, treasurer, chief of police and fire chief shall attend all meetings of the council, unless excused by the council or by the mayor.

The head of any department or any officer of the city, when requested by the mayor to attend meetings shall do so. (Ord. No. 964, §§ 11, 14.)

Sec. 2-27. Duty of city clerk at meetings.

The city clerk shall attend all meetings of the council, unless excused, and shall keep minutes of the meetings of the council or cause such minutes to be kept and perform such other and further duties as may be prescribed by the council. (Ord. No. 964, § 12.)

Sec. 2-28. Attendance at council meetings and opinions on part of city attorney.

The city attorney shall attend all meetings of council, unless excused by council. The city engineer or chief of public works or any member of the council may at any time call upon the city attorney for an oral or written opinion to decide any question of law or to advise the chair upon any parliamentary rule. (Ord. No. 964, § 13.)

Sec. 2-29. Designation of seats for members.

Members of the council shall occupy the seats in the council chamber as designated by the mayor. (Ord. No. 964, § 15.)

Sec. 2-30. Conduct of member when addressing council.

When recognized by the chair, a member of the council, when addressing the council, shall confine himself to the question under debate, avoid personalities and refrain from impugning the motives of any other member. (Ord. No. 964, § 16.)

Sec. 2-31. Appeal from ruling of presiding officer.

At a meeting of the council, any member of the council may appeal to the council from a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state his reason for the same, and the presiding officer may briefly explain his ruling; but there shall be no debate on the appeal and no other member shall participate in the discussion. The presiding officer shall then put the question: "Shall the decision of the chair be sustained?" If a majority of the members present vote "aye," the ruling of the chair is sustained; otherwise it is overruled. A roll call vote shall not be necessary unless the presiding officer so requests. (Ord. No. 964, § 17.)

Sec. 2-32. Member speaking more than once on any one subject.

At a council meeting, no member shall be allowed to speak more than once upon any one subject until every other member choosing to speak thereon shall have spoken. (Ord. No. 964, § 18.)

Sec. 2-33. Voting.

At a council meeting, every member present when a question is put shall vote either "yes" or "no"; provided, that if any member of council does not desire to vote on any question, he may be shown on the record as having "abstained." The record shall show whenever the vote is unanimous. In all other cases, the vote shall be called and recorded. No member shall vote on any matter in which he has a personal interest other than as a taxpayer of the city. (Ord. No. 964, § 19.)

Sec. 2-34. Addressing council on question of personal privilege.

At a council meeting, the right of a member to address the council on a question of personal privilege shall be limited to cases in which his integrity, character or motives are assailed, questioned or impugned. (Ord. No. 964, § 20.)

Sec. 2-35. Expression of dissent from, or protest against, ordinance, etc.

Any member of the council may express dissent from, or protest against, any ordinance, resolution or other action of council, and have the reason therefor entered upon the minutes. Such dissent or protest shall be filed in writing.

couched in respectful language, and presented to the council not later than the next regular meeting following the date of passage of the ordinance, resolution or other action objected to. (Ord. No. 964, § 21.)

Sec. 2-36. Order of precedence of motions.

At a council meeting, when a question is before the council, no motion shall be entertained except: (a) To adjourn; (b) to fix the hour of adjournment; (c) to lay on the table; (d) for the previous question; (e) to postpone to a certain day; (f) to refer; (g) to amend; and (h) to postpone indefinitely. These motions shall have precedence in the order indicated. All such motions, except the motion to amend, shall be put to a vote without debate. (Ord. No. 964, § 22.)

Sec. 2-37. Motion to be stated, etc.; withdrawal of motion.

At a council meeting, when a motion is made and seconded, it shall be stated by the chair before debate. Any member may demand that it be put in writing. A motion may not be withdrawn by the mover without the consent of the member seconding it. (Ord. No. 964, § 23.)

Sec. 2-38. Introduction of motion, etc., out of order.

At a council meeting, the presiding officer may at any time, by two-thirds vote of the members of the council present, permit a member of the council to introduce an ordinance, resolution or motion out of the regular order. (Ord. No. 964, § 24.)

Sec. 2-39. Motions to adjourn generally.

At a council meeting, a motion to adjourn shall be in order at any time, except as follows: (a) When repeated without intervening business or discussion; (b) when made as an interruption of a member while speaking; (c) when the previous question has been ordered and (d) while a vote is being taken. A motion to adjourn is debatable only as to the time to which the meeting is adjourned. (Ord. No. 964, § 25.)

Sec. 2-40. Motions to lay on table generally.

At a council meeting, a motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed at the same meeting or at the next meeting by a majority vote, after some business has been transacted after the original laying on the table. (Ord. No. 964, § 26.)

**Sec. 2-41. Moving the previous question generally.**

At a council meeting, when the previous question is moved, and seconded by one other member, it shall be put as follows: "Shall the main question be considered?" There shall then be no further amendment or debate; but pending amendments shall be put in their order before the main question. If the question, "Shall the main question be considered?" be decided in the negative, the main question remains before the council. (Ord. No. 964, § 27.)

**Sec. 2-42. Division of question.**

At a council meeting, if the question under consideration contains two or more divisible propositions, the presiding officer may and, upon request of a member of the council, shall divide the same. (Ord. No. 964, § 28.)

**Sec. 2-43. Procedure upon amendment to "strike out and insert."**

At a meeting of the council, on an amendment to "strike out and insert," the paragraph to be amended shall first be read as it stands, then the words proposed to be stricken out and those to be inserted shall be read and finally the paragraph as it would stand if so amended shall be read. (Ord. No. 964, § 30.)

**Sec. 2-44. Motion amending an amendment, etc.**

At a meeting of the council, a motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order. (Ord. No. 964, § 31.)

**Sec. 2-45. Motions to postpone generally.**

At a meeting of the council, all motions to postpone, excepting a motion to postpone indefinitely, may be amended as to time. If a motion to postpone indefinitely is carried, the principal question shall be declared lost. (Ord. No. 964, § 32.)

**Sec. 2-46. Motions for reconsideration.**

After the decision of any question by motion at a council meeting, any member of the council who voted with the majority may move a reconsideration of that action at that meeting or any succeeding meeting; provided, that a resolution authorizing or relating to any contract may be reconsidered at any time before the final execution thereof. A motion to reconsider shall require the same number of votes as is required to adopt an ordinance or resolution. After a motion for reconsideration has once been acted on, no other motion for a reconsideration thereof shall be made without unanimous consent. (Ord. No. 964, § 33, Ord. No. 1338.)

**Sec. 2-47. Robert's Rules of Order.**

In the absence of a rule set out in this division to govern a point or procedure, reference shall be had to Robert's Rules of Order. (Ord. No. 964, § 34.)

**Sec. 2-48. Unsigned communications.**

Unsigned communications shall not be introduced in council. (Ord. No. 964, § 35.)

**Division 4. Ordinances and Resolutions.****Sec. 2-49. Form of introduction.**

All ordinances and resolutions shall be introduced in the council in printed, typed or written form, with the name of the council member submitting the ordinance or resolution in question or city attorney endorsed thereon. (Ord. No. 964, § 36.)

**Sec. 2-50. Form of enactment.**

Pronouncements of council may be made in the following forms: (1) Ordinance; (2) emergency ordinance; (3) resolution; and (4) orders and motions. (Ord. No. 964, § 37.)

**Sec. 2-51. Date of enactment.**

An ordinance cannot be passed on the day on which it was introduced. An emergency ordinance, resolution, order or motion may be passed on the day on which it was introduced. (Ord. No. 964, § 37.)

**Sec. 2-52. Adoption procedure generally.**

Ordinances shall be adopted by complying with the provisions of Chapter 8, Article 11, section 4 of the Code of West Virginia.

**Sec. 2-53. When action of council to be by ordinance.**

In the following enumerated cases, the action of council shall be by ordinance:

- (a) Levying taxes or providing for the collection of fees of any kind.
- (b) Requiring a license to do business.
- (c) Relating to offenses and penalties.

- (d) Authorizing the issuance of bonds or other forms of indebtedness.
- (e) Providing for a public improvement.
- (f) Providing for the purchase of private property by the city or for the sale of property belonging to the city.
- (g) Laying out or vacating a public street, alley or way.
- (h) Relating to zoning.
- (i) Granting franchises to public utilities; jurisdiction.
- (j) When otherwise required by law. (Ord. No. 964, § 39.)

Sec. 2-54. Emergency ordinances.

The council may enact an ordinance at the same meeting at which it is introduced in the case of pressing public emergency which would make procedure under section 2-52 dangerous to the public safety, health or morals. Such action may be taken only after a suspension of the rules of procedure and then upon the affirmative vote of two-thirds of the members of council. The nature of the emergency shall be set out in full in the ordinance. (Ord. No. 964, § 40.)

Sec. 2-55. When ordinance may be amended.

At a meeting of the council, it shall be in order to amend an ordinance at any time before final passage. (Ord. No. 964, § 29.)

Article III. Charges for Certain Municipal Services.

Sec. 2-56. Imposition and rate; collection directed.

(a) Levied; schedule. There is hereby levied and shall be collected a charge against residential users of municipal services situate within the city for essential municipal services, including street maintenance, street resurfacing, street cleaning, recreational programs and collection and removal of prepared garbage, but excluding those services rendered as fire and police protection. The charge for such services shall be at the following rates for single-family unit residences, per unit, and for multiple-family dwellings or apartment houses, per residential unit or apartment, whether or not occupied:

	<u>In advance</u>	<u>In arrears</u>
1 year	\$30.00	\$40.00
3/4 year	22.50	30.00
1/2 year	15.00	20.00
1/4 year	7.50	10.00

CERTIFICATE

Certified to be a true and correct copy as to the rules and order of business of the Council of the City of South Charleston.

Given under my hand and the official seal of the City of South Charleston, West Virginia, this 25<sup>th</sup> day of August, 1986

(SEAL)

Charles J. Atkinson  
City Clerk



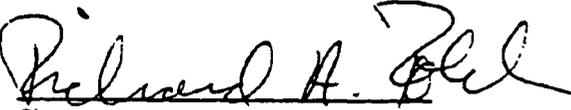
Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, Richard A. Robb, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Mayor to the best of my skill and judgment.*

  
Signature



Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, Jack D. Woolwine, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of City Clerk to the best of my skill and judgment.*

*Jack D. Woolwine*  
Signature



Richard A. Rabb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, James R. "Sonny" Holstine, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Councilmember to the best of my skill and judgment.*

*James R. Sonny Holstine*  
Signature



Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, Paul Neal, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Councilmember to the best of my skill and judgment.*

  
\_\_\_\_\_  
Signature



Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, Dayton S. Griffith, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Councilmember to the best of my skill and judgment.*

  
Signature



Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

I, *William "Butch" Buckley*, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Councilmember to the best of my skill and judgment.

*Wm. E. Buckley*  
Signature



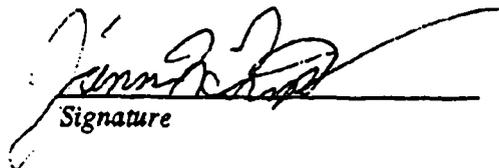
Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, James F. Triplett, do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Councilmember to the best of my skill and judgment.*

  
Signature



Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597  
South Charleston, West Virginia 25303

## OATH OF OFFICE

*I, Warren M. Shirkey, Sr., do solemnly swear that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of Councilmember to the best of my skill and judgment.*

  
Signature

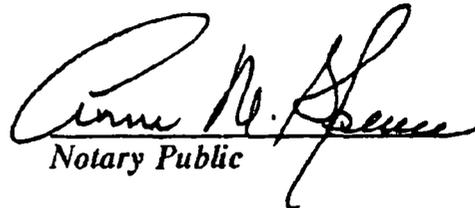
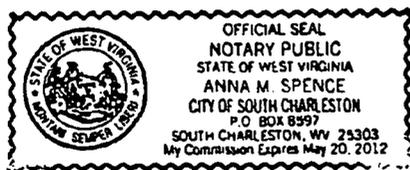
# OATH OF OFFICE

I, Joe A. Mayes, do solemnly affirm that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of councilman to the best of my skill and judgment.



Taken, subscribed and sworn to before the undersigned authority this

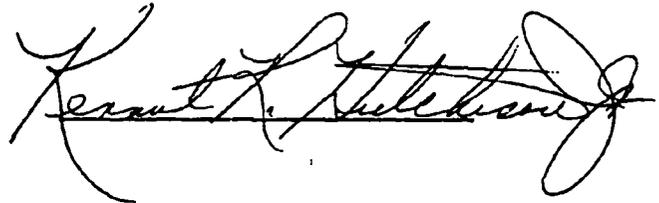
3<sup>rd</sup> day of July, 2003



Notary Public

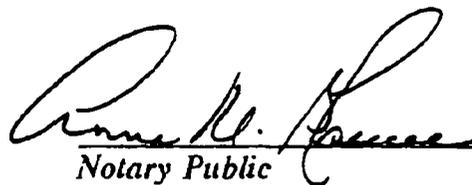
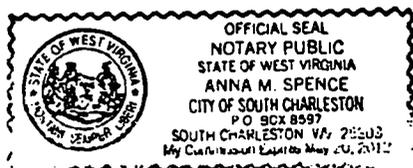
# OATH OF OFFICE

I, Kenneth R. Hutchison, Jr. do solemnly affirm that I will support the Constitution of the United States of America and the State of West Virginia, and that I will, in all respects, observe the provisions of the charter, ordinances, resolutions, regulations, and rules of the City of South Charleston, and will faithfully discharge the duties of councilman to the best of my skill and judgment.



Taken, subscribed and sworn to before the undersigned authority this

3<sup>rd</sup> day of July, 2002



Notary Public

Nicholson as of January 11, 1955. This was seconded by Councilman Riggle. Motion carried.

The following report was given by Councilman Stansbury concerning Comic Book Control:

"Those attending a meeting at 8:00 P. M., January 10, 1955 at the South Charleston City Hall to discuss the elimination of objectionable comic books were as follows:

- J. W. Londeree, Mayor of South Charleston
- W. B. Stevens, The American News Company, Charleston
- Mr. Remaly, Dell Publishing Company, New York City
- A. W. Smith, A. W. Smith News Agency, Charleston
- Mrs. H. M. Parsons, Modern Mothers Club, South Charleston
- Mrs. B. K. Gwen, Jr., Modern Mothers Club, South Charleston
- E. L. Kincaid, St. Albans, West Virginia
- F. Duane Hill, Charleston, West Virginia
- Rev. H. Lloyd Parkinson, First Baptist Church, South Charleston
- H. A. Stansbury, Jr., Councilman, South Charleston
- Martin C. Bowles, City Attorney of St. Albans
- R. J. Collins, Nitro Councilman
- Phil Simms, Dunbar City Solicitor
- D. L. Salisbury, Mayor of Dunbar
- Carl Duttine, Dunbar Councilman

Mr. Stevens and Mr. Smith explained in detail the operation of the code authority of the Comics Magazine Association of America under Judge Charles Murphy of New York City. Three publishers have not joined the association, but only because they already have standards for their magazines which are considered above reproach. The Code Authority will be in full operation by March 1st, 1955. After this date each approved magazine will have the label of the Code Authority printed on the cover. It was the unanimous opinion of those present that no City Ordinances for the control of comic books be considered for the present. This delay will enable the Cities to observe the effectiveness of the Code Authority in the elimination of objectionable comic magazines."

The above report was to be incorporated in the minutes upon motion by Councilman Huffman, seconded by Councilman Coles. Motion carried.

The following ordinance was read to the Council by councilman Stansbury:

ORDINANCE

910.496a

AN ORDINANCE APPOINTING A SANITARY BOARD TO ACQUIRE, CONSTRUCT, EQUIP, ADMINISTER, OPERATE AND MAINTAIN A SEWAGE COLLECTION, PURIFICATION, TREATMENT AND DISPOSAL SYSTEM OR SYSTEMS WITHIN AND WITHOUT THE CITY OF SOUTH CHARLESTON, TO INVEST IN SUCH BOARD THE CUSTODY, ADMINISTRATION, OPERATION, MAINTENANCE, SUPERVISION AND CONTROL OF SUCH SYSTEM OR SYSTEMS, AND TO FINANCE THE COST OF THE ACQUISITION, CONSTRUCTION AND EXPENSION OF ALL SUCH WORKS BY THE ISSUANCE OF REVENUE BONDS, AS PROVIDED BY ARTICLE 13 OF CHAPTER 16 OF THE CODE OF WEST VIRGINIA.

WHEREAS, it is the desire of the City of South Charleston to own, acquire, construct, equip, operate and maintain a sewage collection, system or systems, sewage treatment and/or purification plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations and all other appurtenances necessary or useful and convenient for the collection, treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, night soil and industrial waste of the City of South Charleston and/or of the sanitary district which may be created, and to finance the acquisition, construction and extension of such system or systems, works and appurtenances by the issuance of revenue bonds, and to provide for the establishment and collection of rates for the use of such works and the services rendered thereby, all as provided by Article 13, Chapter 16 of the Code of West Virginia, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SOUTH CHARLESTON:

Section 1. There is hereby created and appointed the Sanitary Board of the City of South Charleston consisting of the Mayor of the City of South Charleston, who shall act as chairman of said Board, Stephen E. Prtichard, a resident of the City of South Charleston, who shall serve for a term of three years, and Bertram Robert Harper a registered professional engineer, who shall serve for a term of two years, neither of said members having been an officer or employee of the City of South Charleston within a period of one year prior of one the date of the introduction of this ordinance.

Section 2. Upon the expiration of each of the terms of said appointees, other than the Mayor, and of each succeeding term, a successor shall be appointed by the Council for a full term of three years, but during the construction period of the works constructed under the supervision and direction of said Board one member thereof shall be a registered professional engineer. The Chairman of the Board shall always be the then Mayor of the City of South Charleston and vacancies to fill unexpired terms shall be filled by the Council.

Section 3. The Board shall elect a vice-chairman from its members and shall designate a secretary and treasurer (who may be one and the same person) who need not be members of the Board and who shall hold office at the will of the Board.

Section 3. The Board shall elect a vice-chairman from its members and shall designate a secretary and treasurer (who may be one and the same person) who need not be members of the Board and who shall hold office at the will of the Board.

Each member of the Board including the Mayor, shall receive a salary of Fifty Dollars (\$50.00) per month, and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties.

The secretary and treasurer shall be paid such reasonable compensation for services as from time to time may be fixed by the Council and the treasurer shall give bond, with qualified corporate surety, in the amount of Five Thousand Dollars (\$5,000.00) or such

other amount as the Council subsequently may require, conditioned for the proper application for all moneys received by him as such and for the faithful performance of the duties of his office.

All compensation, and all expense, incurred by said Board, its officers and employees, shall be paid solely from funds authorized to be collected and received by the Board as provided by said Article 13, Chapter 16 of the Code of West Virginia.

Section 4. The construction, acquisition, improvement, equipment, custody, operation, maintenance and administration of all works for the collection, treatment or disposal of sewage within the City of South Charleston and in the sanitary district which shall be acquired, constructed, operated or maintained by said Board, the employment of all engineers, architects, inspectors, superintendents, manager, collectors, attorneys and other employees in the judgment of the Board necessary to the execution of its powers and duties, and the collection of all revenues from the works acquired, constructed, operated or maintained by it, shall be under the supervision and control of the Board.

Section 5. In addition to the authority and powers enumerated herein, the Board created by this ordinance shall be invested with all other powers and authorities provided for such Boards by said Article 13, Chapter 16 of the Code of West Virginia, as amended, or as the same may be amended.

Councilman Stansbury moved this ordinance be adopted; seconded by Councilman Huffman. Upon roll call vote the following responded:

AYES: Councilmen Coles, Copper, Huffman, Jones, Lee, Reed, Riggle, and Stansbury

NAYS: None

Motion carried by unanimous roll call vote.

Councilman Coles:

Councilman Coles stated all his files from the Council Sewer Committee had been turned over to the Sanitary Board.

Councilman Jones moved that the "Special Committee to investigate the Sewer System" be dissolved; seconded by Councilman Huffman. Motion carried.

Councilman Coles also stated that the sidewalk at the corner of "D" Street and Third Avenue was in bad condition and asked that the City Engineer, John H. Isclaw, check with the adjoining property owners concerning their feelings of replacing this sidewalk.

Councilman Copper moved to refer the problem of sidewalk at First Avenue from "D" Street to "C" Street and "C" Street from First Avenue to Second Avenue to the Street Department and City Engineer for study and action. Councilman Riggle seconded this motion. Motion carried.

CERTIFICATE

Certified to be a true and correct copy of Ordinance No. 496 B  
adopted by the City Council of The City of South Charleston, West  
Virginia, on January 21, 1955, duly filed and of record in the office  
of the City Clerk of the City of South Charleston, West Virginia.

Given under my hand and the official seal of The City of  
South Charleston, West Virginia, this 9 day of September, 1986.

(SEAL)

Charles J. Atkinson  
City Clerk

ORDINANCE NO. 1859

INTRODUCED IN COUNCIL

AUGUST 18, 1994

PASSED BY COUNCIL

9-1-94

INTRODUCED BY

MAYOR ROBB

REFERRED TO

\_\_\_\_\_

AN ORDINANCE TO AMEND AND READOPT THE CITY CODE OF THE CITY OF SOUTH CHARLESTON WEST VIRGINIA, BY AMENDING ARTICLE 931, TITLED "SEWERS AND SEWAGE DISPOSAL."

WHEREAS, the City of South Charleston provides sanitary sewer service to its citizens pursuant to West Virginia Code Chapter 16, Article 13, and

WHEREAS, the City has organized a Sanitary Board pursuant to the provisions of West Virginia Code Chapter 16, Article 13, for the governance of its publicly owned treatment works, and

WHEREAS, the South Charleston Sanitary Board operates according to City ordinances codified at South Charleston City Code Article 931, and

WHEREAS, amending Article 931 of the City Code of South Charleston is in the best interest of improving sanitary sewer service and of maintaining the sanitary sewer system in optimal condition,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH CHARLESTON, WEST VIRGINIA TO AMEND CITY CODE ARTICLE 931, SAID ARTICLE TO READ AS FOLLOWS:

**ARTICLE 931**  
**Sewers and Sewage Disposal**

- 931.01 Purpose and Policy; City Sanitary Sewer System Use.
- 931.02 Application of State Code.
- 931.03 Supervision and Control by Sanitary Board; Statutory Powers and Authority of Sanitary Board; Limits; Rules and Regulations.
- 931.04 Sanitary Board Compensation and Bond.
- 931.05 Private Systems Prohibited; Removal of Private Systems; Other Effluent Systems Prohibited.
- 931.06 Connection Required; Individual Pump Stations.
- 931.07 Discharge of Unpolluted Waters.
- 931.08 Permission Required to Uncover, Connect With or Disturb Sewers; Sanitary Sewer Taps by Authorized Persons Only.
- 931.09 Connection and Service Application; City Employee Right of Entry; Change of Customer; Wastewater Volume or Constituents Change Notification.
- 931.10 State Plumbing Code.
- 931.11 Property Owner Maintenance Responsibilities; Board Repairs.
- 931.12 Clean Out Required.
- 931.13 Separate Building Sanitary Sewer for Each Building; Townhomes; Extensions Prohibited.
- 931.14 Inspections Prerequisite to Sanitary Sewer Connection; Notification for Inspection Prior to Connection; Requirements for Sanitary Sewer Laterals; Authority of Inspectors.
- 931.15 Liability to City for Sanitary Sewer Service; Shut-off Periods.
- 931.16 Limitation on City Damage Liability; Emergency Restrictions.
- 931.96 Public Nuisances.
- 931.97 Penalty.
- 931.98 Appeals.
- 931.99 Severability.

## GENERAL REGULATIONS

### **931.01 PURPOSE AND POLICY: CITY SANITARY SEWER SYSTEM USE.**

The purpose of this ordinance is to establish uniform regulations for the use of the publicly owned treatment works of the City. Use of the sanitary sewer system of the City is hereby determined and declared to be essential for the protection and preservation of the public health, comfort, safety, economy and for the general welfare of the inhabitants of the City, and of the area served by the sanitary sewer system.

### **931.02 APPLICATION OF STATE CODE.**

All pertinent provisions of West Virginia Code §§ 16-13-1 to 16-13-24, shall be deemed to be a part of this article to the same extent as if written fully herein.

### **931.03 SUPERVISION AND CONTROL BY SANITARY BOARD; STATUTORY POWERS AND AUTHORITY OF SANITARY BOARD; LIMITS; RULES AND REGULATIONS.**

- (a) The South Charleston Sanitary Board is hereby vested with the control and management of the publicly owned treatment works.
- (b) In addition to the authority and powers enumerated in this article, the Sanitary Board created by this article shall be vested with all other powers and authorities provided for such sanitary boards by West Virginia Code Article 16-13.
- (c) The Sanitary Board shall be subject to the rules and regulations of the West Virginia Public Service Commission, the West Virginia Department of Environmental Protection, the United States Environmental Protection Agency, the West Virginia Department of Health and Human Services, and the provisions of any outstanding sanitary bond issuances by the City.
- (d) Nothing in this article shall prevent the Sanitary Board from adopting rules and regulations for the use of the Sanitary Sewer System that may be deemed necessary by the Board for efficient operation of the system.

### **931.04 SANITARY BOARD COMPENSATION AND BOND.**

- (a) Compensation.
  - (1) Each member of the Sanitary Board shall receive a salary of one hundred dollars (\$100.00) per month, and shall be entitled to payment for reasonable expenses incurred in the performance of duties.

(2) The secretary and treasurer shall be paid such reasonable compensation for services as from time to time may be fixed by the South Charleston City Council.

- b) **Treasurer's Bond.** The treasurer shall give bond, with qualified corporate surety, in the amount of five thousand dollars (\$5,000) or such other amount as Council subsequently may require, conditioned for the proper application for all moneys received by him as such and for the faithful performance of the duties of his office.

**931.05 PRIVATE SYSTEMS PROHIBITED; REMOVAL OF PRIVATE SYSTEMS; OTHER EFFLUENT SYSTEMS PROHIBITED.**

- (a) No person shall construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater where public sanitary sewer service is available, as defined in Section 931.06.
- (b) At such time as a public sanitary sewer becomes available to a property served by a private wastewater disposal system, the owner of such property shall construct a direct connection to the public sanitary sewer system in compliance with this article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge at the owner's expense. The vessel may be filled with suitable material or salvaged and removed at the owner's expense.
- (c) Where connection to sanitary sewer service is required, the use of any type of septic tank effluent system is hereby prohibited.

**931.06 CONNECTION REQUIRED; INDIVIDUAL PUMP STATIONS.**

- (a) The owner of real property which abuts a public sanitary sewer line, street, alley or other public way containing a sanitary sewer service, or which is located within 300 feet of sanitary sewer service, and upon which property a building or other habitable structure has been erected for residential, commercial or industrial use, shall be required to connect the building or structure in question to the sanitary sewer system or to such part of the system as may from time to time be extended or become reasonably available, and shall thereafter refrain from using or cease to use any other method in place of the sanitary sewer services which are now, or may hereafter become, available; and shall thereafter pay all the charges, rates or fees as required.

- (b) In the event that sanitary sewer service is unavailable to the property by gravity because of terrain, the property may be connected to the sanitary sewers by means of individual pump stations. Such stations shall be constructed and maintained by the property owner, at his expense, shall conform to the specifications of the BOCA Plumbing Code and shall be approved by the West Virginia Department of Health and Human Services and the Sanitary Board. All persons proposing construction of a building or other habitable structure within the South Charleston Sanitary Board service area, whether within 300 feet of an existing sanitary sewer line or not, shall contact the Sanitary Board prior to construction.

**931.07 DISCHARGE OF UNPOLLUTED WATERS.**

In compliance with State and Federal environmental regulations governing sanitary sewer use, no person shall discharge or cause to be discharged into the sanitary sewer system through any leak, defect or connection any storm water or other unpolluted wastewater, to include but not be limited to, footer drains, downspouts, yard drains and catch basins.

**931.08 PERMISSION REQUIRED TO UNCOVER, CONNECT WITH OR DISTURB SEWERS; SANITARY SEWER TAPS BY AUTHORIZED PERSONS ONLY.**

- (a) It shall be unlawful for any person to access, pave over, uncover, or make any connections with or opening into the sanitary sewer system; to use, alter or disturb the system; to excavate or alter the grade adjacent thereto; or otherwise to prevent reasonable access to the system, without first obtaining written permission from the Sanitary Board.
- (b) It shall be unlawful for any unauthorized person to use or attempt to use a mechanical, high water pressure or commercial cleaning device and/or industrial chemical solution in the South Charleston Sanitary Sewer System.
- (c) No person, except those persons duly authorized by the Sanitary Board for such purpose, shall tap into the South Charleston Sanitary Sewer System.

**931.09 CONNECTION AND SERVICE APPLICATION; CITY EMPLOYEE RIGHT OF ENTRY; CHANGE OF CUSTOMER; WASTEWATER VOLUME OR CONSTITUENTS CHANGE NOTIFICATION.**

- (a) It shall be unlawful for any person to make an initial cut in or connection with the South Charleston sanitary sewer system, or to use such system without first making written application for such connection and service to the Sanitary Board and paying costs, charges, fees and deposits incident to this article or Article 932.
  - (1) Such application shall be made on forms prescribed and furnished by the Board and shall constitute an agreement by the applicant with the City to abide by all provisions of this article and the applicable rules and regulations of the City or Sanitary Board regarding the use of such sanitary sewer system.
  - (2) Applicants shall be required to furnish information about all waste producing activities, wastewater characteristics and constituents, in accordance with the standards given in City Code section 930.4.4 . The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Board.
- (b) The application shall require the applicant to grant to the City, without cost, all rights, easements, permits and privileges which are necessary for the rendering of sanitary sewer service.
- (c) Sanitary Board employees or authorized agents of the Board shall have access, at all reasonable hours, to the premises of the applicant for the purpose of installing or removing any of its property, examining pipes or fixtures or for any purpose which is incidental to the rendering of sanitary sewer service or which is within the statutory authority of the Board. Any such employee or agent who is denied such access shall have the authority to seek a search warrant from any court of competent jurisdiction.
- (d) Each contracted customer shall give written notice to the Board upon any change in occupancy of any improved property. The contracted customer shall be liable for any sanitary sewer user charges that may accrue prior to the notice of change of occupancy of premises.
- (e) Users shall notify the Sanitary Board of any proposed new introduction of wastewater constituents or any proposed substantial change in the volume or character of the wastewater constituents being introduced into the Publicly Owned Treatment Works.

**931.10 STATE PLUMBING CODE.**

All building sanitary sewer lines and connections shall be installed so as to meet or exceed the requirements of the most current revision of the BOCA Plumbing Code, or such other Code as may be adopted by the City, and such administrative regulations as the Sanitary Board may approve.

**931.11 PROPERTY OWNER MAINTENANCE RESPONSIBILITIES; BOARD REPAIRS.**

- (a) In accordance with the provisions of the BOCA Property Maintenance Code, § PM-507.2, the owner, tenant or occupant of the property served by the City sanitary sewer shall be continuously responsible for maintaining and keeping the sanitary sewer pipe leading to and between the plumbing system of his premises to the City's connecting sanitary sewer clean and free from obstruction and shall not cause, suffer or permit any article or thing to be introduced into such pipe which causes a stoppage or interference with the operation of the system..
- (b) In the event of any such obstruction or stoppage, the Sanitary Board shall have the right to terminate water service, which shall not be reconnected until such sanitary sewer pipe is cleaned and maintained properly; and in the further event of the failure of such user to remedy such obstruction or stoppage, the Board shall have the right to enter upon such premises and make necessary repairs. The costs associated with this type of repair work shall be \$100 per hour plus the cost of labor and materials, all of which shall be included as part of the charges against such premises as outlined in Article 932, Section 932.18 of the South Charleston City Code.
- (c) In the event of a stoppage that may be in the Sanitary Boards lateral connection or main line, the customer shall notify the Sanitary Board of this emergency situation. The Sanitary Board shall promptly investigate all reports of stoppage. The Sanitary Board shall not be liable for claims by individuals or contractors for any work not authorized by the Sanitary Board.

**931.12 CLEAN OUT REQUIRED.**

For all structures in which a building lateral is being constructed, whether being constructed as a new lateral or being replaced, a clean out must be installed at or near the property line or edge of the easement. The clean out must be constructed in accordance with 931.10. A TEE connection shall be used.

**931.13 SEPARATE BUILDING SANITARY SEWER FOR EACH BUILDING;  
TOWNHOMES; EXTENSIONS PROHIBITED.**

- (a) A separate and independent building sewer shall be provided for every building.
- (b) Buildings comprised of multiple townhome style living units shall be served by a separate and independent customer service line for each townhome living unit. Buildings comprised of multiple apartment style living units may be served by a single customer service line which may be common to all such living units within the buildings; where such living units are to be individually owned, the single customer service line shall be owned and maintained as common property of such owners.
- (c) Extension of customer service lines from any point on the customer's side of the tap for delivery of waste from any location other than that of the customer in whose name the tap is registered **shall not be permitted**, and is hereby declared unlawful.
- (d) Private extensions of the South Charleston Sanitary Sewer system shall be prohibited. All persons proposing to extend the sanitary sewer system shall contact and make application to the South Charleston Sanitary Board. The South Charleston Sanitary Board is directed to establish uniform rules and regulations in accordance with the West Virginia Public Service Commission and the West Virginia Department of Health and Human Services to maintain the integrity of the system.

**931.14 INSPECTIONS PREREQUISITE TO SANITARY SEWER CONNECTION;  
NOTIFICATION FOR INSPECTION PRIOR TO CONNECTION;  
REQUIREMENTS FOR SANITARY SEWER LATERALS; AUTHORITY  
OF INSPECTORS.**

- (a) The customer's sanitary sewer line, beginning five feet from the building and extending to the tap, shall remain uncovered until it has been inspected and approved by an inspector of the Board.
- (b) The customer shall notify the Board when the building sanitary sewer is ready for inspection and connection to the public sanitary sewer. The connection shall be made under the supervision of the Board or its representative. All connections shall be made gastight and watertight and verified by proper testing, at the owners expense, when necessary. Any deviation from the prescribed procedures and materials shall be approved by the Board before installation. If the size of the project is sufficient to require the construction of one or more manholes, an agent of the Sanitary Board shall be present for inspections during all period of construction. Inspection shall be billed on a cost of service basis.

- (c) Anyone replacing a lateral connection to the South Charleston Sanitary Sewer System shall notify the Board in writing of such work. The replacement connection shall be constructed in accordance with 931.08 and 931.12.
- (d) The General Manager of the South Charleston Sanitary Board is hereby given the authority to halt work on any extension, service lateral or connection to the sanitary sewer system if the extension, service lateral or connection is not being constructed in accordance with the provisions of this Article or if the construction practices are immediately dangerous to life and health of workers or the residents of the City. Failure to halt construction after receiving a written notice shall be unlawful and shall be subject to penalty as specified in section 931.97. Provided, that the Sanitary Board manager shall provide the party performing the construction work with a list of deficiencies and when the deficiencies are corrected, the construction work may continue.

**931.15 LIABILITY TO CITY FOR SANITARY SEWER SERVICE; SHUT-OFF PERIODS.**

Customer liability for payment for and connection to service shall begin on the date that sanitary sewer service shall become reasonably available to any persons. Such liability shall continue thereafter unless such premises are disconnected from the sanitary sewer system with the approval of the Sanitary Board. After such liability begins, no allowance shall be made for vacant houses unless a written request to have the sanitary sewer system shut off is received by the Board, nor shall any allowance be made for any shut-off period which is less than thirty days.

**931.16 LIMITATION ON CITY DAMAGE LIABILITY; EMERGENCY RESTRICTIONS.**

- (a) Except as otherwise provided by law, the City shall not be liable for any damage resulting from bursting of any sanitary sewer main, service pipe or valve, or by discontinuing the operation of its sanitary 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.
- (b) In cases of emergency, the Sanitary 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, its residents, the sanitary sewer system, and the environment.

OFFICIAL OATH

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties as MEMBER for The City of South Charleston Sanitary Board in said county and state to the best of my skill and judgment: SO HELP ME GOD.

Term to expire: July 7, 2007

  
Signature

Subscribed and sworn to before me in my said county and state this the 15  
day of July, 2003.

  
Secretary

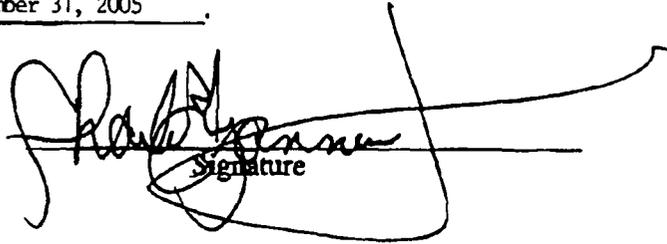
OFFICIAL OATH

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties as MEMBER for The City of South Charleston Sanitary Board in said county and state to the best of my skill and judgment: SO HELP ME GOD.

Term to expire: December 31, 2005.

  
Signature

Subscribed and sworn to before me in my said county and state this the 31  
day of December, 2002.

  
Secretary

**OFFICIAL OATH**

**STATE OF WEST VIRGINIA,**

**COUNTY OF KANAWHA:**

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties as MEMBER for The City of South Charleston Sanitary Board in said county and state to the best of my skill and judgment: SO HELP ME GOD.

Term to expire: August 27, 2004

Ralph E. King  
Signature

Subscribed and sworn to before me in my said county and state this the 27 day of August, 2003.

Matthew C. White  
Secretary

Post-It® Fax Note	7871	Date	9/5/03	# of pages	1
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Co./Dept.		Co.			
Phone #		Phone #	7684140		
Fax #	558-0299	Fax #	7681639		

PETITION OF THE SANITARY BOARD OF  
THE CITY OF SOUTH CHARLESTON

TO THE COUNCIL OF THE CITY OF SOUTH CHARLESTON, WEST VIRGINIA:

Pursuant to the provisions of Chapter 16, Article 13, Section 5 of the Code of West Virginia, 1931, as amended, the Sanitary Board (the "Sanitary Board") of the City of South Charleston, West Virginia (the "Issuer"), hereby petitions the Council to enact an ordinance which shall:

(a) set forth a brief and general description of the additions, betterments and improvements to the existing public sewerage system (the "System") of the Issuer, consisting of the acquisition of the entire existing public sewerage facilities of Green Valley Community Public Service District (the "District") by the Issuer, including, without limitation, the acquisition of all the assets and liabilities of the District and the assumption of all the outstanding bonds and other obligations of the District (the "Project");

(b) order the acquisition of the Project;

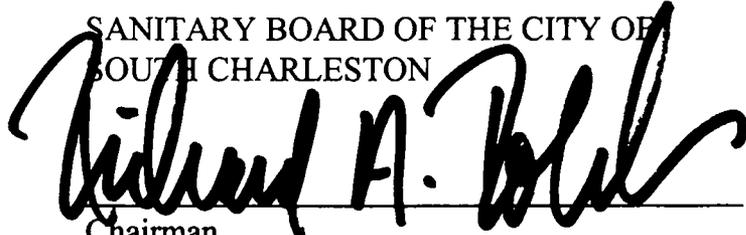
(c) direct that sewer revenue bonds of the Issuer be issued pursuant to Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended, to assume the outstanding bonds of the District in an aggregate principal amount not to exceed \$1,700,000; and

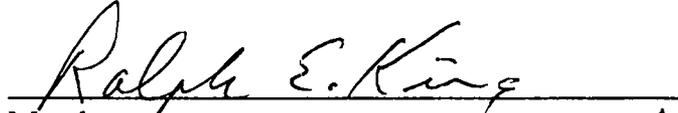
(d) contain such other provisions as may be necessary in the premises.

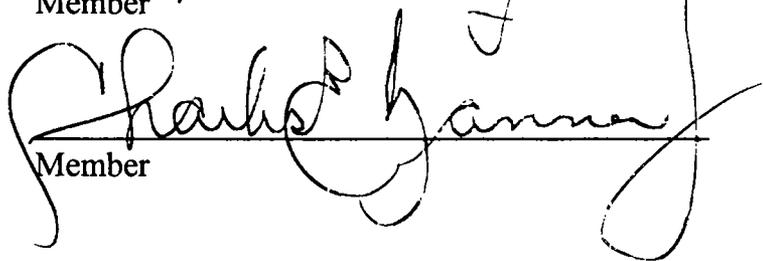
This Petition was duly approved and authorized at a meeting of the Sanitary Board duly called and held on the 18<sup>th</sup> day of May, 2004.

WITNESS our signatures on this 18<sup>th</sup> day of May, 2004.

SANITARY BOARD OF THE CITY OF  
SOUTH CHARLESTON

  
Chairman

  
Member

  
Member

2.2

**THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)**

**BOND ORDINANCE**

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Ordinance No. \_\_\_\_\_

Introduced in Council: \_\_\_\_\_, 2004

Passed by Council: \_\_\_\_\_, 2004

ORDINANCE AUTHORIZING THE MERGER AND ACQUISITION OF THE ASSETS OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT AND THE ASSUMPTION OF ALL OUTSTANDING BONDS AND OTHER OBLIGATIONS OF THE DISTRICT BY THE CITY OF SOUTH CHARLESTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$110,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), NOT MORE THAN \$1,100,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 B (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN \$275,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SOUTH CHARLESTON:

## ARTICLE I

### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01.     Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13, Chapter 22C, Article 1 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02.     Findings. It is hereby found, determined and declared that:

A.     The City of South Charleston (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State. The Issuer presently owns and operates a public sewerage system through its Sanitary Board.

B.     Green Valley Community Public Service District (the "District") is a public service district created pursuant to Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended and currently provides sewer collection service to approximately 900 customers. Pursuant to an operation and maintenance agreement by and between the Issuer and the District, the Issuer operates and maintains the District's sewerage system and performs billing and collection services for the District.

C.     The Issuer and the District signed a purchase agreement providing that the Issuer will acquire all the property and assets of the District, the Issuer will assume all the legal and financial obligations of the District and the customers served by the District will become customers to be served by the Issuer.

D.     The Issuer, the Sanitary Board and the District jointly petitioned the Public Service Commission of West Virginia (the "PSC") for approval of the acquisition of the District's assets and the assumption of the District's Bonds and other obligations by the Issuer.

E.     The PSC approved the acquisition of the District's assets and the assumption of the District's Bonds and other obligations by the Issuer in an order entered on April 7, 2004, in Case No. 03-1973-PSD-S-PC.

F.     It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired the complete public service properties of the District for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, together with all real and personal property, easements, rights-of-way and other interest in real property, all permits, licenses, orders, certificates and other approvals,

and all tangible and intangible assets of the District, together with all appurtenant facilities (collectively, the "Project")(the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements are herein called the "System").

G. The acquisition and construction of the District's sewerage system were financed in part by the proceeds of the District's (i) Subordinate Sewer Revenue Bonds, Series 1982, dated July 27, 1982, issued in the original principal amount of \$250,000 (the "Series 1982 Bonds"); (ii) Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated September 7, 2000, issued in the original principal amount of \$1,160,000 (the "Series 2000 A Bonds"); and (iii) Sewer Refunding Revenue Bonds, Series 2001 A, dated September 13, 2001, issued in the original principal amount of \$450,000 (the "Series 2001 A Bonds") (collectively, the "District Bonds"). The Registered Owners of the District's Bonds have stated that they will consent to the Issuer's assumption of the District's Bonds and the replacement of the District's Bonds with the Series 2004 Bonds of the Issuer, on a parity with the Issuer's outstanding bonds.

H. It is deemed necessary for the Issuer to issue its (i) Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), in an aggregate principal amount of not more than \$110,000 (the "Series 2004 A Bonds"), to replace the District's Series 1982 Bonds; (ii) Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), in an aggregate principal amount of not more than \$1,100,000 (the "Series 2004 B Bonds"), to replace the District's Series 2000 A Bonds; and (iii) Sewer Revenue Bonds, Series 2004 C (Capital State Bank), in an aggregate principal amount of not more than \$275,000 (the "Series 2004 C Bonds"), to replace the District's Series 2001 A Bonds (collectively, the "Series 2004 Bonds").

I. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2004 Bonds as to liens, pledge, source of and security for payment, being (i) the Supplemental Subordinate Sewer Revenue Bonds, Series 1986, dated August 29, 1986, issued in the original principal amount of \$378,985 (the "Series 1986 B Bonds"); (ii) the Subordinate Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated May 25, 1999, issued in the original principal amount of \$605,854 (the "Series 1999 A Bonds"); and (iii) the Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated September 5, 2003, issued in the original principal amount of \$4,567,360 (the "Series 2003 A Bonds"). The Series 1986 B Bonds, the Series 1999 A Bonds and the Series 2003 A Bonds are collectively called the "Prior Bonds."

The Series 2004 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2004 Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior

Bonds are met; (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2004 Bonds on a parity with the Prior Bonds; and (iii) the written consent of the Registered Owners of the District's Bonds to the assumption of the District's Bonds by the Issuer and the replacement of the District's Bonds by the Series 2004 Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

J. The estimated revenues to be derived in each year after the acquisition of the Project from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Series 2004 Bonds and the Prior Bonds and all funds and accounts and other payments provided for herein and in the Prior Ordinance.

K. The Issuer has complied with all requirements of West Virginia law relating to the authorization of the acquisition of the Project and the issuance of the Series 2004 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the acquisition of the Project and the financing thereof, and obtaining of the consent and approval from the PSC by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2004 Bonds or such final order will not be subject to appeal.

L. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2004 Bonds for the purposes set forth herein.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2004 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2004 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. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13, Chapter 22C, Article 1 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is the current Registered Owner of the District's Series 1982 Bonds and the Series 2000 A Bonds and is expected to be the original purchaser and Registered Owner of the Series 2004 A Bonds and the Series 2004 B Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

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

"Bank" means Capital State Bank, Charleston, West Virginia, which is the current Registered Owner of the District's Series 2001 A Bonds and is expected to be the original purchaser and Registered Owner of the Series 2004 C Bonds.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

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

"Bonds" means, collectively, the Series 2004 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"Closing Date" means the date upon which the acquisition of the District's assets and the assumption of the District's Bonds and other obligations by the Issuer are complete.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting

Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

"Costs" or "Costs of the Project" means those costs in connection with the acquisition of the Project and the assumption of the District's Bonds.

"DEP" means the West Virginia Department of Environmental Protection or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"District" means Green Valley Community Public Service District, a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha County, West Virginia, which will transfer all its assets, liabilities and obligations to the Issuer pursuant to the merger.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

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

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

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

"Investment Property" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

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

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

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

"Loan Agreement" means, collectively, the Loan Agreement heretofore entered into by and between the District and the Authority, providing for the purchase of the District's Series 1982 Bonds and the Loan Agreement heretofore entered into by and among the Issuer, the Authority and the DEP, providing for the purchase of the District's Series 2000 A Bonds, which will be assumed by the Issuer in connection with the merger.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2004 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the respective Series 2004 Bonds Reserve Account. For purposes of the Private

Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2004 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

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

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all 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.

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

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity designated as such for the Series 2004 Bonds in the Supplemental Resolution.

"Prior Bonds" means, collectively, the Issuer's (i) Supplemental Subordinate Sewer Revenue Bonds, Series 1986, dated August 29, 1986, issued in the original principal

amount of \$378,985, (ii) Subordinate Sewer Revenue Bonds, Series 1999 A, dated May 25, 1999, issued in the original principal amount of \$605,854, and (iii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated September 5, 2003, issued in the original principal amount of \$4,567,360.

“Prior Ordinance” means, collectively, the ordinances and supplemental resolutions of the Issuer, authorizing the issuance of the Prior Bonds.

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

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

“PSC” means the Public Service Commission of West Virginia and any successor to the functions thereof.

“PSC Order” means, collectively, the final order or orders of the PSC, approving the acquisition of the District’s assets and the assumption of the District’s Bonds and other obligations by the Issuer.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

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

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 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 Investors Service, Inc. or Standard & Poor's Corporation.

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

"Registrar" means the Bond Registrar.

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

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

"Reserve Accounts" means, collectively, the respective Reserve Accounts

created for the Series 2004 Bonds and the Prior Bonds.

“Reserve Requirement” means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2004 Bonds.

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

“Sanitary Board” or “Board” means the Sanitary Board of the Issuer.

“Series 2004 Bonds” means, collectively, the Series 2004 A Bonds, the Series 2004 B Bonds and the Series 2004 C Bonds of the Issuer.

“Series 2004 A Bonds” means the Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), of the Issuer, authorized by this Bond Legislation to replace the District’s Series 1982 Bonds.

"Series 2004 A Bonds Sinking Fund" means the Series 2004 A Bonds Sinking Fund created by Section 5.02 hereof.

“Series 2004 B Bonds” means the Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation to replace the District’s Series 2000 A Bonds.

"Series 2004 B Bonds Reserve Account" means the Series 2004 B Bonds Reserve Account created by Section 5.02 hereof.

"Series 2004 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2004 B Bonds in the then current or any succeeding year.

"Series 2004 B Bonds Sinking Fund" means the Series 2004 B Bonds Sinking Fund created by Section 5.02 hereof.

“Series 2004 C Bonds” means the Sewer Revenue Bonds, Series 2004 C (Capital State Bank), of the Issuer, authorized by this Bond Legislation to replace the District’s Series 2001 A Bonds.

"Series 2004 C Bonds Reserve Account" means the Series 2004 C Bonds Reserve Account created by Section 5.02 hereof.

"Series 2004 C Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2004 C Bonds in the then current or any succeeding year.

"Series 2004 C Bonds Sinking Fund" means the Series 2004 C Bonds Sinking Fund created by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds created for the Series 2004 Bonds and the Prior Bonds.

"SRF Administrative Fee" means the administrative fee to be paid under the Loan Agreement for the District's Series 2000 A Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2004 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2004 Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2004 Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewerage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND ASSUMPTION

Section 2.01. Authorization of Acquisition and Assumption. There is hereby authorized and ordered the acquisition of the Project and the assumption of the District's Bonds through the issuance of the Series 2004 Bonds by the Issuer.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. For the purposes of assuming and replacing the District's Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2004 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2004 Bonds of the Issuer. The Series 2004 Bonds shall be issued in three series, each as a single bond, designated respectively as "Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority)," in the principal amount of not more than \$110,000; "Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program)," in the principal amount of not more than \$1,100,000; and "Sewer Revenue Bonds, Series 2004 C (Capital State Bank)," in the principal amount of not more than \$275,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2004 Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2004 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2004 Bonds, if any, shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable between the Issuer and the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2004 Bonds shall initially be issued in the form of a single bond for each series, fully registered to the Registered Owner thereof, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of each series of the Series 2004 Bonds. The Series 2004 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of such Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of such Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2004 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2004 Bonds shall cease to be such officer of the Issuer before the Series 2004 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2004 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2004 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof, shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2004 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2004 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 Registered Owner, in accepting the Series 2004 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 Registered Owner shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2004 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2004 Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2004 Bonds or transferring the registered Series 2004 Bonds are exercised, all Series 2004 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2004 Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2004 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2004 Bonds during the period commencing on the 15<sup>th</sup> day of the month next preceding an interest payment date on the Series 2004 Bonds or, in the case of any proposed redemption of Series 2004 Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2004 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2004 Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the System as herein provided. No Registered Owner of the Series 2004 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2004 Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2004 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Series 2004 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2004 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2004 Bonds to the original purchasers upon receipt of a request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2004 Bonds to the original purchasers.

Section 3.10. Form of Bonds. The text of the Series 2004 Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2004 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BOND, SERIES 2004 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. AR-1

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF SOUTH CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), in annual installments on October 1 of each year, commencing October 1, \_\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between Green Valley Community Public Service District (the "District") and the Authority, dated \_\_\_\_\_, \_\_\_\_\_, and assumed by the Issuer.

This Bond is issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Subordinate Sewer Revenue Bonds, Series 1982, in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 1 of the Code

of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 200\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 200\_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, DATED AUGUST 29, 1986, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$378,985; (2) SUBORDINATE SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 1999, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$605,854; (3) SEWER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 5, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,567,360 (COLLECTIVELY, THE "PRIOR BONDS"); (4) SEWER REVENUE BONDS, SERIES 2004 B (WEST VIRGINIA SRF PROGRAM), DATED \_\_\_\_\_, 2004, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$\_\_\_\_\_; AND (5) SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK), DATED \_\_\_\_\_, 2004, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$\_\_\_\_\_. (COLLECTIVELY, THE "SERIES 2004 BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2004 Bonds, and from unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest, if any, on this Bond payable in any year, and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds; provided however, that so long as there exists in the

respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF SOUTH CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated \_\_\_\_\_, 200\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

(FORM OF SERIES 2004 B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BOND, SERIES 2004 B  
(WEST VIRGINIA SRF PROGRAM)

No. BR-\_\_\_\_\_

\$\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF SOUTH CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, as set forth on said EXHIBIT B.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

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

This Bond is issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C,

Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 200\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 200\_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, DATED AUGUST 29, 1986, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$378,985; (2) SUBORDINATE SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 1999, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$605,854; (3) SEWER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 5, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,567,360 (COLLECTIVELY, THE "PRIOR BONDS"); (4) SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED \_\_\_\_\_, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$ \_\_\_\_\_; AND (5) SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK), DATED \_\_\_\_\_, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (COLLECTIVELY, THE "SERIES 2004 BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2004 Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2004 B Bonds Reserve Account"), and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2004 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest, if any, on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds; provided however, that so long as there exists in the Series 2004 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds, an amount at least equal to the requirement therefor, such percentage may be

reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF SOUTH CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated \_\_\_\_\_, 200\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 200\_\_.

\_\_\_\_\_

\_\_\_\_\_, as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A  
RECORD OF ADVANCES

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

TOTAL     \$

EXHIBIT B  
DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_

(FORM OF SERIES 2004 C BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BOND, SERIES 2004 C  
(CAPITAL STATE BANK)

No. CR-\_\_\_\_\_

\$\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That, THE CITY OF SOUTH CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to CAPITAL STATE BANK (the "Payee") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), in monthly installments on the \_\_\_\_\_ day of each month, commencing \_\_\_\_\_, \_\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference, with interest on each installment at the rate of \_\_\_\_\_% per annum, payable on the \_\_\_\_\_ day of each month, commencing \_\_\_\_\_, \_\_\_\_\_. Interest shall be calculated using an actual 30-day month/360-day year.

The principal of and interest on this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of Capital State Bank, Charleston, West Virginia (the "Paying Agent"). If any payment is made more than 10 days after the due date, the Issuer shall pay a late charge equal to 5% of the principal and interest then due, with a minimum of \$25 and a maximum of \$250.

This Bond is subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and the interest accrued to the prepayment date.

This Bond is issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A, in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, \_\_\_\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, \_\_\_\_\_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably

from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, DATED AUGUST 29, 1986, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$378,985; (2) SUBORDINATE SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 1999, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$605,854; (3) SEWER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 5, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,567,360 (COLLECTIVELY, THE "PRIOR BONDS"); (4) SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED \_\_\_\_\_, 2004, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$\_\_\_\_\_; AND (5) SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK), DATED \_\_\_\_\_, 2004, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$\_\_\_\_\_ (COLLECTIVELY, THE "SERIES 2004 BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of the Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2004 Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2004 C Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2004 C Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond, and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds; provided however, that so long as there exists in the Series 2004 C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

This Bond is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended. This Bond is exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof under the Act.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF SOUTH CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated \_\_\_\_\_, 200\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 200\_\_.

CAPITAL STATE BANK, as Registrar

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A  
DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto\_\_\_\_  
\_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_, Attorney to transfer the said Bond  
on the books kept for registration of the within Bond of the said Issuer with full power of  
substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Approval and Ratification of District's Loan Agreement. The Loan Agreement for the District's Series 1982 Bonds and Series 2000 A Bonds, including all schedules and exhibits attached thereto, are hereby approved and ratified and incorporated into this Bond Legislation. The Series 2004 A and the Series 2004 B Bonds which are issued to replace the District's Series 1982 Bonds and Series 2000 A Bonds, respectively, shall be issued pursuant to the terms and conditions of the Loan Agreement.

ARTICLE IV

[RESERVED]

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously created by the Prior Ordinance) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (created by the Prior Ordinance); and
- (2) Renewal and Replacement Fund (created by the Prior Ordinance).

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

- (1) Series 2004 A Bonds Sinking Fund (transferred from the District's Series 1982 Bonds Sinking Fund);
- (2) Series 2004 B Bonds Sinking Fund (transferred from the District's Series 2000 A Bonds Sinking Fund);
- (3) Series 2004 B Bonds Reserve Account (transferred from the District's Series 2000 A Bonds Reserve Account); and
- (4) Series 2004 C Bonds Reserve Account (transferred from the District's Series 2001 A Bonds Reserve Account).

B. The following special fund is hereby created with and shall be held by the Paying Agent of the Series 2004 C Bonds, separate and apart from all other funds or accounts of the Paying Agent or the Issuer:

- (1) Series 2004 C Bonds Sinking Fund (transferred from the District's Series 2001 A Bonds Sinking Fund).

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinance and this Bond Legislation. All moneys in the Revenue Fund shall be disposed of only in the following manner and order of priority:

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

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Series 1999 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the interest on the Series 1999 A Bonds; (ii) remit to the Commission for deposit in the Series 2003 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the interest on the Series 2003 A Bonds; and (iii) remit to the Paying Agent for the Series 2004 C Bonds for deposit in the Series 2004 C Bonds Sinking Fund, the amount of interest which will become due on the Series 2004 C Bonds as set forth in the Series 2004 C Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Series 1986 B Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Series 1986 B Bonds; (ii) remit to the Commission for deposit in the Series 1999 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Series 1999 A Bonds; (iii) remit to the Commission for deposit in the Series 2003 A Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Series 2003 A Bonds; (iv) remit to the Commission for deposit in the Series 2004 A Bonds Sinking Fund, the amount of principal which will mature and become due on the Series 2004 A Bonds as set forth in the Series 2004 A Bonds; (v) remit to the Commission for deposit in the Series 2004 B Bonds Sinking Fund, the amount of principal which will mature and become due on the Series 2004 B Bonds as set forth in the Series 2004 B Bonds; and (vi) remit to the Paying Agent for the Series 2004 C Bonds for deposit in the Series 2004 C Bonds Sinking Fund, the amount of principal which will mature and become due on the Series 2004 C Bonds as set forth in the Series 2004 C Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 B Bonds Reserve Account, the amount required by the Prior Ordinance; (ii) for deposit in the Series 1999 A Bonds Reserve Account, the amount required by the Prior Ordinance; (iii) for deposit in the Series 2003 A Bonds Reserve Account, the amount required by the Prior Ordinance; (iv) for deposit in the Series 2004 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2004 B Bonds Reserve Requirement; and (v) for deposit in the Series 2004 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2004 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2004 B Bonds Reserve Account or the Series 2004 C Bonds Reserve Account as long as there shall remain on deposit therein, an amount equal to the respective Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinance and not in addition thereto), exclusive of any payments into the Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of

determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the respective Series 2004 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2004 Bonds as the same shall become due. Moneys in the respective Series 2004 Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2004 Bonds as the same shall come due, when other moneys in the respective Series 2004 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Series 2004 Bonds Sinking Fund and the Series 2004 Bonds Reserve Account shall be returned, after fully funded, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due, if any, on the Series 2004 Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the respective Series 2004 Bonds Reserve Account which result in a reduction in the balance therein to an amount below the respective Series 2004 Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2004 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay any interest on such additional Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the respective Series 2004 Bonds Sinking Fund or the Series 2004 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2004 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2004 Bonds and the Prior Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the respective Series 2004 Bonds Sinking Fund and the Series 2004 Bonds Reserve Account created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority, the Issuer shall make the necessary arrangements whereby required payments into such accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates hereunder.

Moneys in the respective Series 2004 Bonds Sinking Fund and the Series 2004 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The respective Series 2004 Bonds Sinking Fund and the Series 2004 Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2004 Bonds Outstanding under the conditions and restrictions set forth herein.

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

C. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month), remit to the Commission the SRF Administrative Fee set forth in the Schedule Y attached to the Loan Agreement for the District's Series 2000 A Bonds.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

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

F. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges then due. If required by the Authority, the Issuer shall make the necessary arrangements whereby payments to the Commission under this paragraph shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

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

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

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

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

ARTICLE VI

[RESERVED]

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Registered Owner of the Series 2004 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2004 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2004 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2004 Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Registered Owner of the Series 2004 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2004 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2004 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Series 2004 Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The Issuer will charge the existing customers of the District the same rates and charges that are currently in effect for the District for a period of 18 months from the merger.

So long as the Series 2004 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2004 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance. Additionally, so long as the Series 2004 Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP 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 fully pay all the Bonds outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2004 Bonds, immediately be remitted to the Commission and the Paying Agent for deposit in the respective Series 2004 Bonds Sinking Fund, and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Registered Owner, the Issuer shall direct the Commission and the Paying Agent to apply such proceeds to the payment of principal of and interest on the Series 2004 Bonds. Any balance remaining after the payment of the Series 2004 Bonds and interest thereon shall be remitted to the Issuer by the Commission and the Paying Agent unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine, upon consultation with a professional engineer, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation.

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

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2004 Bonds. All obligations issued by the Issuer after the issuance of the Series 2004 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2004 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2004 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2004 Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2004 Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2004 Bonds.

No such Parity Bonds shall be issued, except for the purposes of financing the costs of the design, acquisition or construction of additions, extensions, improvements or betterments to the System or refunding any Bonds outstanding, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than 115% of the largest aggregate amount which will mature or become due in any succeeding year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such additional Parity Bonds.

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

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Registered Owners of the Bonds and the Registered Owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. All Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from the Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2004 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2004 Bonds.

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

**Section 7.08. Books; Records and Audit.** The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following acquisition of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following such acquisition.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Series 2004 Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2004 Bonds, and shall mail in each year to any Registered Owner of the Series 2004 Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountant in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit

Act, or any successor thereof, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountant, or a summary thereof, to any Registered Owner of the Series 2004 Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2004 Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to acquire the Project. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the Authority and the 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 acquisition and commencement of operation of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement for the District's Series 2000 A Bonds or as promulgated from time to time.

**Section 7.09. Rates.** Prior to the issuance of the Series 2004 Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses 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 Series 2004 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2004 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit respectively in the Series 2004 Bonds Reserve Account and the Reserve Accounts for obligations on a parity with the Series 2004 Bonds, including the

Prior Bonds, are funded at least at the requirement therefor, 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 Series 2004 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2004 Bonds, including the Prior Bonds.

Section 7.10. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall within 30 days of adoption thereof mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Registered Owner of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the DEP and any Registered Owner of such Bonds or anyone acting for and on behalf of such Registered Owner.

Section 7.11. Operating Personnel. The Issuer shall employ qualified operating personnel properly certified by the State so long as the Series 2004 Bonds are outstanding.

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

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

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System.

The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a termination agreement with the provider of such water, subject to any required approval of such agreement by the PSC and all rules, regulations and orders of the PSC.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance. The Issuer hereby covenants and agrees that so long as the Series 2004 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR in compliance with the State law.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board or the Issuer having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

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

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

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

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

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

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority and the DEP or other State, federal or local bodies in regard to the acquisition of the Project and the operation, maintenance and use of the System.

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

A. **PRIVATE BUSINESS USE LIMITATION.** The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2004 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2004 Bonds during the term thereof is, under the terms of the Series 2004 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2004 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2004 Bonds during the term thereof is, under the terms of the Series 2004 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2004 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2004 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. **PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of the lesser of 5% or \$5,000,000 of the Net Proceeds of the Series 2004 Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than State or local government units.

C. **FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2004 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. **INFORMATION RETURN.** The Issuer shall file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2004 Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer shall take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2004 Bonds will be and remain excludable from gross income

for federal income tax purposes, and shall not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

## ARTICLE VIII

### INVESTMENTS; NON ARBITRAGE

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2004 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2004 Bonds from gross income for federal income tax purposes.

**Section 8.02. Non Arbitrage.** The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2004 Bonds which would cause the Series 2004 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and Regulations, and (ii) it shall take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2004 Bonds) so that the interest on the Series 2004 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 8.03. Small Issuer Exemption from Rebate.** In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2004 Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2004 Bonds are to be

used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt bonds (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2004 Bonds are issued are not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 2004 Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2004 Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay, from any lawful sources available therefor, to the United States such rebate amount, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. The Issuer shall obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary to maintain the exclusion of interest on the Series 2004 Bonds from gross income for federal income tax purposes. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond year, a certified copy of its rebate calculation or, if the Issuer qualifies for the small issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge which would make the Series 2004 Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority,

including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2004 Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2004 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2004 Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2004 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2004 Bonds, and such default shall have continued for a period of 30 days after the Issuer or Board, as appropriate, shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or the Registered Owner of a Bond; or

(3) If the Issuer or Board files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2004 Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2004 Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2004 Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2004 Bonds, or the rights of such Registered Owners; provided however, that all rights and remedies of the Registered Owners of the Series 2004 Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2004 Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of

Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate and maintain, manage and control the System, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to the System as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Registered Owners of the Series 2004 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2004 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2004 Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2004 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2004 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2004 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2004 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owners thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2004 Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2004 Bonds from gross income of the Registered Owners thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2004 Bonds.

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

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinance, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto;

and that the Mayor, the City Clerk and members of the Governing Body and the Sanitary Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance in the form set forth in Exhibit A attached hereto and incorporated herein by reference, shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Charleston Gazette and The Charleston Daily Mail, 2 qualified newspapers of general circulation in The City of South Charleston, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2004 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. The Governing Body hereby determines that the abstract of this Ordinance as set forth in Exhibit A contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

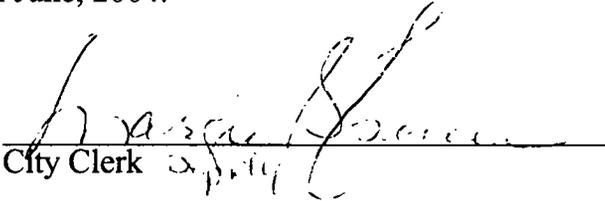
Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

CERTIFICATION

Certified a true copy of an Ordinance duly passed by the Council of THE CITY OF SOUTH CHARLESTON on June 3, 2004, and effective June 17, 2004.

Dated this 18<sup>th</sup> day of June, 2004.

[SEAL]

  
\_\_\_\_\_  
City Clerk



## EXHIBIT A

### THE CITY OF SOUTH CHARLESTON

#### NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on June 3, 2004, the Council of The City of South Charleston (the "Issuer") adopted an ordinance which, among other things:

1. Authorized the merger and acquisition of the assets of Green Valley Community Public Service District (the "District") by the Issuer and the assumption of the District's Bonds through the issuance by the Issuer of not more than \$110,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority); not more than \$1,100,000 in aggregate principal amount of Sewer Revenue Bonds Series 2004 B (West Virginia SRF Program); and not more than \$275,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2004 C (Capital State Bank)(collectively, the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of a Revenue Fund and the disposition of the revenues of the System; provided for the payment of operating expenses; provided for the monthly payment of principal of and interest on the Bonds when due; provided for the creation of a Sinking Fund, a Reserve Account and a Renewal and Replacement Fund for the Bonds; and provided for the use of excess funds of the System.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the Registered Owners of the Bonds to the Net Revenues of the System.

5. Provided certain conditions for the issuance of additional bonds.

6. Provided for insurance coverage on the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Registered Owners of the Bonds.

7. Established the events of default and the remedies of the Registered Owners of the Bonds.

8. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer 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 South Charleston at a regular meeting on Thursday, June 17, 2004, at 7:00 p.m., in the Council Chambers, City Hall, 4<sup>th</sup> Avenue and D Street, South Charleston, West Virginia, and present protests 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 is on file with the City Clerk for review by interested persons during the office hours of the City Hall.

/s/ \_\_\_\_\_  
City Clerk

2.3

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SEWER REVENUE BONDS, SERIES 2004 B (WEST VIRGINIA SRF PROGRAM); AND SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK), OF THE CITY OF SOUTH CHARLESTON; DESIGNATING A REGISTRAR AND PAYING AGENT; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of The City of South Charleston (the "Issuer") has duly and officially passed a Bond Ordinance on June 3, 2004, effective June 17, 2004 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE MERGER AND ACQUISITION OF THE ASSETS OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT AND THE ASSUMPTION OF ALL OUTSTANDING BONDS AND OTHER OBLIGATIONS OF THE DISTRICT BY THE CITY OF SOUTH CHARLESTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$110,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), NOT MORE THAN \$1,100,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 B (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN \$275,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE

BONDS, SERIES 2004 C (CAPITAL STATE BANK); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of the Issuer's Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), in an aggregate principal amount not to exceed \$110,000; Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), in an aggregate principal amount not to exceed \$1,100,000; and Sewer Revenue Bonds, Series 2004 C (Capital State Bank), in an aggregate principal amount not to exceed \$275,000 (individually, the "Series 2004 A Bonds," the "Series 2004 B Bonds" and the "Series 2004 C Bonds," or collectively, the "Bonds" or the "Series 2004 Bonds"), all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Bond Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Bonds are being issued to evidence the Issuer's assumption of certain outstanding bonds of Green Valley Community Public Service District (the "District"), in connection with the Issuer's acquisition of the District's sewerage system; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SOUTH CHARLESTON, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in The Charleston Gazette and The Charleston Daily Mail, 2 qualified newspapers of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the City Clerk has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In council chambers, City Hall, South Charleston, West Virginia, on June 17, 2004, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer:

(A) Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), of the Issuer, originally represented by a single Bond, numbered AR-1, in the original principal amount of \$108,108.04. The Series 2004 A Bonds shall be issued to assume the District's Subordinate Sewer Revenue Bonds, Series 1982 (the "Series 1982 Bonds"), shall be dated the date of delivery, shall finally mature October 1, 2019, and shall bear no interest. The principal of the Series 2004 A Bonds shall continue to be payable annually on October 1 of each year, in the amounts set forth in the Schedule X attached to the Loan Agreement for the District's Series 1982 Bonds and incorporated in and made a part of the Series 2004 A Bonds. The Series 2004 A Bonds shall be subject to redemption upon the written consent of the Authority and upon payment of the redemption premium, if any, and

otherwise in compliance with such Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2004 A Bonds.

(B) Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered BR-1, in the original principal amount of \$1,072,997. The Series 2004 B Bonds shall be issued to assume the District's Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program) (the "Series 2000 A Bonds"), shall be dated the date of delivery, shall finally mature March 1, 2032, and, shall bear no interest. The principal of the Series 2004 B Bonds shall continue to be payable quarterly on March 1, June 1, September 1 and December 1 of each year, in the amounts set forth in the Schedule Y attached to the Loan Agreement for the District's Series 2000 A Bonds and incorporated in and made a part of the Series 2004 B Bonds. The Issuer shall continue to pay the SRF Administrative Fee equal to 0.5% of the principal amount of the Series 2004 B Bonds set forth in the Schedule Y attached to such Loan Agreement. The Series 2004 B Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with such Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2004 B Bonds.

(C) Sewer Revenue Bonds, Series 2004 C (Capital State Bank), of the Issuer, originally represented by a single Bond, numbered CR-1, in the original principal amount of \$271,200.08. The Series 2004 C Bonds shall be issued to assume the District's Sewer Refunding Revenue Bonds, Series 2001 A (the "Series 2001 A Bonds"), shall be dated the date of delivery, shall finally mature September 10, 2017, shall bear interest at the rate of 5.8% per annum. The principal of and interest on the Series 2004 C Bonds shall continue to be payable on the 10<sup>th</sup> day of each month, in the amounts set forth in the Debt Service Schedule of the Series 2001 A Bonds, which is incorporated in and made a part of the Series 2004 C Bonds. If any payment is made more than 10 days after the due date, the Issuer shall pay a late charge equal to 5% of the principal and interest then due, with a minimum of \$25 and a maximum of \$250. The Series 2004 C Bonds shall be subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and the interest accrued to the prepayment date.

(D) The Series 2004 Bonds are being issued to evidence the Issuer's assumption of the District's Bonds. Therefore, no bond proceeds will be received. The funds in the District's Series 2000 A Bonds Reserve Account and Series 2001 A Bonds Reserve Account shall be transferred to the Series 2004 B Bonds Reserve Account and Series 2004 C Bonds Reserve Account respectively as part of the merger and acquisition of the District's assets by the Issuer. The District is not required to have a reserve account for the Series 1982 Bonds.

(E) The assumption of the District's Bonds through the delivery of the Series 2004 Bonds to the respective Registered Owners thereof is hereby approved. The Mayor is hereby authorized and directed to execute the Series 2004 Bonds by his manual signature and attested by the City Clerk by his manual signature and the seal of the Issuer shall be impressed thereon. All other provisions relating to the Series 2004 Bonds and the text of the 2004 Bonds shall be in substantially the forms provided in the Bond Ordinance.

Section 3. The Issuer hereby affirms all covenants and representations made in the respective Loan Agreement for the District's Series 1982 Bonds and the Series 2000 A Bonds. Both Loan Agreements are hereby assumed by the Issuer and shall remain in full force and effect and be binding on the Issuer so long as such Bonds are outstanding.

Section 4. The Issuer hereby ratifies, approves and accepts the purchase agreement dated November 20, 2003 (the "Purchase Agreement"), between the Issuer and the District, pursuant to which the Issuer will acquire all the assets of the District and assume all the bonds, obligations and liabilities of the District.

Section 5. The Issuer hereby appoints and designates Capital State Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Series 2004 Bonds under the Bond Ordinance. The Issuer shall notify the current Registrar of the District's Bonds of the assumption of such Bonds by the Issuer.

Section 6. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Series 2004 A Bonds and the Series 2004 B Bonds and Capital State Bank as Paying Agent for the Series 2004 C Bonds under the Bond Ordinance.

Section 7. The Commission is hereby authorized to transfer all the funds in the District's Series 2000 A Bonds Reserve Account into the Issuer's Series 2004 B Bonds Reserve Account and all the funds in the District's Series 2001 A Bonds Reserve Account into the Issuer's Series 2004 C Bonds Reserve Account. Moneys in the Reserve Accounts for the Series 2004 Bonds shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 8. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 2004 Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Series 2004 Bonds may be delivered to the respective Registered Owners on or about June 18, 2004. The Issuer hereby authorizes the Deputy City Clerk, Margie Spence, to sign all such documents and certificates on behalf of the City Clerk.

Section 9. The acquisition by merger of the District's assets and the assumption of the District's Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 10. The Issuer shall not permit at any time or times any of the proceeds of the Series 2004 Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 2004 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 Series 2004 Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code, including any regulations to be promulgated thereunder.

Section 11. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than \$5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 2004, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Section 12. The Issuer hereby designates the Series 2004 C Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2004 C Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 in aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code),

including the Series 2004 C Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2004.

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

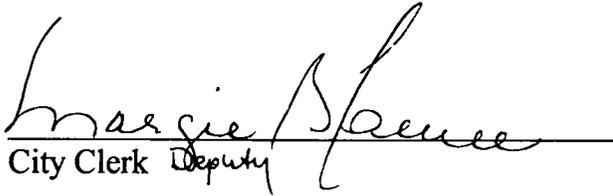
Adopted this 17<sup>th</sup> day of June, 2004.

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of South Charleston on the 17<sup>th</sup> day of June, 2004.

Dated this 18<sup>th</sup> day of June, 2004.

[SEAL]

  
City Clerk Deputy

06/17/04  
001793/00309

JOURNAL OF THE COUNCIL  
CITY OF SOUTH CHARLESTON

The council met in its chambers in City Hall on June 17, 2004 at 7:30 p.m., DST for the second meeting and was called to order by Mayor Robb

Margie Spence, Deputy City Clerk, called the roll and the following members were present:

Sonny Holstine  
Butch Buckley  
Ron Hutchison  
Dayton Griffith

Joe Mayes  
Warren Shirkey  
Paul Neal  
Mayor Robb

Absent: Jim Triplett

\*\*\*\*\*

PRAYER

Offered by Dayton Griffith.

\*\*\*\*\*

PLEDGE OF ALLEGIANCE

Led by Margie Spence.

\*\*\*\*\*

ALSO IN ATTENDANCE:

Margie Spence, Deputy City Clerk  
C. W. Sigman, Chief, Fire Department  
David Dunlap, Chief Police Department  
Frank Mullens, Director of Public Works  
Carlton Lee, Sanitary Board Manager  
Ty Newberry, Recreation Director  
Melissa Newberry, City Attorney  
Marsha Smith, City Treasurer

\*\*\*\*\*

MINUTES OF PREVIOUS MEETING

Mr. Neal moved to approve the minutes of the June 3, 2004 council meeting; seconded by Mr. Dayton Griffith and passed by a unanimous voice vote.

\*\*\*\*\*

FINANCIAL REPORT

Mr. Neal moved to approve the financial report; seconded by Mr. Hutchison and passed by a unanimous voice vote.

\*\*\*\*\*

PETITIONS, COMMUNICATIONS AND PUBLIC HEARINGSBOND ORDINANCE FOR GREEN VALLEY PUBLIC SERVICE DISTRICT (THIRD READING)  
(PUBLIC HEARING) (MAYOR)

It was moved by Mr. Shirkey; seconded by Mr. Mayes to adopt the ordinance.

Mayor Robb opened the public hearing. As there was no one to speak for or against the ordinance Mayor Robb closed the public hearing.

Therefore, the ordinance was adopted by a unanimous roll call vote.

AN ORDINANCE TO CLOSE, ABANDON, AND DISCONTINUE A PUBLIC ALLEY (SECOND  
READING) (BUCKLEY)

It was moved by Mr. Buckley; seconded by Mr. Griffith to adopt the ordinance. This passed by a unanimous roll call vote.

RECOGNIZE CONTRIBUTIONS OF FRANCES BOWERS PRICE (MAYES)

Mayor Robb recognized Francine Price Cornelius, daughter of Frances Price and presented her with a certificate of recognition and commendation in memory of Mrs. Price's dedication and involvement to the city.

RECOGNIZE KEN SAMPLES REGARDING AWARD (MAYOR)

Mayor Robb presented Ken Samples a certificate of recognition in honor of his recent win of holder in weight lifting.

REVISION GENERAL FUND #2004-01-02 (MAYOR)

It was moved by Mr. Buckley; seconded by Mr. Hutchison to approve the Resolution. This passed by a unanimous voice vote.

APPROVE APPOINTMENT OF DICK BURG OF 5121 OHIO STREET, RETIRED FMC  
EMPLOYEE, TO MUNICIPAL PLANNING COMMISSION (MAYOR)

It was moved by Mr. Holstine; seconded by Mr. Mayes to approve the appointment. This passed by a unanimous voice vote.

RECOGNIZE ELIZABETH SLATER REGARDING CSX RAILROAD (MAYOR)

This item was disregarded at this time.

INTERPRETATIVE CENTER OF THE MOUND (DOH PROPOSED CONTRACT) (HUTCHISON)

It was moved by Mr. Hutchison; seconded by Mr. Griffith to approve the contract. This passed by a unanimous roll call vote.

\*\*\*\*\*

BIDSCITY PAVING

It was moved by Mr. Buckley; seconded by Mr. Hutchison to award the bid to West Virginia Paving in the amount of \$200,000.00.

The motion was amended by Mr. Holstine to add \$35,000.00 taken from Capital Reserve in order to complete the paving list. The amendment passed by a 7-1 roll call vote with Mr. Neal voting in the negative.

Therefore, the original motion to approve the paving passed by a unanimous roll call vote.

GENERAL LIABILITY INSURANCE

It was moved by Mr. Buckley; seconded by Mr. Griffith to give the power to act to the Finance Committee until all quotes are received. This passed by a unanimous roll call vote.

\*\*\*\*\*

REPORT OF CITY ATTORNEY - No written report.

REPORT OF DIRECTOR OF PUBLIC WORKS - No written report.

REPORT OF POLICE CHIEF - No written report.

REPORT OF FIRE CHIEF - Submitted a written report.

REPORT OF RECREATION DIRECTOR - No written report.

REPORT OF CITY TREASURER - Submitted a written report.

REPORT OF SANITARY BOARD MANAGER - No written report.

\*\*\*\*\*

COMMITTEE REPORTSWEST VIRGINIA WATER LEGAL FEE TO FIGHT INCREASE

It was moved by Mr. Buckley; seconded by Mr. Griffith to approve spending up to \$10,000 to fight the increase. This passed by a unanimous roll call vote.

\*\*\*\*\*

NEW BUSINESS

None.

\*\*\*\*\*

MISCELLANEOUS BUSINESS

None.

\*\*\*\*

ADJOURNMENT

Mr. Hutchison moved to adjourn the meeting; seconded by Mr. Mayes and passed by a unanimous voice vote.

Mayor Robb adjourned the meeting at: 8:45 p.m.

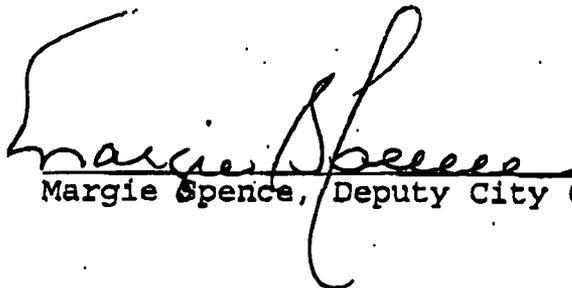
\*\*\*\*\*

APPROVAL

Approved this 1<sup>st</sup> day of July, 2004.

  
Richard A. Robb, Mayor

ATTEST:

  
Margie Spence, Deputy City Clerk



**CHARLESTON NEWSPAPERS**

P.O. Box 2993  
Charleston, West Virginia 25330  
Billing 348-4898  
Classified 348-4848  
1-800-WVA-NEWS

**LEGAL ADVERTISING INVOICE**

INVOICE DATE	06/14/04
ACCOUNT NBR	038491106
SALES REP ID	0022
INVOICE NBR	134024001

BILLED TO

JACKSON & KELLY  
\*\*\*\*\*  
150 CLAY STREET  
MORGANTOWN WV 26507 USA

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Make checks payable to: Charleston Newspapers

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INVOICE DATE	06/14/04
ACCOUNT NBR	038491106
SALES REP ID	0022
INVOICE NBR	134024001

Legal pricing is based upon 63 words per column inch.

Each successive insertion is discounted by 25% of the first insertion rate.

The Daily Mail is at a rate of \$.12 per word, and the Charleston Gazette is at a rate of \$.12 per word.

ISSUE DATE	AD TYPE	PUB	DESCRIPTION		AD NUMBER	AD SIZE	RATE	GROSS AMOUNT	NET AMOUNT
			REFERENCE NBR	PURCHASE ORDER #		TOTAL RUN			
			134024004			12.50	7.56	94.50	
			LEGAL DISCOUNT 25%					23.63-	70.87
			TOTAL INVOICE AMOUNT						330.74

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, Sonara Biggs of

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,  
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,  
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of  
SEWER REVENUE BONDS

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County,  
West Virginia, on the 5TH day of JUNE 2004. Published during the following dates: 06/04/04-06/11/04

Subscribed and sworn to before me this 15 day of June

Printers fee \$ 330.74

Alvin K. Feider  
Notary Public of Kanawha County, West Virginia



**CHARLESTON NEWSPAPERS**

P.O. Box 2993  
Charleston, West Virginia 25330  
Billing 348-4898  
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			REFERENCE NBR	PURCHASE ORDER #		TOTAL RUN			
06/04	LEGF	DM	134024001	SEWER REVENUE BONDS	0111469	1X1250 12.50	7.56	94.50	94.50
06/04	LEGF	GZ	134024002	SEWER REVENUE BONDS		1X1250 12.50	7.56	94.50	94.50
06/11	LEGR	DM	134024003	SEWER REVENUE BONDS		1X1250 12.50	7.56	94.50	
				LEGAL DISCOUNT 25%				23.63-	70.87
06/11	LEGR	GZ		SEWER REVENUE BONDS		1X1250			

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, \_\_\_\_\_ of

published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the \_\_\_\_\_ day of \_\_\_\_\_ . Published during the following dates:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

Printers fee \$

\_\_\_\_\_  
Notary Public of Kanawha County, West Virginia

**THE CITY OF  
SOUTH CHARLESTON**

**NOTICE OF  
PUBLIC HEARING  
AND ABSTRACT OF  
BOND ORDINANCE**

Notice is hereby given to any person interested that on June 3, 2004, the Council of The City of South Charleston (the "Issuer") adopted an ordinance which, among other things:

1. Authorized the merger and acquisition of the assets of Green Valley Community Public Service District (the "District") by the Issuer and the assumption of the District's Bonds through the issuance by the Issuer of not more than \$110,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority); not more than \$1,100,000 in aggregate principal amount of Sewer Revenue Bonds Series 2004 B (West Virginia SRF Program); and not more than \$275,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2004 C (Capital State Bank) (collectively, the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of a Revenue Fund and the disposition of the revenues of the System; provided for the payment of operating expenses; provided for the monthly payment of principal of and interest on the Bonds when due; provided for the creation of a Sinking Fund, a Reserve Account and a Renewal and Replacement Fund for the Bonds; and provided for the use of excess funds of the System.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the Registered Owners of the Bonds to the Net Revenues of the System.

5. Provided certain conditions for the issuance of additional bonds.

6. Provided for insurance coverage on the System, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Registered Owners of the Bonds.

7. Established the events of default and the remedies of the Registered Owners of the Bonds.

8. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer 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 South Charleston at a regular meeting on Thursday, June 17, 2004, at 7:00 p.m., in the Council Chambers, City Hall, 4th Avenue and D Street, South Charleston, West Virginia, and present protests 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 is on file with the City Clerk for review by interested persons during the office hours of the City Hall.

/s/ Jack D. Woolwine  
City Clerk  
(111459)



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BOND, SERIES 2004 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. AR-1

\$108,108.04

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF SOUTH CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of ONE HUNDRED EIGHT THOUSAND ONE HUNDRED EIGHT DOLLARS FOUR CENTS (\$108,108.04), in annual installments on October 1 of each year, commencing October 1, 2004, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between Green Valley Community Public Service District (the "District") and the Authority, dated June 9, 1982, and assumed by the Issuer.

This Bond is issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Subordinate Sewer Revenue Bonds, Series 1982, in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West

Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly passed by the Issuer on June 3, 2004, and effective June 17, 2004, and a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, DATED AUGUST 29, 1986, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$378,985; (2) SUBORDINATE SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 1999, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$605,854; (3) SEWER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 5, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,567,360 (COLLECTIVELY, THE "PRIOR BONDS"); (4) SEWER REVENUE BONDS, SERIES 2004 B (WEST VIRGINIA SRF PROGRAM), DATED JUNE 18, 2004, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,072,997; AND (5) SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK), DATED JUNE 18, 2004, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL PRINCIPAL AMOUNT OF \$271,200.08 (COLLECTIVELY, THE "SERIES 2004 BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2004 Bonds, and from unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest, if any, on this Bond payable in any year, and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds; provided however, that so long as there exists in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into

AR-1

SPECIMEN

certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

AR-1

IN WITNESS WHEREOF, THE CITY OF SOUTH CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated June 18, 2004.

[SEAL]

*[Signature]*  
\_\_\_\_\_  
Mayor  
SPECIMEN

ATTEST:

*[Signature]*  
\_\_\_\_\_  
City Clerk Deputy  
SPECIMEN

AR-1

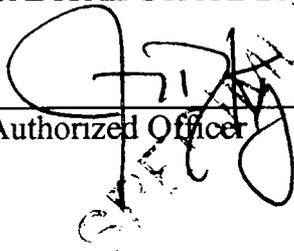
**SPECIMEN**

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: June 18, 2004.

CAPITAL STATE BANK, as Registrar

  
\_\_\_\_\_  
Authorized Officer

AR-1

EXHIBIT A

DEBT SERVICE SCHEDULE

SPECIMEN

ISSUE: GREEN VALLEY COMMUNITY PSD 82-B SEWER REVENUE

ISSUE DATE: July 27, 1982

COUNTY: Kanawha

ORIG PRIN: \$ 250,000 INT RATE: 0% Annual DS

COUNSEL: J&K

PAYING AGENT BANK: MBC - OVB2

Pg 1 of 1

MO	YR	REMAIN PRIN	PRIN DUE	INT DUE	TOTAL DUE
OCT	1983	250,000.00	6,756.76	0.00	6,756.76
OCT	1984	243,243.24	6,756.76	0.00	6,756.76
OCT	1985	236,486.48	6,756.76	0.00	6,756.76
OCT	1986	229,729.72	6,756.76	0.00	6,756.76
OCT	1987	222,972.96	6,756.76	0.00	6,756.76
OCT	1988	216,216.20	6,756.76	0.00	6,756.76
OCT	1989	209,459.44	6,756.76	0.00	6,756.76
OCT	1990	202,702.68	6,756.76	0.00	6,756.76
OCT	1991	195,945.92	6,756.76	0.00	6,756.76
OCT	1992	189,189.16	6,756.76	0.00	6,756.76
OCT	1993	182,432.40	6,756.76	0.00	6,756.76
OCT	1994	175,675.64	6,756.76	0.00	6,756.76
OCT	1995	168,918.88	6,756.76	0.00	6,756.76
OCT	1996	162,162.12	6,756.76	0.00	6,756.76
OCT	1997	155,405.36	6,756.76	0.00	6,756.76
OCT	1998	148,648.60	6,756.76	0.00	6,756.76
OCT	1999	141,891.84	6,756.76	0.00	6,756.76
OCT	2000	135,135.08	6,756.76	0.00	6,756.76
OCT	2001	128,378.32	6,756.76	0.00	6,756.76
OCT	2002	121,621.56	6,756.76	0.00	6,756.76
OCT	2003	114,864.80	6,756.76	0.00	6,756.76
OCT	2004	108,108.04	6,756.76	0.00	6,756.76
OCT	2005	101,351.28	6,756.76	0.00	6,756.76
OCT	2006	94,594.52	6,756.76	0.00	6,756.76
OCT	2007	87,837.76	6,756.76	0.00	6,756.76
OCT	2008	81,081.00	6,756.76	0.00	6,756.76
OCT	2009	74,324.24	6,756.76	0.00	6,756.76
OCT	2010	67,567.48	6,756.76	0.00	6,756.76
OCT	2011	60,810.72	6,756.76	0.00	6,756.76
OCT	2012	54,053.96	6,756.76	0.00	6,756.76
OCT	2013	47,297.20	6,756.76	0.00	6,756.76
OCT	2014	40,540.44	6,756.76	0.00	6,756.76
OCT	2015	33,783.68	6,756.76	0.00	6,756.76
OCT	2016	27,026.92	6,756.76	0.00	6,756.76
OCT	2017	20,270.16	6,756.76	0.00	6,756.76
OCT	2018	13,513.40	6,756.76	0.00	6,756.76
OCT	2019	6,756.64	6,756.64	0.00	6,756.64

TOTAL 250,000.00 0.00

AR-1

ASSIGNMENT

SPECIMEN

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

M0428723.1

NUMBER  
BR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BOND, SERIES 2004 B  
(WEST VIRGINIA SRF PROGRAM)

No. BR-1

\$1,072,997

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF SOUTH CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of ONE MILLION SEVENTY TWO THOUSAND NINE HUNDRED NINETY SEVEN DOLLARS (\$1,072,997), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2004, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2004, as set forth on said EXHIBIT B.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among Green Valley Community Public Service District (the "District"), the Authority and the DEP, dated June 14, 2000, and assumed by the Issuer.

This Bond is issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly passed by the Issuer on June 3, 2004, and effective June 17, 2004, and a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, DATED AUGUST 29, 1986, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$378,985; (2) SUBORDINATE SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 1999, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$605,854; (3) SEWER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 5, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,567,360 (COLLECTIVELY, THE "PRIOR BONDS"); (4) SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED JUNE 18, 2004, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL PRINCIPAL AMOUNT OF \$108,108.04; AND (5) SEWER REVENUE BONDS, SERIES 2004 C (CAPITAL STATE BANK), DATED JUNE 18, 2004, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL PRINCIPAL AMOUNT OF \$271,200.08 (COLLECTIVELY, THE "SERIES 2004 BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2004 Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2004 B Bonds Reserve Account"), and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2004 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and

maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest, if any, on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds; provided however, that so long as there exists in the Series 2004 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

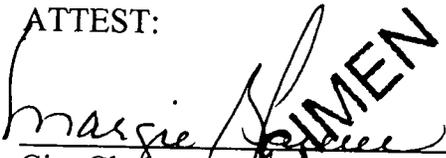
# SPECIMEN

IN WITNESS WHEREOF, THE CITY OF SOUTH CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated June 18, 2004.

[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk Deputy

SPECIMEN

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: June 18, 2004.

CAPITAL STATE BANK, as Registrar

  
Authorized Officer

**SPECIMEN**

EXHIBIT A  
RECORD OF ADVANCES

SPECIMEN

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

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE SPECIMEN

**Green Valley Community Public Service District (West Virginia)**

*Loan of \$1,160,000*

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

*Closing Date: September 7, 2000*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Total P+I
12/01/2000	-	-	-
3/01/2001	-	-	-
6/01/2001	-	-	-
9/01/2001	-	-	-
12/01/2001	-	-	-
3/01/2002	-	-	-
6/01/2002	9,667.00	-	9,667.00
9/01/2002	9,667.00	-	9,667.00
12/01/2002	9,667.00	-	9,667.00
3/01/2003	9,667.00	-	9,667.00
6/01/2003	9,667.00	-	9,667.00
9/01/2003	9,667.00	-	9,667.00
12/01/2003	9,667.00	-	9,667.00
3/01/2004	9,667.00	-	9,667.00
6/01/2004	9,667.00	-	9,667.00
9/01/2004	9,667.00	-	9,667.00
12/01/2004	9,667.00	-	9,667.00
3/01/2005	9,667.00	-	9,667.00
6/01/2005	9,667.00	-	9,667.00
9/01/2005	9,667.00	-	9,667.00
12/01/2005	9,667.00	-	9,667.00
3/01/2006	9,667.00	-	9,667.00
6/01/2006	9,667.00	-	9,667.00
9/01/2006	9,667.00	-	9,667.00
12/01/2006	9,667.00	-	9,667.00
3/01/2007	9,667.00	-	9,667.00
6/01/2007	9,667.00	-	9,667.00
9/01/2007	9,667.00	-	9,667.00
12/01/2007	9,667.00	-	9,667.00
3/01/2008	9,667.00	-	9,667.00
6/01/2008	9,667.00	-	9,667.00
9/01/2008	9,667.00	-	9,667.00
12/01/2008	9,667.00	-	9,667.00
3/01/2009	9,667.00	-	9,667.00
6/01/2009	9,667.00	-	9,667.00
9/01/2009	9,667.00	-	9,667.00
12/01/2009	9,667.00	-	9,667.00
3/01/2010	9,667.00	-	9,667.00
6/01/2010	9,667.00	-	9,667.00
9/01/2010	9,667.00	-	9,667.00
12/01/2010	9,667.00	-	9,667.00
3/01/2011	9,667.00	-	9,667.00
6/01/2011	9,667.00	-	9,667.00
9/01/2011	9,667.00	-	9,667.00
12/01/2011	9,667.00	-	9,667.00
3/01/2012	9,667.00	-	9,667.00

# SPECIMEN

## Green Valley Community Public Service District (West Virginia)

Loan of \$1,160,000

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

Closing Date: September 7, 2000

### DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2012	9,667.00	-	9,667.00
9/01/2012	9,667.00	-	9,667.00
12/01/2012	9,667.00	-	9,667.00
3/01/2013	9,667.00	-	9,667.00
6/01/2013	9,667.00	-	9,667.00
9/01/2013	9,667.00	-	9,667.00
12/01/2013	9,667.00	-	9,667.00
3/01/2014	9,667.00	-	9,667.00
6/01/2014	9,667.00	-	9,667.00
9/01/2014	9,667.00	-	9,667.00
12/01/2014	9,667.00	-	9,667.00
3/01/2015	9,667.00	-	9,667.00
6/01/2015	9,667.00	-	9,667.00
9/01/2015	9,667.00	-	9,667.00
12/01/2015	9,667.00	-	9,667.00
3/01/2016	9,667.00	-	9,667.00
6/01/2016	9,667.00	-	9,667.00
9/01/2016	9,667.00	-	9,667.00
12/01/2016	9,667.00	-	9,667.00
3/01/2017	9,667.00	-	9,667.00
6/01/2017	9,667.00	-	9,667.00
9/01/2017	9,667.00	-	9,667.00
12/01/2017	9,667.00	-	9,667.00
3/01/2018	9,667.00	-	9,667.00
6/01/2018	9,667.00	-	9,667.00
9/01/2018	9,667.00	-	9,667.00
12/01/2018	9,667.00	-	9,667.00
3/01/2019	9,667.00	-	9,667.00
6/01/2019	9,667.00	-	9,667.00
9/01/2019	9,667.00	-	9,667.00
12/01/2019	9,667.00	-	9,667.00
3/01/2020	9,667.00	-	9,667.00
6/01/2020	9,667.00	-	9,667.00
9/01/2020	9,667.00	-	9,667.00
12/01/2020	9,667.00	-	9,667.00
3/01/2021	9,667.00	-	9,667.00
6/01/2021	9,667.00	-	9,667.00
9/01/2021	9,667.00	-	9,667.00
12/01/2021	9,667.00	-	9,667.00
3/01/2022	9,667.00	-	9,667.00
6/01/2022	9,666.00	-	9,666.00
9/01/2022	9,666.00	-	9,666.00
12/01/2022	9,666.00	-	9,666.00
3/01/2023	9,666.00	-	9,666.00
6/01/2023	9,666.00	-	9,666.00
9/01/2023	9,666.00	-	9,666.00

**Green Valley Community Public Service District (West Virginia)**

*Loan of \$1,160,000*

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

*Closing Date: September 7, 2000*

**DEBT SERVICE SCHEDULE**

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Total P+I</b>
12/01/2023	9,666.00	-	9,666.00
3/01/2024	9,666.00	-	9,666.00
6/01/2024	9,666.00	-	9,666.00
9/01/2024	9,666.00	-	9,666.00
12/01/2024	9,666.00	-	9,666.00
3/01/2025	9,666.00	-	9,666.00
6/01/2025	9,666.00	-	9,666.00
9/01/2025	9,666.00	-	9,666.00
12/01/2025	9,666.00	-	9,666.00
3/01/2026	9,666.00	-	9,666.00
6/01/2026	9,666.00	-	9,666.00
9/01/2026	9,666.00	-	9,666.00
12/01/2026	9,666.00	-	9,666.00
3/01/2027	9,666.00	-	9,666.00
6/01/2027	9,666.00	-	9,666.00
9/01/2027	9,666.00	-	9,666.00
12/01/2027	9,666.00	-	9,666.00
3/01/2028	9,666.00	-	9,666.00
6/01/2028	9,666.00	-	9,666.00
9/01/2028	9,666.00	-	9,666.00
12/01/2028	9,666.00	-	9,666.00
3/01/2029	9,666.00	-	9,666.00
6/01/2029	9,666.00	-	9,666.00
9/01/2029	9,666.00	-	9,666.00
12/01/2029	9,666.00	-	9,666.00
3/01/2030	9,666.00	-	9,666.00
6/01/2030	9,666.00	-	9,666.00
9/01/2030	9,666.00	-	9,666.00
12/01/2030	9,666.00	-	9,666.00
3/01/2031	9,666.00	-	9,666.00
6/01/2031	9,666.00	-	9,666.00
9/01/2031	9,666.00	-	9,666.00
12/01/2031	9,666.00	-	9,666.00
3/01/2032	9,666.00	-	9,666.00
<b>Total</b>	<b>1,160,000.00</b>	<b>-</b>	<b>1,160,000.00 *</b>

\*Plus \$731 one-half percent administrative fee paid quarterly. Total fee paid over the life of the loan is \$87,720.

# SPECIMEN

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

M0428857.1

NUMBER  
CR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BOND, SERIES 2004 C  
(CAPITAL STATE BANK)

No. CR-1

\$271,200.08

KNOW ALL MEN BY THESE PRESENTS: That, THE CITY OF SOUTH CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to CAPITAL STATE BANK (the "Payee") or registered assigns the sum of TWO HUNDRED SEVENTY ONE THOUSAND TWO HUNDRED DOLLARS EIGHT CENTS (\$271,200.08), in monthly installments on the tenth day of each month, commencing July 10, 2004, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference, with interest on each installment at the rate of 5.8% per annum, payable on the tenth day of each month, commencing July 10, 2004. Interest shall be calculated using an actual 30-day month/360-day year.

The principal of and interest on this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of Capital State Bank, Charleston, West Virginia (the "Paying Agent"). If any payment is made more than 10 days after the due date, the Issuer shall pay a late charge equal to 5% of the principal and interest then due, with a minimum of \$25 and a maximum of \$250.

This Bond is subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and the interest accrued to the prepayment date.

This Bond is issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A, in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under

the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Ordinance duly passed by the Issuer on June 3, 2004, and effective June 17, 2004, and a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, DATED AUGUST 29, 1986, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$378,985; (2) SUBORDINATE SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 1999, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$605,854; (3) SEWER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 5, 2003, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,567,360 (COLLECTIVELY, THE "PRIOR BONDS"); (4) SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED JUNE 18, 2004, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL PRINCIPAL AMOUNT OF \$108,108.04; AND (5) SEWER REVENUE BONDS, SERIES 2004 B (WEST VIRGINIA SRF PROGRAM), DATED JUNE 18, 2004, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,072,997 (COLLECTIVELY, THE "SERIES 2004 BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of the Net Revenues in favor of the registered owners of the Prior Bonds and the Series 2004 Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2004 C Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2004 C Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond, and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds; provided however, that

so long as there exists in the Series 2004 C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds and the Series 2004 Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

This Bond is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended. This Bond is exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof under the Act.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and upon the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

NUMBER  
CR-1

IN WITNESS WHEREOF, THE CITY OF SOUTH CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated June 18, 2004.

[SEAL]

*Richard Kelly*  
\_\_\_\_\_  
Mayor

ATTEST:

*Margie Greene*  
\_\_\_\_\_  
City Clerk

SPECIMEN

SPECIMEN

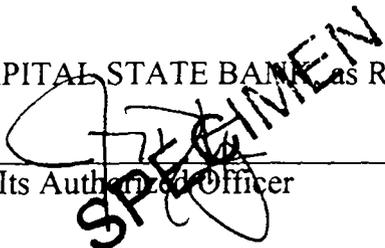
NUMBER  
CR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: June 18, 2004.

CAPITAL STATE BANK as Registrar

By  \_\_\_\_\_  
Its Authorized Officer

CR-1

EXHIBIT A

DEBT SERVICE SCHEDULE

SPECIMEN

09-07-2001 \*\* AMORTIZATION SCHEDULE \*\* 15:12:51  
( Actual/360 ) Page 1

Payment #	Date	Interest	Principal	Balance
192	09/13/01	5.8004	\$450000.00	\$450000.00
1	10/10/01	1957.50	1663.50	448336.50
2	11/10/01	2239.19	1381.81	446954.69
3	12/10/01	2160.28	1460.72	445493.97
YEAR	2001	6356.97	4506.03	445493.97
4	01/10/02	2224.99	1396.01	444097.96
5	02/10/02	2218.02	1402.98	442694.98
6	03/10/02	1997.05	1623.95	441071.03
7	04/10/02	2202.90	1418.10	439652.93
8	05/10/02	2124.99	1496.01	438156.92
9	06/10/02	2188.35	1432.65	436724.27
10	07/10/02	2110.83	1510.17	435214.10
11	08/10/02	2173.65	1447.35	433766.75
12	09/10/02	2166.42	1454.58	432312.17
13	10/10/02	2089.51	1531.49	430780.68
14	11/10/02	2151.51	1469.49	429311.19
15	12/10/02	2075.00	1546.00	427765.19
YEAR	2002	25723.22	17728.78	427765.19
16	01/10/03	2136.45	1484.55	426280.64
17	02/10/03	2129.03	1491.97	424788.67
18	03/10/03	1916.27	1704.73	423083.94
19	04/10/03	2113.07	1507.93	421576.01
20	05/10/03	2037.62	1583.38	419992.63
21	06/10/03	2097.63	1523.37	418469.26
22	07/10/03	2022.60	1598.40	416870.86
23	08/10/03	2082.04	1538.96	415331.90
24	09/10/03	2074.35	1546.65	413785.25
25	10/10/03	1999.96	1621.04	412164.21
26	11/10/03	2058.53	1562.47	410601.74
27	12/10/03	1984.58	1636.42	408965.32
YEAR	2003	24652.13	18799.87	408965.32
28	01/10/04	2042.55	1578.45	407386.87
29	02/10/04	2034.67	1586.33	405800.54
30	03/10/04	1895.99	1725.01	404075.53
31	04/10/04	2018.13	1602.87	402472.66
32	05/10/04	1945.28	1675.72	400796.94
33	06/10/04	2001.76	1619.24	399177.70
34	07/10/04	1929.36	1691.64	397486.06
35	08/10/04	1985.22	1635.78	395850.28
36	09/10/04	1977.05	1643.95	394206.33
37	10/10/04	1905.33	1715.67	392490.66
38	11/10/04	1960.27	1660.73	390829.93
39	12/10/04	1889.02	1731.99	389097.94
YEAR	2004	23584.62	19867.38	389097.94
40	01/10/05	1943.33	1677.67	387420.27
41	02/10/05	1934.95	1686.05	385734.22
42	03/10/05	1740.09	1880.91	383853.31
43	04/10/05	1917.13	1703.87	382149.44
44	05/10/05	1847.06	1773.94	380375.50
45	06/10/05	1899.76	1721.24	378654.26
46	07/10/05	1830.16	1790.84	376863.42
47	08/10/05	1882.22	1738.78	375124.64
48	09/10/05	1873.54	1747.46	373377.18
49	10/10/05	1804.66	1816.34	371560.84
50	11/10/05	1855.74	1765.26	369795.58
51	12/10/05	1787.35	1833.65	367961.93
YEAR	2005	22315.99	21136.01	367961.93
52	01/10/06	1837.77	1783.23	366178.70
53	02/10/06	1828.86	1792.14	364386.56
54	03/10/06	1643.79	1977.21	362409.35
55	04/10/06	1810.03	1810.97	360558.38
56	05/10/06	1742.89	1878.11	358720.27
57	06/10/06	1791.61	1829.39	356890.88
58	07/10/06	1724.97	1896.03	354994.85
59	08/10/06	1773.00	1848.00	353146.85
60	09/10/06	1763.77	1857.23	351289.62
61	10/10/06	1697.90	1923.10	349366.52
62	11/10/06	1744.89	1876.11	347490.41
63	12/10/06	1679.54	1941.46	345548.95
YEAR	2006	21039.02	22412.98	345548.95
64	01/10/07	1725.83	1895.17	343653.78

CR-1

9-07-2001      \*\* AMORTIZATION SCHEDULE \*\*      15:12:51  
 ( Actual/360 )      Page 2

SPECIME

Payment #	Date	Interest	Principal	Balance
192	09/13/01	5.8004	5450000.00	5450000.00
65	02/10/07	1716.36	1904.64	341749.14
66	03/10/07	1541.67	2079.33	339669.81
67	04/10/07	1696.46	1924.54	337745.27
68	05/10/07	1632.44	1988.56	335756.71
69	06/10/07	1676.92	1944.08	333812.63
70	07/10/07	1613.43	2007.57	331805.06
71	08/10/07	1657.18	1963.82	329841.24
72	09/10/07	1647.37	1973.63	327867.61
73	10/10/07	1584.69	2034.31	325831.30
74	11/10/07	1627.35	1993.65	323837.65
75	12/10/07	1565.22	2055.78	321781.87
YEAR	2007	19684.92	23767.08	321781.87
76	01/10/08	1607.12	2013.88	319767.99
77	02/10/08	1597.06	2023.94	317744.05
78	03/10/08	1484.57	2136.43	315607.62
79	04/10/08	1576.28	2044.72	313562.90
80	05/10/08	1515.55	2105.45	311457.45
81	06/10/08	1555.56	2065.44	309392.01
82	07/10/08	1495.39	2125.61	307266.40
83	08/10/08	1534.62	2086.38	305180.02
84	09/10/08	1524.20	2096.80	303083.22
85	10/10/08	1464.90	2156.10	300927.12
86	11/10/08	1502.96	2118.04	298809.08
87	12/10/08	1444.24	2176.76	296632.32
YEAR	2008	18302.45	25149.55	296632.32
88	01/10/09	1481.51	2139.49	294492.83
89	02/10/09	1470.83	2150.17	292342.66
90	03/10/09	1318.79	2302.21	290040.45
91	04/10/09	1448.59	2172.41	287868.04
92	05/10/09	1391.36	2229.64	285638.40
93	06/10/09	1426.61	2194.39	283444.01
94	07/10/09	1369.98	2251.02	281192.99
95	08/10/09	1404.40	2216.60	278976.39
96	09/10/09	1393.33	2227.67	276748.72
97	10/10/09	1337.62	2283.38	274465.34
98	11/10/09	1370.80	2250.20	272215.14
99	12/10/09	1315.71	2305.29	269909.85
YEAR	2009	16729.53	26722.47	269909.85
100	01/10/10	1348.05	2272.95	267636.90
101	02/10/10	1336.70	2284.30	265352.60
102	03/10/10	1197.04	2423.96	262928.64
103	04/10/10	1313.18	2307.82	260620.82
104	05/10/10	1259.67	2361.33	258259.49
105	06/10/10	1289.86	2331.14	255928.35
106	07/10/10	1236.99	2384.01	253544.34
107	08/10/10	1266.31	2354.69	251189.65
108	09/10/10	1254.55	2346.45	248823.20
109	10/10/10	1202.65	2418.35	246404.85
110	11/10/10	1230.66	2390.34	244014.51
111	12/10/10	1179.40	2441.60	241572.91
YEAR	2010	15115.06	28336.94	241572.91
112	01/10/11	1206.52	2414.48	239158.43
113	02/10/11	1194.46	2426.54	236731.89
114	03/10/11	1067.92	2553.08	234178.81
115	04/10/11	1169.59	2451.41	231727.40
116	05/10/11	1120.02	2500.98	229226.42
117	06/10/11	1144.86	2476.14	226750.28
118	07/10/11	1095.96	2525.04	224225.24
119	08/10/11	1119.88	2501.12	221724.12
120	09/10/11	1107.39	2513.61	219210.51
121	10/10/11	1059.52	2561.48	216649.03
122	11/10/11	1082.04	2538.96	214110.07
123	12/10/11	1034.87	2586.13	211523.94
YEAR	2011	13403.03	30048.97	211523.94
124	01/10/12	1056.44	2564.56	208959.38
125	02/10/12	1043.64	2577.36	206382.02
126	03/10/12	964.26	2656.74	203725.28
127	04/10/12	1017.49	2603.51	201121.77
128	05/10/12	972.09	2648.91	198472.86
129	06/10/12	991.26	2629.74	195843.12

SPECIMEN

09-07-2001      \*\* AMORTIZATION SCHEDULE \*\*      15:12:5

( Accrual/360 )

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Payment #	Date	Interest	Principal	Balance
192	09/13/01	5.800%	\$450000.00	\$450000.00
130	07/10/12	946.58	2674.42	193168.00
131	08/10/12	964.77	2656.23	190512.00
132	09/10/12	951.50	2669.50	187842.50
133	10/10/12	907.91	2713.09	185129.40
134	11/10/12	924.62	2696.38	182433.02
135	12/10/12	881.76	2739.24	179694.20
YEAR	2012	11622.32	31829.68	179694.20
136	01/10/13	897.47	2723.53	176970.67
137	02/10/13	883.87	2737.13	174233.54
138	03/10/13	785.99	2835.01	171398.53
139	04/10/13	856.04	2764.96	168633.57
140	05/10/13	815.06	2805.94	165827.63
141	06/10/13	828.22	2792.78	163034.85
142	07/10/13	788.00	2833.00	160201.85
143	08/10/13	800.12	2820.88	157381.97
144	09/10/13	786.03	2834.97	154546.00
145	10/10/13	746.97	2874.03	151672.00
146	11/10/13	757.52	2863.48	148808.52
147	12/10/13	719.24	2901.76	145906.76
YEAR	2013	9664.53	33787.47	145906.76
148	01/10/14	728.72	2892.28	143014.48
149	02/10/14	714.28	2906.72	140107.76
150	03/10/14	632.04	2988.96	137118.80
151	04/10/14	684.83	2936.17	134182.63
152	05/10/14	648.55	2972.45	131210.20
153	06/10/14	655.32	2965.68	128244.52
154	07/10/14	619.85	3001.15	125243.37
155	08/10/14	625.52	2995.48	122247.90
156	09/10/14	610.56	3010.44	119237.46
157	10/10/14	576.31	3044.69	116192.77
158	11/10/14	580.32	3040.68	113152.09
159	12/10/14	546.90	3074.10	110077.99
YEAR	2014	7623.20	35828.80	110077.99
160	01/10/15	549.78	3071.22	107006.77
161	02/10/15	534.44	3066.56	103920.21
162	03/10/15	468.80	3152.20	100768.01
163	04/10/15	503.28	3117.72	97650.29
164	05/10/15	471.98	3149.02	94501.27
165	06/10/15	478.98	3149.02	91352.25
166	07/10/15	441.54	3179.46	88172.79
167	08/10/15	440.37	3180.63	84992.16
168	09/10/15	424.49	3196.51	81795.65
169	10/10/15	395.35	3225.65	78570.00
170	11/10/15	392.41	3228.59	75341.41
171	12/10/15	364.15	3256.85	72084.56
YEAR	2015	5458.57	37993.43	72084.56
172	01/10/16	360.02	3260.98	68823.58
173	02/10/16	343.74	3277.26	65546.32
174	03/10/16	306.25	3314.75	62231.57
175	04/10/16	310.81	3310.19	58921.38
176	05/10/16	284.79	3335.21	55585.17
177	06/10/16	277.62	3343.38	52241.79
178	07/10/16	252.50	3368.50	48873.29
179	08/10/16	244.09	3376.91	45496.38
180	09/10/16	227.23	3393.77	42102.61
181	10/10/16	203.50	3417.50	38685.11
182	11/10/16	193.21	3427.79	35257.32
183	12/10/16	170.41	3450.59	31806.73
YEAR	2016	3174.17	40277.83	31806.73
184	01/10/17	158.86	3462.14	28344.59
185	02/10/17	141.57	3479.43	24865.16
186	03/10/17	112.17	3508.83	21356.33
187	04/10/17	106.66	3514.34	17841.99
188	05/10/17	86.24	3534.76	14307.23
189	06/10/17	71.46	3549.54	10757.69
190	07/10/17	52.00	3569.00	7188.69
191	08/10/17	35.90	3585.10	3603.59
192	09/10/17	18.00	3603.59	0.00
YEAR	2017	782.86	31806.73	0.00

CR-1

ASSIGNMENT

SPECIMEN

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

M0428862.1

BOND REGISTER

2.7 (A)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$108,108.04	June 18, 2004

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

Signature of Registrar:

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

Capital State Bank



\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
  
\_\_\_\_\_  
  
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\_\_\_\_\_

06/07/04  
001793/00309

M0427937.1

BOND REGISTER

2.7 (B)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS, SERIES 2004 B  
(WEST VIRGINIA SRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$1,072,997	June 18, 2004

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

Capital State Bank

  
\_\_\_\_\_  
Authorized Representative

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06/07/04  
001793/00309

M0427939.1

BOND REGISTER

2.7 (C)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS, SERIES 2004 C  
(CAPITAL STATE BANK)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. CR-1	\$271,200.08	June 18, 2004

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309

Signature of Registrar:

Capital State Bank

  
Authorized Representative

06/08/04  
001793/00309

M0427941.1

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

3.1

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. RATES
7. INCUMBENCY AND OFFICIAL NAME
8. MEETINGS
9. INSURANCE
10. LOAN AGREEMENT
11. SPECIMEN BONDS
12. PUBLICATION AND PUBLIC HEARING ON BOND  
ORDINANCE
13. LAND AND RIGHTS-OF-WAY
14. PUBLIC SERVICE COMMISSION ORDER
15. COUNTERPARTS

We, the undersigned MAYOR and the undersigned CITY CLERK of The City of South Charleston in Kanawha County, West Virginia (the "Issuer"), and the undersigned CITY ATTORNEY for the Issuer, hereby certify in connection with the above-captioned bonds (collectively, the "Bonds" or the "Series 2004 Bonds"), as follows:

1. **TERMS:** All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, the Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Ordinance").

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition of the District's assets or the assumption of the District's Bonds, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net

Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer, the Governing Body, or the Sanitary Board to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition of the District's assets or the assumption of the District's Bonds, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. **GOVERNMENTAL APPROVALS:** All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition of the District's assets or the assumption of the District's Bonds, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since January 1, 2004.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2004 Bonds as to liens, pledge, source of and security for payment, being (i) the Supplemental Subordinate Sewer Revenue Bonds, Series 1986, dated August 29, 1986, issued in the original principal amount of \$378,985 (the "Series 1986 B Bonds"); (ii) the Subordinate Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated May 25, 1999, issued in the original principal amount of \$605,854 (the "Series 1999 A Bonds"); and (iii) the Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated September 5, 2003, issued in the original principal amount of \$4,567,360 (the "Series 2003 A Bonds"). The Series 1986 B Bonds, the Series 1999 A Bonds and the Series 2003 A Bonds are collectively called the "Prior Bonds."

The Series 2004 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2004 Bonds on a parity with the Prior Bonds; and (iii) the written consent of the Registered Owners of the District's Bonds to the assumption of the District's Bonds by the Issuer and the replacement of the District's Bonds by the Series 2004 Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

5. **SIGNATURES AND DELIVERY:** The undersigned Mayor and City Clerk are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the

official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond for each series, dated the date hereof, by his manual signature; the undersigned City Clerk did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Registrar did officially authenticate and deliver the Bonds to a representative of the respective Registered Owners of the Bonds.

6. **RATES:** The Issuer has duly enacted a sewer rate ordinance on July 3, 2003, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of the Act and the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

Pursuant to the PSC Order entered on April 7, 2004, in Case No. 03-1973-PSD-S-PC, the Issuer shall continue to charge the existing customers of the District the rates and charges currently in effect for the District for a period of at least 18 months.

7. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "The City of South Charleston." The Issuer is a municipal corporation of the State of West Virginia in Kanawha County of said State. The Governing Body of the Issuer is its Council, consisting of 8 Council members and the Mayor. The City Clerk is the ex officio clerk of the Council. The names and dates of commencement and termination of terms of office for all such officials are listed below:

<u>Office</u>	<u>Name</u>	<u>Date Of Commencement Of Office</u>	<u>Date Of Termination Of Office</u>
Mayor	Richard A. Robb	July 1, 2003	June 30, 2007
City Clerk	Jack D. Woolwine	July 1, 2003	June 30, 2007
Council Member	James R. Holstine	July 1, 2003	June 30, 2007
Council Member	Paul Neal	July 1, 2003	June 30, 2007
Council Member	William Buckley	July 1, 2003	June 30, 2007
Council Member	Dayton S. Griffith	July 1, 2003	June 30, 2007
Council Member	Warren M. Shirkey, Sr.	July 1, 2003	June 30, 2007
Council Member	James F. Triplett	July 1, 2003	June 30, 2007
Council Member	Kenneth R. Hutchison, Jr.	July 1, 2003	June 30, 2007
Council Member	Joe A. Mayes	July 1, 2003	June 30, 2007

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

Chairman: Richard A. Robb  
Member: Ralph King, P.E.  
Member: Charles Gannon

The duly appointed and acting Deputy City Clerk for the Issuer is Margie Spence, who has been authorized to execute the closing documents on behalf of the City Clerk. The duly appointed and acting City Attorney for the Issuer is Melissa Newberry, Esquire, of South Charleston, West Virginia. The duly appointed and acting special PSC counsel to the Issuer is Spilman, Thomas & Battle, PLLC, Charleston, West Virginia.

8. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition of the District's assets and the assumption of the District's Bonds were authorized or adopted at meetings of the Governing Body duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected or appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. INSURANCE: All insurance for the System required by the Ordinance is in full force and effect.

10. LOAN AGREEMENT: The Loan Agreements for the District's Series 1982 Bonds and the Series 2000 A Bonds are being assumed by the Issuer in connection with the Issuer's assumption of such Bonds. Both Loan Agreements shall remain in full force and effect and be binding on the Issuer so long as such Bonds are outstanding.

11. SPECIMEN BONDS: Attached hereto as Exhibit A is a specimen of each series of the Series 2004 Bonds which are identical in all respects with the Bonds this day delivered to the Registered Owners thereof and being substantially in the forms prescribed in the Ordinance.

12. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the

public hearing, in The Charleston Gazette and The Charleston Daily Mail, 2 qualified newspapers of general circulation in the Issuer, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in the Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of the Governing Body on June 17, 2004, at 7:00 p.m., prevailing time, in the council chambers of the City Hall in South Charleston, West Virginia, and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

13. **LAND AND RIGHTS-OF-WAY:** All land in fee simple and all rights-of-way and easements necessary for the acquisition of all the real property of the District have been acquired by merger on the date hereof and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes.

14. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the PSC Order entered on April 7, 2004, in Case No. 03-1973-PSD-S-PC, among other things, approving the purchase agreement between the Issuer and the District, the acquisition of the District's assets and the assumption of the District's Bonds by the Issuer. The time for appeal of the PSC Order has expired prior to the date hereof without any appeal having been filed. Such Order remains in full force and effect.

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

WITNESS our signatures and the official corporate seal of The City of South Charleston on this 18<sup>th</sup> day of June, 2004.

[SEAL]

<u>Signature</u>	<u>Official Title</u>
 _____	Mayor
 _____ Deputy	City Clerk
 _____	City Attorney

EXHIBIT A

See Specimen Bonds (Tab No. 11)

06/15/04  
001793/00309

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 C (CAPITAL STATE BANK)

3.2

CERTIFICATE AS TO ARBITRAGE

The undersigned Mayor of The City of South Charleston in Kanawha County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of \$271,200.08 aggregate principal amount of Sewer Revenue Bonds, Series 2004 C (Capital State Bank), of the Issuer, dated June 18, 2004 (the "Bonds"), hereby certifies as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, as supplemented by the Supplemental Resolution duly passed by the Issuer on June 17, 2004 (collectively, the "Bond Ordinance"), authorizing the Bonds.

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on June 18, 2004, the date on which the Bonds are delivered, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause the Bonds to be "arbitrage

bonds" within the meaning of Section 148 of the Code, and (ii) it shall take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Sections 103 and 148 of the Code.

6. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of evidencing the Issuer's assumption of the Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A, in connection with the Issuer's acquisition of the District's sewerage system (the "Project"). Therefore, no proceeds will be received. The funds in the District's Series 2001 A Bonds Reserve Account shall be transferred into the Series 2004 C Bonds Reserve Account on the date hereof in connection with the merger and acquisition.

7. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created for the Bonds (or continued pursuant to the Prior Ordinances):

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2004 C Bonds Sinking Fund; and
- (4) Series 2004 C Bonds Reserve Account.

8. Moneys held in the Series 2004 C Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds as the same shall become due. All investment earnings on moneys in the Series 2004 C Bonds Reserve Account (if equal to the Series 2004 C Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, will be deposited in the Series 2004 C Bonds Sinking Fund, and such amounts will be applied as set forth in the Bond Ordinance.

9. Except for the Series 2004 C Bonds Sinking Fund and the Series 2004 C Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds, and because such amounts may be

expended for other purposes, there is no reasonable assurance that such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved desegregation plan or other investment property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. The Series 2004 C Bonds Reserve Account is fully funded and the amount in the Series 2004 C Bonds Reserve Account 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 Series 2004 C Bonds Reserve Account will be invested without yield limitation. The establishment of the Series 2004 C Bonds Reserve Account is required by the Registered Owner thereof and is reasonably required to assure payments of debt service on the Bonds.

10. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of the Bonds.

11. The Series 2004 C Bonds Sinking Fund (other than the Series 2004 C Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Bonds each year. The Series 2004 C Bonds Sinking Fund (other than the Series 2004 C Bonds Reserve Account therein) will be depleted at least once a year, except for a reasonable carryover amount not in excess of the greater of 1/12<sup>th</sup> of annual debt service on the Bonds or 1 year's interest earnings on the Series 2004 C Bonds Sinking Fund (other than the Series 2004 C Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2004 C Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 2004 C Bonds Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 2004 C Bonds Sinking Fund (other than in the Series 2004 C Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

12. 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.

13. 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 or \$5,000,000 have been or will be used to make or finance loans to, any person who is not a governmental unit.

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

15. The Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

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

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

18. The Issuer will rebate to the United States the amount, if any, required by the Code and take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount and any and all penalties and other amounts from lawfully available sources, and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

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

21. The Issuer has funded the Series 2004 C Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with funds from the District's Series 2001 A Bonds Reserve Account. Moneys in the Series 2004 C Bonds Reserve Account and the Series 2004 C Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

22. The Issuer 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.

23. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds and the interest thereon. In addition, the Issuer has covenanted to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code and has covenanted to take such actions, or refrain from taking such actions, as may be necessary to fully comply with Section 148(f) of the Code and the Regulations, regardless of whether such actions may be contrary to any of the provisions of the Bond Ordinance authorizing issuance of the Bonds.

24. The Issuer is a governmental unit and has general taxing powers; no Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the aggregate face amount of all tax-exempt bonds or obligations (other than private activity bonds) issued by the Issuer during the calendar year 2004, the calendar year in which the Bonds are issued, is not reasonably expected to exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code. For purposes of this paragraph and for purposes of applying such Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer. No portion of the Bonds is issued to refund other obligations.

25. The Issuer 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, or payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. 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 of, 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 Issuer) 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").

26. The Issuer does not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations (other than private activity bonds and bonds issued to currently refund any obligation of the Issuer) during the calendar year 2004 and hereby and in the Supplemental Resolution designates the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

27. The Bonds are a fixed yield issue. No interest or other amount payable on the Bonds (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

28. None of the Bonds has a yield-to-maturity more than one-fourth of one percent higher than the yield on the Bonds determined by assuming the Bonds are retired on the date that when used in computing the yield on the Bonds produces the lowest yield.

29. No portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

30. Other than the Series 2004 A Bonds and the Series 2004 B Bonds issued on the date hereof to evidence the assumption of the District's Series 1982 Bonds and Series 2000 A Bonds, there are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

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

32. On the date hereof, the undersigned Mayor did officially execute a properly completed IRS Form 8038-G in connection with the Bonds and will cause such executed IRS Form 8038-G to be filed in a timely manner pursuant to Section 149(e) of the Code with the applicable Internal Revenue Service Center. The information contained in such executed Form 8038-G is true, correct and complete.

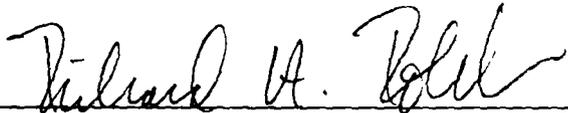
33. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

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

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

WITNESS my signature on this 18<sup>th</sup> day of June, 2004.

THE CITY OF SOUTH CHARLESTON

  
\_\_\_\_\_  
Mayor

06/08/04  
001793/00309

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

3.3

CERTIFICATE OF CITY CLERK AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

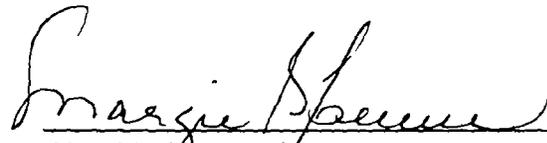
The undersigned duly elected City Clerk of The City of South Charleston (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the above-captioned bonds (collectively, the "Bonds") are, as of the date hereof, true, complete and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, 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.
2. Oaths of Office of Mayor, City Clerk and Council Members.
3. Ordinance Creating Sanitary Board.
4. Oaths of Office of Sanitary Board Members.
5. Petition of Sanitary Board.
6. Bond Ordinance.
7. Supplemental Resolution.
8. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.

9. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.
10. Public Service Commission Order Approving Merger.
11. Consents of West Virginia Water Development Authority and Capital State Bank.
12. Affidavit of Publication of Notice of Proposed Merger.
13. Purchase Agreement between the Sanitary Board and Green Valley Community Public Service District (the "District").
14. Orders of The County Commission of Kanawha County Approving the Merger and Dissolving the District.
15. Deed.
16. Bill of Sale.
17. Assignment of Rights of Ways and Easements.
18. Assignment of Judgments and Liens.
19. Assignment of Intangibles.
20. 1982 and 2000 Loan Agreements.

[The rest of this page is intentionally left blank.]

WITNESS my signature and the official seal of The City of South Charleston  
on this 18<sup>th</sup> day of June, 2004.

  
City Clerk Deputy

[SEAL]

06/15/04  
001793/00309

**G T**  
**W P**

**GRIGORACI, TRAINER, WRIGHT & PATERNO**

608 TENNESSEE AVENUE

**CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS**

(A PARTNERSHIP OF ACCOUNTING CORPORATIONS)

P. O. Box 1191  
CHARLESTON, WV 25324  
(304) 343-5511  
FAX: (304) 343-5514

June 18, 2004

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

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

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

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309

Ladies and Gentlemen:

In connection with the acquisition of all the assets of Green Valley Community Public Service District (the "District") and the assumption of all the bonds, obligations and liabilities of the District by The City of South Charleston (the "Issuer"), we have reviewed the sewer service rates of the District which the Issuer is required to continue to charge the existing customers of the District for a period of at least 18 months, pursuant to the Final Order of the Public Service Commission of West Virginia entered April 7, 2004, in Case No. 03-1973-PSD-S-PC, the sewer service rates set forth in the rate ordinance enacted by the

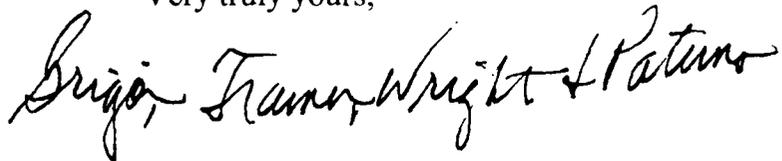
The City of South Charleston  
West Virginia Water Development Authority  
West Virginia Department of Environmental Protection  
Capital State Bank  
June 18, 2004  
Page 2

Issuer on July 3, 2003, and the current operating expenses and customer usage provided by the Issuer and the District. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the sewerage system of the Issuer, as enlarged by the acquisition of the District's sewerage system (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 the payment of principal of and interest on the Issuer's Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2004 C (Capital State Bank) (collectively, the "Series 2004 Bonds") and all other obligations secured by or payable from revenues of the System on a parity with the Series 2004 Bonds, including the Issuer's Supplemental Subordinate Sewer Revenue Bonds, Series 1986, Subordinate Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), and Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program) (collectively, the "Prior Bonds").

It is further our opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2004 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of the Series 2004 Bonds, will not be less than 115% of the maximum debt service in any succeeding year on the Prior Bonds and the Series 2004 Bonds.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Series 2004 Bonds.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sergio Tramm Wright & Patano". The signature is written in a cursive, flowing style.

THE CITY OF SOUTH CHARLESTON 3.5 (A)  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)  
AND SERIES 2004 B (WEST VIRGINIA SRF PROGRAM)

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, in connection with the above-captioned bonds (collectively, the "Bonds"), hereby certifies as follows:

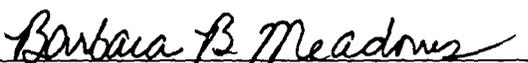
1. On the date hereof, in Charleston, West Virginia, the Authority received the entire original issue of \$108,108.04 in aggregate principal amount of the Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), of The City of South Charleston (the "Issuer"), dated June 18, 2004, in the form of one bond, fully registered to the Authority, numbered AR-1, issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Subordinate Sewer Revenue Bonds, Series 1982, owned by the Authority.

2. On the date hereof, in Charleston, West Virginia, the Authority received the entire original issue of \$1,072,997 in aggregate principal amount of the Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), of the Issuer, dated June 18, 2004, in the form of one bond, fully registered to the Authority, numbered BR-1, issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), owned by the Authority.

3. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 18<sup>th</sup> day of June, 2004.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

  
Authorized Representative

06/08/04  
001793/00309

M0427948.1

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS, SERIES 2004 C  
(CAPITAL STATE BANK)

3.5 (B)

RECEIPT FOR BONDS

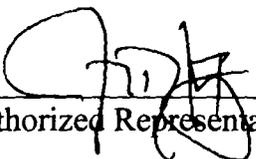
The undersigned authorized representative of Capital State Bank, Charleston, West Virginia (the "Bank"), for and on behalf of the Bank, hereby certifies as follows:

1. On the date hereof, in Charleston, West Virginia, the Bank received the entire original issue of \$271,200.08 in aggregate principal amount of the Sewer Revenue Bonds, Series 2004 C (Capital State Bank), of The City of South Charleston (the "Issuer"), dated June 18, 2004, in the form of one bond, fully registered to the Bank, numbered CR-1 (the "Bonds"), issued to evidence the Issuer's assumption of the Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A, owned by the Bank.

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 18<sup>th</sup> day of June, 2004.

CAPITAL STATE BANK

  
\_\_\_\_\_  
Authorized Representative

06/08/04  
001793/00309

M0428000.1

3.6

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

REQUEST AND AUTHORIZATION TO  
AUTHENTICATE AND DELIVER THE BONDS

Capital State Bank, as Registrar  
Charleston, West Virginia

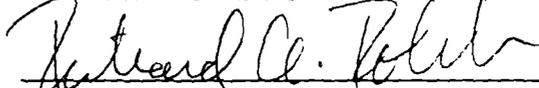
Ladies and Gentlemen:

We herewith hand to you, duly executed, the (i) \$108,108.04 Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), in the form of one bond, numbered AR-1, dated June 18, 2004 (the "Series 2004 A Bonds"); (ii) \$1,072,997 Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), in the form of one bond, numbered BR-1, dated June 18, 2004 (the "Series 2004 B Bonds"); and (iii) \$271,200.08 Sewer Revenue Bonds, Series 2004 C (Capital State Bank), in the form of one bond, numbered CR-1, dated June 18, 2004 (the "Series 2004 C Bonds"), of The City of South Charleston (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, and a Supplemental Resolution duly adopted by the Issuer on June 17, 2004.

You are hereby requested and authorized to register, authenticate and deliver the Series 2004 A Bonds and the Series 2004 B Bonds on behalf of the Issuer to the West Virginia Water Development Authority and the Series 2004 C Bonds on behalf of the Issuer to Capital State Bank.

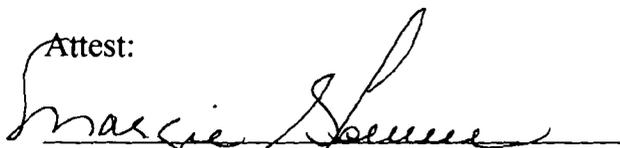
WITNESS my signature on this 18<sup>th</sup> day of June, 2004.

THE CITY OF SOUTH CHARLESTON

  
\_\_\_\_\_  
Mayor

(SEAL)

Attest:

  
\_\_\_\_\_  
City Clerk Deputy

06/08/04

001793/00309

M0427998.1

3.7

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 18<sup>th</sup> day of June, 2004, by and between THE CITY OF SOUTH CHARLESTON, a municipal corporation (the "Issuer"), and CAPITAL STATE BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its (i) \$108,108.04 Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), in the form of one bond, numbered AR-1, in fully registered form, (ii) \$1,072,997 Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), in the form of one bond, numbered BR-1, in fully registered form; and (iii) \$271,200.08 Sewer Revenue Bonds, Series 2004 C (Capital State Bank), in the form of one bond, numbered CR-1, in fully registered form (collectively, the "Bonds"), pursuant to a Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, and a Supplemental Resolution duly adopted June 17, 2004 (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 Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer 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 Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the 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, if any, on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the 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 Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the 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:

ISSUER:

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303  
Attention: Mayor

REGISTRAR:

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309  
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

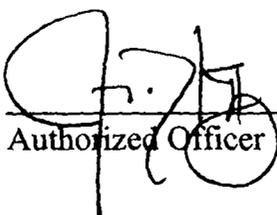
8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

THE CITY OF SOUTH CHARLESTON

  
\_\_\_\_\_  
Mayor

CAPITAL STATE BANK

  
\_\_\_\_\_  
Authorized Officer

06/08/04  
001793/00309

EXHIBIT A

See Bond Ordinance (Tab No. 7)  
See Supplemental Resolution (Tab No. 8)

3.8

THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

CERTIFICATE OF REGISTRATION OF BONDS

CAPITAL STATE BANK, Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, (i) the single, fully registered Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), of The City of South Charleston (the "Issuer"), dated June 18, 2004, in the principal amount of \$108,108.04, and numbered AR-1, was registered as to principal only in the name of "West Virginia Water Development Authority;" (ii) the single, fully registered Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), of the Issuer, dated June 18, 2004, in the principal amount of \$1,072,997, and numbered BR-1, was registered as to principal only in the name of "West Virginia Water Development Authority;" and (iii) the single, fully registered Sewer Revenue Bonds, Series 2004 C (Capital State Bank), of the Issuer, dated June 18, 2004, in the principal amount of \$271,200.08, and numbered CR-1, was registered as to principal and interest in the name of "Capital State Bank;" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 18<sup>th</sup> day of June, 2004.

CAPITAL STATE BANK, as Registrar

  
\_\_\_\_\_  
Authorized Officer

06/08/04  
001793/00309

M0427966.1

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

Suite 500  
8 Capitol Street, Charleston, WV 25301  
(304) 558-3971

3.9 (A)

**NEW ISSUE REPORT FORM**

Date of Report: June 18, 2004

ISSUE: The City of South Charleston Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority)

ADDRESS: P.O. Box 8597, South Charleston, WV 25303 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money   
Refunding  Refunds issue(s) dated: \_\_\_\_\_  
Other  X (See NOTES below)

ISSUE DATE: June 18, 2004 CLOSING DATE: June 18, 2004

ISSUE AMOUNT: \$108,108.04 RATE: 0%

1st DEBT SERVICE DUE: October 1, 2004 1st PRINCIPAL DUE: October 1, 2004

1st DEBT SERVICE AMOUNT: \$6,756.76 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: Samme L. Gee, Esquire Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318 Phone: \_\_\_\_\_

CLOSING BANK: Capital State Bank ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: J.D. Koontz Contact Person: \_\_\_\_\_  
Phone: (304) 746-4600 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: West Virginia Water Development Authority  
Contact Person: Carlton Lee Contact Person: Daniel Yonkosky  
Position: General Manager Function: Director  
Phone: (304) 768-4140 Phone: (304) 558-3612

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ Other: \_\_\_\_\_ \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_ To Cons.Invest.Fund \$ \_\_\_\_\_  
\_\_\_\_\_ To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: This Bond is issued to evidence the assumption of the Green Valley Community Public Service District Subordinate Sewer Revenue Bonds, Series 1982. The original debt service schedule will remain the same and payments will continue to be made in accordance thereunder. The funds in the District's Series 1982 Bonds Sinking Fund shall be transferred into The City of South Charleston's Series 2004 A Bonds Sinking Fund.

FOR MUNICIPAL BOND COMMISSION USE ONLY:  
Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

Suite 500  
8 Capitol Street, Charleston, WV 25301  
(304) 558-3971

3.9(B)

**NEW ISSUE REPORT FORM**

Date of Report: June 18, 2004

ISSUE: The City of South Charleston Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program)

ADDRESS: P.O. Box 8597, South Charleston, WV 25303 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money   
Refunding  Refunds issue(s) dated: \_\_\_\_\_  
Other  X (See NOTES below)

ISSUE DATE: June 18, 2004 CLOSING DATE: June 18, 2004

ISSUE AMOUNT: \$1,072,997 RATE: 0%; Administrative Fee: 0.5%

1st DEBT SERVICE DUE: September 1, 2004 1st PRINCIPAL DUE: September 1, 2004

1st DEBT SERVICE AMOUNT: \$9,667 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: Samme L. Gee, Esquire Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318 Phone: \_\_\_\_\_

CLOSING BANK: Capital State Bank ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: J.D. Koontz Contact Person: \_\_\_\_\_  
Phone: (304) 746-4600 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVDEP  
Contact Person: Carlton Lee Contact Person: Rosalie Brodersen  
Position: General Manager Function: Program Manager  
Phone: (304) 768-4140 Phone: (304) 558-0637

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ Capitalized Interest: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
Other: \_\_\_\_\_ \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_ To Cons.Invest.Fund \$ \_\_\_\_\_  
\_\_\_\_\_ To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: This Bond is issued to evidence the assumption of the Green Valley Community Public Service District Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program). The original debt service schedule will remain the same and payments will continue to be made in accordance thereunder. The funds in the District's Series 2000 A Bonds Sinking Fund and Series 2000 A Bonds Reserve Account shall be transferred into The City of South Charleston's Series 2004 B Bonds Sinking Fund and Series 2004 B Bonds Reserve Account.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

Suite 500  
8 Capitol Street, Charleston, WV 25301  
(304) 558-3971

3.9(C)

**NEW ISSUE REPORT FORM**

Date of Report: June 18, 2004

ISSUE: The City of South Charleston Sewer Revenue Bonds, Series 2004 C (Capital State Bank)

ADDRESS: P.O. Box 8597, South Charleston, WV 25303 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money   
Refunding  Refunds issue(s) dated: \_\_\_\_\_  
Other  (See NOTES below)

ISSUE DATE: June 18, 2004 CLOSING DATE: June 18, 2004

ISSUE AMOUNT: \$271,200.08 RATE: 5.8 %

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: N/A

1st DEBT SERVICE AMOUNT: N/A PAYING AGENT: Capital State Bank

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: Samme L. Gee, Esquire Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318 Phone: \_\_\_\_\_

CLOSING BANK: Capital State Bank ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: J. D. Koontz Contact Person: \_\_\_\_\_  
Phone: (304) 746-4600 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: \_\_\_\_\_  
Contact Person: Carlton Lee Contact Person: \_\_\_\_\_  
Position: General Manager Function: \_\_\_\_\_  
Phone: (304) 768-4140 Phone: \_\_\_\_\_

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ Other: \_\_\_\_\_ \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_ To Cons.Invest.Fund \$ \_\_\_\_\_  
\_\_\_\_\_ To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: This Bond is issued to evidence the assumption of the Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A. The original debt service schedule will remain the same and payments will continue to be made directly to Capital State Bank in accordance thereunder. The funds in the District's Series 2001 A Bonds Reserve Account shall be transferred into the City of South Charleston's Series 2004 C Bonds Reserve Account.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_



1600 LAIDLEY TOWER • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130  
[www.jacksonkelly.com](http://www.jacksonkelly.com)

DIRECT NO. (304) 340-1318

EMAIL: [sgee@jacksonkelly.com](mailto:sgee@jacksonkelly.com)

FAX NO. (304) 340-1080 OR 1040

June 18, 2004

3.10

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Internal Revenue Service  
Internal Revenue Service Center  
Ogden, Utah 84201

Re: The City of South Charleston  
Sewer Revenue Bonds, Series 2004 C  
(Capital State Bank)

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue, by which The City of South Charleston, West Virginia, has assumed the Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope. A copy of the Form 8038-G filed by Green Valley Community Public Service District in 2001 is also attached for your reference.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. L. Gee', is written over a horizontal line.

Samme L. Gee

SLG/lp

Enclosure

cc: Carlton Lee (w/ enc.)

**Information Return for Tax-Exempt Governmental Obligations**

Under Internal Revenue Code section 149(e)

See separate instructions.

OMB No. 1545-0720

Caution: If the issue price is under \$100,000, use Form 8038-GC.

**Part I Reporting Authority** If Amended Return, check here

1 Issuer's name <b>The City of South Charleston</b>	2 Issuer's employer identification number <b>55 ; 6000255</b>
3 Number and street (or P.O. box if mail is not delivered to street address) <b>P.O. Box 8597</b>	Room/suite <b>3</b> 4 Report number <b>01</b>
5 City, town, or post office, state, and ZIP code <b>South Charleston, West Virginia 25303</b>	6 Date of issue <b>June 18, 2004</b>
7 Name of issue <b>Sewer Revenue Bonds, Series 2004 C*/Assuming Outstanding Bonds see Appendix A</b>	8 CUSIP number <b>N/A</b>
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Samme L. Gee, Esquire</b>	10 Telephone number of officer or legal representative <b>( 304 ) 340-1318</b>

**Part II Type of Issue (check applicable box(es) and enter the issue price)** See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input checked="" type="checkbox"/> Environment (including sewage bonds)	15 <b>271,200.28</b>
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

**Part III Description of Obligations. Complete for the entire issue for which this form is being filed.**

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	9/10/2017	\$ 450,000	\$ 450,000	11.25 years	5.876 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22	0
23 Issue price of entire issue (enter amount from line 21, column (b))	23	0
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	0
25 Proceeds used for credit enhancement	25	0
26 Proceeds allocated to reasonably required reserve or replacement fund	26	0
27 Proceeds used to currently refund prior issues	27	0
28 Proceeds used to advance refund prior issues	28	0
29 Total (add lines 24 through 28)	29	0
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	0

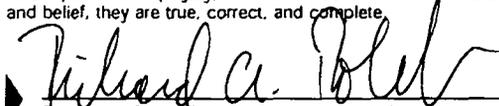
**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	_____ years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	_____ years
33 Enter the last date on which the refunded bonds will be called	_____
34 Enter the date(s) the refunded bonds were issued	_____

**Part VI Miscellaneous**

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	N/A
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	N/A
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	N/A
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer _____ and the date of the issue _____		
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input checked="" type="checkbox"/>		
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>		
40 If the issuer has identified a hedge, check box <input type="checkbox"/>		

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.

**Sign Here**  
  
 Signature of issuer's authorized representative Richard A. Robb, Mayor  
 Date June 18, 2004  
 Type or print name and title



## **APPENDIX A**

\*Replacement Bond to evidence the assumption by the City of South Charleston of the \$450,000 Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A. The District is being merged into the City of South Charleston. The District's 8038-G is attached. No terms or conditions were changed.

**Information Return for Tax-Exempt Governmental Obligations**

Under Internal Revenue Code section 149(e)  
 See separate instructions.

OMB No. 1545-0720

Caution: If the issue price is under \$100,000, use Form 8038-GC.

**Part I Reporting Authority** If Amended Return, check here

1 Issuer's name <b>Green Valley Community Public Service District</b>	2 Issuer's employer identification number <b>55 0607810</b>
3 Number and street (or P.O. box if mail is not delivered to street address) <b>P.O. Box 8497</b>	4 Report number <b>301</b>
5 City, town, or post office, state, and ZIP code <b>South Charleston, WV 25303</b>	6 Date of issue <b>09/13/01</b>
7 Name of issue <b>Green Valley Community Public Service District Sewer Refunding Revenue Bonds, Series 2001 A</b>	8 CUSIP number <b>None</b>
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Samme L. Gee, Esquire</b>	10 Telephone number of officer or legal representative <b>(304) 340-1318</b>

**Part II Type of Issue (check applicable box(es) and enter the issue price)** See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input checked="" type="checkbox"/> Environment (including sewage bonds)	15 \$ 450,000
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

**Part III Description of Obligations.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	9/10/2017	\$ 450,000	\$ 450,000	11.25 years	5.876 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22	0
23 Issue price of entire issue (enter amount from line 21, column (b))	23	450,000
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	34,975
25 Proceeds used for credit enhancement	25	0
26 Proceeds allocated to reasonably required reserve or replacement fund	26	43,452
27 Proceeds used to currently refund prior issues	27	325,377.98
28 Proceeds used to advance refund prior issues	28	0
29 Total (add lines 24 through 28)	29	403,804.98
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	46,195.02

**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

31 Enter the remaining weighted average maturity of the bonds to be currently refunded	14.833 years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	N/A years
33 Enter the last date on which the refunded bonds will be called	October 1, 2001
34 Enter the date(s) the refunded bonds were issued	July 27, 1982

**Part VI Miscellaneous**

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	N/A
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	N/A
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	N/A
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer and the date of the issue		
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(iii) (small issuer exception), check box		<input checked="" type="checkbox"/>
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box		<input type="checkbox"/>
40 If the issuer has identified a hedge, check box		<input type="checkbox"/>

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.

Sign Here

Betty J Thompson 09/13/01 Betty Thompson, Chairperson  
 Signature of issuer's authorized representative Date Type or print name and title



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: April 7, 2004

CASE NO. 03-1973-PSD-S-PC

GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT;  
CITY OF SOUTH CHARLESTON; and SOUTH CHARLESTON  
SANITARY BOARD.

Joint petition for consent and approval of the  
District's wastewater collection system by the  
Sanitary Board.

RECOMMENDED DECISION

On November 21, 2003, the South Charleston Sanitary Board (Sanitary Board), the City of South Charleston (City) and the Green Valley Community Public Service District (PSD) filed a joint petition seeking Commission approval of the Sanitary Board's acquisition of the PSD's wastewater collection system. The PSD is a resale customer of the Sanitary Board. The Sanitary Board currently operates and maintains the PSD's sewer system and provides billing and collection service for the PSD. The Joint Petitioners concluded that it would be in the public interest for the Sanitary Board to own the PSD's system. The Sanitary Board will assume all outstanding indebtedness and will charge the customers of the PSD the same rates as currently being charged by the PSD. The Joint Petitioners are seeking bondholder consent and will seek a dissolution of the PSD upon approval of the petition.

On January 9, 2004, the Commission referred the matter requiring a decision on or before June 18, 2004.

By Procedural Order issued March 16, 2004, the Joint Petitioners were required to publish notice of their petition in a newspaper published in Kanawha County. The public notice allowed for the opportunity for written comment on the acquisition.

On March 24, 2004, the Joint Petitioners filed a publication affidavit indicating that the notice was properly published on March 22, 2004. There have been no public comments filed pursuant to the notice.

On March 24, 2004, Staff recommended that the Commission approve the acquisition of the PSD's assets by the Sanitary Board, subject to certain conditions.

By Procedural Order issued March 25, 2004, all parties were given ten (10) days to object to the Staff recommendation.

On April 6, 2004, the Joint Petitioners filed a letter indicating that they were in agreement with the Staff recommendation and that all parties, including Staff, agreed that Staff's recommendation No. 6 only required the Sanitary Board to review rates in eighteen months, but did not require the Sanitary Board to make any filing with the Commission or to modify any rates at that time.

Given that the acquisition is in the public interest, has been recommended by Staff and was properly noticed without any protests, the relief requested should be granted and the Sanitary Board should be allowed to acquire the assets of the PSD.

## FINDINGS OF FACT

1. On November 21, 2003, the City, the Sanitary Board and the PSD jointly petitioned the Commission for approval of the Sanitary Board's acquisition of the assets of the PSD. (See petition).

2. The Sanitary Board owns and operates a wastewater treatment and collection system serving the residents of the City and has approximately 6,225 customers. (See petition).

3. The PSD owns and operates a wastewater collection system near the City and has approximately 900 customers. (See petition).

4. The PSD is a resale customer of the Sanitary Board and, pursuant to an operating agreement, the Sanitary Board currently operates and maintains the PSD's sewer system and provides billing and collecting services for the PSD. (See petition).

5. The PSD and the Sanitary Board have concluded that it would be in the public interest for the Sanitary Board to acquire all the assets and liabilities of the PSD and they have entered into a purchase agreement. (See petition and purchase agreement).

6. The Sanitary Board will assume all outstanding indebtedness of the PSD. (See petition and purchase agreement).

7. The Sanitary Board will continue to charge the customers of the PSD the same rates that are currently being charged by the PSD. (See petition and purchase agreement).

8. The PSD voted to transfer its assets to the Sanitary Board after a public meeting and proper public notice. (See petition and Exhibit D, attached to petition).

9. The County Commission of Kanawha County has approved the transfer of the facilities. (See Exhibit E, attached to the petition).

10. No other utility will be affected by this transfer of assets. (See petition; Final Joint Staff Memorandum filed March 24, 2004).

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11. The terms and conditions of the transaction are fair, reasonable and do not adversely affect the public in West Virginia. (See Staff recommendation filed March 24, 2004; petition).

12. The Joint Petitioners published notice of the petition to the Public Service Commission in a newspaper published in Kanawha County on March 22, 2004, which provided the opportunity for the public to make comment on this acquisition. (See publication affidavit filed March 24, 2004).

13. No public comment was filed pursuant to the public notice. (See file generally).

14. Staff recommended approval of the transfer of the facilities and for the other relief requested in the petition. (See Staff Memorandum filed March 24, 2004).

## CONCLUSION OF LAW

It is in the public interest to approve the petition filed by the Joint Petitioners on November 21, 2003, and to permit the Sanitary Board to acquire the assets of the PSD.

## ORDER

IT IS, THEREFORE, ORDERED that the purchase agreement between the City of South Charleston Sanitary Board and the Green Valley Community Public Service District, filed with the Commission on November 21, 2003, be, and hereby is, approved.

IT IS FURTHER ORDERED that the acquisition of the Green Valley Community Public Service District's assets and liabilities by the City of South Charleston Sanitary Board be, and hereby is, approved.

IT IS FURTHER ORDERED that the assumption of the debt of the Green Valley Community Public Service District by the City of South Charleston Sanitary Board be, and hereby is, approved.

IT IS FURTHER ORDERED that the City of South Charleston Sanitary Board and the Green Valley Community Public Service District be, and hereby are, required to obtain approval of their bondholders concerning the acquisition prior to consummating the transaction.

IT IS FURTHER ORDERED that the joint request of Green Valley Community Public Service District and the City of South Charleston Sanitary Board for a waiver of Rule 21 of the Commission's Rules of Practice and Procedure be, and hereby is, granted.

IT IS FURTHER ORDERED that the City of South Charleston Sanitary Board continue to charge the existing customers of the Green Valley Community Public Service District the rates and charges currently in effect for the PSD for a period of at least eighteen (18) months. The City of South Charleston Sanitary Board is hereby required to review the

rates charged to the customers of the former Green Valley Community Public Service District at that time, but is not required to take any action or make any Commission filing related to its review.

IT IS FURTHER ORDERED that the City of South Charleston Sanitary Board record in its books and records the amount of \$3,129,393 as the net book value of the Green Valley Community Public Service District's net water utility plant.

IT IS FURTHER ORDERED that the City of South Charleston Sanitary Board and the Green Valley Community Public Service District seek a formal dissolution of the public service district upon approval of the transfer of assets.

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

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

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

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

Keith A. George

Administrative Law Judge

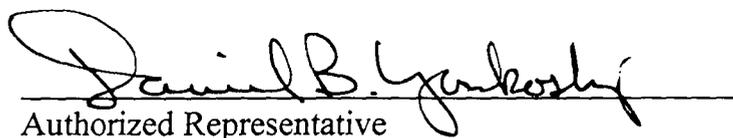
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

CONSENT TO ASSUMPTION AND ISSUANCE OF PARITY BONDS

In reliance upon a certificate of the Issuer's certified public accountant stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the District's Series 1982 Bonds and Series 2000 A Bonds and the Issuer's Prior Bonds, all hereinafter defined and described, hereby (a) consents to the assumption of the Subordinate Sewer Revenue Bonds, Series 1982 (the "Series 1982 Bonds"), the Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program) (the "Series 2000 A Bonds"), and the Sewer Refunding Revenue Bonds, Series 2001 A (the "Series 2001 A Bonds"), of Green Valley Community Public Service District (the "District") by The City of South Charleston (the "Issuer") and (b) further consents to the issuance of (i) the Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), in the original principal amount of \$108,108.04, by the Issuer to evidence the Issuer's assumption of the District's Series 1982 Bonds; (ii) the Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), in the original principal amount of \$1,072,997, by the Issuer to evidence the Issuer's assumption of the District's Series 2000 A Bonds; and (iii) the Sewer Revenue Bonds, Series 2004 C (Capital State Bank), in the original principal amount of \$271,200.08, by the Issuer to evidence the Issuer's assumption of the District's Series 2001 A Bonds, all on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Supplemental Subordinate Sewer Revenue Bonds, Series 1986, Subordinate Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program) (collectively, the "Prior Bonds").

WITNESS my signature on this 18<sup>th</sup> day of June , 2004.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Authorized Representative

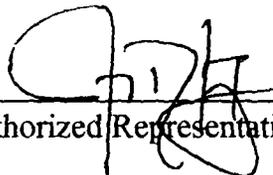
THE CITY OF SOUTH CHARLESTON  
SEWER REVENUE BONDS,  
SERIES 2004 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY),  
SERIES 2004 B (WEST VIRGINIA SRF PROGRAM) AND  
SERIES 2004 C (CAPITAL STATE BANK)

CONSENT TO ASSUMPTION AND ISSUANCE OF PARITY BONDS

In reliance upon a certificate of the Issuer's certified public accountant stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of Capital State Bank, the registered owner of the District's Series 2001 A Bonds, hereinafter defined and described, hereby (a) consents to the assumption of the Subordinate Sewer Revenue Bonds, Series 1982 (the "Series 1982 Bonds"), the Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program) (the "Series 2000 A Bonds"), and the Sewer Refunding Revenue Bonds, Series 2001 A (the "Series 2001 A Bonds"), of Green Valley Community Public Service District (the "District") by The City of South Charleston (the "Issuer") and (b) further consents to the issuance of (i) the Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), in the original principal amount of \$108,108.04, by the Issuer to evidence the Issuer's assumption of the District's Series 1982 Bonds; (ii) the Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), in the original principal amount of \$1,072,997, by the Issuer to evidence the Issuer's assumption of the District's Series 2000 A Bonds; and (iii) the Sewer Revenue Bonds, Series 2004 C (Capital State Bank), in the original principal amount of \$271,200.08, by the Issuer to evidence the Issuer's assumption of the District's Series 2001 A Bonds, all on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Supplemental Subordinate Sewer Revenue Bonds, Series 1986, Subordinate Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program) (collectively, the "Prior Bonds").

WITNESS my signature on this 18<sup>th</sup> day of June, 2004.

CAPITAL STATE BANK

  
\_\_\_\_\_  
Authorized Representative

06/08/04  
0001793/00309

M0428199.1

**GREEN VALLEY  
COMMUNITY PUBLIC  
SERVICE DISTRICT**

**Notice of Hearing**

The Public Service Board of the Green Valley Community Public Service District will hold a hearing at its regular monthly meeting to be held on Thursday, August 21, 2003, at 9:00 a.m. at the South Charleston Sanitary Board offices, 1 Rockcrest Drive, South Charleston, WV 25303, West Virginia, for the purpose of taking comments and objections, if any, relating to the proposed transfer of Green Valley Community Public Service District's utility rights and assets to the City of South Charleston and its Sanitary Board.

The Board will, following the receipt of comments and objections, vote on whether or not to proceed with the transfer of its utility rights and assets to the City of South Charleston. This meeting is open to the press and public and any person interested may appear at such meeting and protect their interest.

**GREEN VALLEY  
COMMUNITY  
PUBLIC SERVICE  
DISTRICT  
(063085)**



**CHARLESTON NEWSPAPERS**

P.O. Box 2993  
Charleston, West Virginia 25330  
Billing 348-4898  
Classified 348-4848  
1-800-WVA-NEWS  
FETN 55-0676079

INVOICE DATE	08/08/03
ACCOUNT NBR	047834006
SALES REP ID	0025
INVOICE NBR	052624001

Legal pricing is based upon 63 words per column inch.

Each successive insertion is discounted by 25% of the first insertion rate.

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Date	Pub	Code	Description	Invoice #	Rate	Charges	Discount	Total
08/07	LEG	GZ	Green Valley Comm. P 052624001	0063085	1X0400	4.00	7.56	30.24
08/07	LEG	DM	Green Valley Comm. P 052624002		1X0400	4.00	7.56	30.24
<b>TOTAL INVOICE AMOUNT</b>								<b>60.48</b>

State of West Virginia,

**AFFIDAVIT OF PUBLICATION**

I, Andrea Lloyd of  
THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,  
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,  
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:



OFFICIAL SEAL  
NOTARY PUBLIC  
STATE OF WEST VIRGINIA  
ANNA BELL REED  
CHARLESTON NEWSPAPERS  
1201 VIRGINIA ST., E.  
CHARLESTON, WV 25301  
My Commission Expires Nov. 22, 2006

Green Valley Comm. PSD

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County,

West Virginia, on the 8TH day of AUGUST 2003. Published during the following dates: 08/07/03-08/07/03

Subscribed and sworn to before me this 11 day of August

Printers fee \$ 60.48

Anna Bell Reed  
Notary Public of Kanawha County, West Virginia

ASSET PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the CITY OF SOUTH CHARLESTON, a municipal corporation, acting by and through its SOUTH CHARLESTON SANITARY BOARD (hereinafter referred to as "South Charleston"), and GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT, a public corporation, acting by and through its Board of Commissioners (hereinafter referred to as "Green Valley") (South Charleston and Green Valley sometimes hereinafter collectively referred to as the "Parties").

WHEREAS, South Charleston is a municipal corporation, created and authorized to transact business in accordance with the laws of the State of West Virginia, and is engaged in providing sewer service to residential and business customers in and near the City of South Charleston, West Virginia, pursuant to authority granted by the Public Service Commission of West Virginia (the "Commission"); and

WHEREAS, Green Valley is a public service district, created and authorized to transact business in accordance with the laws of the State of West Virginia, and is engaged in providing sewer service near South Charleston (hereinafter referred to as "franchised area"), as a public utility in Kanawha County, West Virginia; and

WHEREAS, South Charleston, pursuant to an Operating Agreement with Green Valley, currently operates and maintains Green Valley's sewer system and further provides billing and collecting services for Green Valley; and

WHEREAS, the Parties have determined that it is in the best interests of the Parties and of their customers for South Charleston to acquire all the assets and liabilities of Green Valley; and

WHEREAS, the Parties have further determined it to be mutually beneficial and advantageous to the Parties and to their customers to enter into an Agreement defining the respective duties and responsibilities of the Parties, all of which is subject to the approval of the Commission, pursuant to the provision of Chapter 16, Article 13A, Section 18a and Chapter 24, Article 2, Section 12 of the West Virginia Code of 1931, as amended.

WITNESSETH:

The Parties, for and in consideration of the mutual covenants, agreements, representations, warranties and other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, hereby agree as follows:

I. On the terms and subject to the conditions of this Agreement, on the Closing (as hereinafter defined), Green Valley shall sell, convey, assign, transfer and deliver to South Charleston, and South Charleston shall purchase and acquire from Green Valley all of Green Valley's right, title and interest in and to all of the assets constituting and used in connection with Green Valley's sewer system business (the "Sewer System"), which assets include but are not limited to all tangible and intangible assets, real estate and interests in real estate, all easements, rights-of-way, licenses and other rights of ingress and egress relating to the Sewer System, equipment, instruments, accounts receivable, general intangibles, chattel paper, leasehold interests, customer lists, agreements and engagements, machinery, trade names, licenses, permits, names, books and records, all customer security deposits and other accounts and funds owned by Green Valley, all goodwill of Green Valley and the Sewer System. All assets being sold, conveyed, transferred or assigned by Green Valley hereunder are referred to as the "Assets." South Charleston may perform a complete inventory of all Assets, including but not limited to parts, prior to Closing.

2. From and after the date of this Agreement, Green Valley agrees that it:
  - a. Will not purchase any vehicles or equipment or execute any contracts concerning any part of the Assets without the express written consent of South Charleston, which consent shall not be unreasonably withheld;
  - b. Will not make any improvements or extensions to the Sewer System without the express written consent of South Charleston, which consent shall not be unreasonably withheld;
  - c. Will not enter into any indebtedness concerning the Assets; and
  - d. Will keep current all debt principal and interest payments through the date of South Charleston's acquisition of the Assets.
  
3. Green Valley hereby warrants and represents to South Charleston that:
  - a. Green Valley is the sole owner of and has good and marketable title to the Assets, free of any liens or encumbrances, except as set forth on Schedule 1 attached hereto and incorporated herein;
  - b. Schedule 2 attached hereto and incorporated herein is a complete and accurate list of all the Assets;
  - c. There are no contracts, agreements, leases, obligations or liabilities relating to or affecting the Assets, except as set forth on Schedule 3 attached hereto and incorporated herein;
  - d. The only indebtedness or financial obligations of Green Valley are those set forth on Schedule 4 attached hereto and incorporated herein;

e. Green Valley shall grant, transfer, convey and assign to South Charleston all warranties and guarantees, express or implied, relating to the Assets, and will provide to South Charleston all written documentation of said warranties and guarantees;

f. Not fewer than sixty percent of the members of Green Valley's Board of Commissioners have adopted a resolution to sell the Assets to South Charleston, and caused to be published notice of a hearing before said Board as required by West Virginia Code §16-13A-18a, and have held the required hearing; and

g. The execution and performance of this Agreement have been duly authorized and approved by all corporate and other action by Green Valley, and this Agreement constitutes its valid and binding obligation enforceable against it in accordance with its terms, and, when the consents and approvals expressly referred to in this Agreement are obtained, the performance of this Agreement will violate no law or agreement binding on Green Valley.

4. South Charleston hereby warrants and covenants to Green Valley that South Charleston will assume all outstanding indebtedness of Green Valley.

5. This Agreement is subject to the approval of the Commission, and of the County Commission of Kanawha County (the "Kanawha County Commission"), and the Parties agree to cooperate in good faith and in an expeditious manner in seeking all necessary approvals.

6. South Charleston hereby represents that upon acquisition of the Sewer System it will charge the customers of the Sewer System the same rates as are charged by Green Valley.

7. The transaction contemplated by this Agreement is subject to the approval of the holders of Green Valley's outstanding bonds and other debt.

8. The date of closing of this transaction shall be on a date to be set by mutual agreement of the Parties, but not more than 90 days from the date an Order of the Commission approving the transfer becomes a final, non-appealable Order, or from the date of approval of the transfer from the Kanawha County Commission, whichever date is later (the "Closing").

9. At the Closing, Green Valley shall execute and deliver to South Charleston (i) all deeds, bills of sale and other documents necessary to vest good and marketable title to the Assets in South Charleston, free and clear of all liens and encumbrances, and in accordance with the terms of this Agreement, (ii) evidence of bondholder approval of the sale of the Assets, (iii) resolutions duly adopted by the Board of Commissioners of Green Valley authorizing and approving such sale, (iv) the opinion of Green Valley's counsel to the effect that there are no violations, citations, or legal proceedings pending of which Green Valley has knowledge, and (v) such other documents and assurances that South Charleston shall reasonably request, all of which shall be in form and substance satisfactory to South Charleston.

10. Any communications between the Parties and all notices required to be served by one party on the other pursuant to this Agreement, unless subsequently changed in writing, shall be delivered to the Parties at the following addresses:

South Charleston Sanitary Board  
P.O. Box 8336  
South Charleston, West Virginia 25309

Green Valley Community Public Service District  
P. O. Box 8497  
South Charleston, West Virginia 25303

11. This Agreement shall be binding upon the Parties hereto, their successors and assigns, and shall be interpreted according to the laws of the State of West Virginia.

WITNESS the following signatures, the date and year first set out above.

THE CITY OF SOUTH CHARLESTON, WEST  
VIRGINIA, acting by and through its  
SOUTH CHARLESTON SANITARY BOARD

By: Richard A. Bell  
Title:

GREEN VALLEY COMMUNITY PUBLIC  
SERVICE DISTRICT

By: Betty J. Thompson  
Title:

266746

## GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT

### RESOLUTION

WHEREAS, the Green Valley Community Public Service District was originally constructed in 1982 and has, since its inception, been operated by the City of South Charleston's Sanitary Board; and

WHEREAS, the Green Valley Community Public Service District, which currently transports sewage to the City of South Charleston for treatment by the South Charleston Sanitary Board, and contracts with the South Charleston Sanitary Board for the operation and maintenance of its sewer system desires to sell its sewer system to the City of South Charleston; and

WHEREAS, the City of South Charleston desires to acquire the sewer system of the Green Valley Community Public Service District, and to operate the sewer system as part of its municipal system; and

WHEREAS, West Virginia Code §16-13A-18a provides that a public service district may sell its sewer system, provided that a majority of not less than sixty percent (60%) of the members of the Board of the public service district deem it to be in the best interests of the district to sell its system, and upon approval of the County Commission of the county in which the district operates, and upon approval of the Public Service Commission of West Virginia; and,

WHEREAS, the Board of the Green Valley Community Public Service District, after proper publication of a Class I legal notice on August 7, 2003, as required by West Virginia Code §16-13A-18a, held a hearing on August 21, 2003 to consider the terms and conditions of the transfer of its system to the City of South Charleston; and,

WHEREAS, based upon the results of such hearing and its consideration of the terms and conditions of such transfer which provide that the Sanitary Board will acquire the District's system and, upon retirement of the debt of the District, establish rates for the customers of the District that are the same as the rates to the customers located within the city limits of the City of South Charleston, the Board of the District has determined that the transfer of the system to the City of South Charleston is in the best interests of the District and its customers.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT:

1. The Board of Green Valley Community Public Service District is authorized to undertake all actions necessary to transfer the assets of the Green Valley Community Public Service District to the City of South Charleston, subject to the approval of the County Commission of Kanawha County, West Virginia, and the Public Service Commission of West Virginia, and receipt of bondholder approval.
2. The Chairman of the Board of the Green Valley Community Public Service District is hereby authorized to execute any and all documents necessary to carry out the provisions of this Resolution.

Adopted this 21<sup>st</sup> day of August, 2003.

  
Chairman

  
Member

  
Member

a:green.psd\resolute

**GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**  
**A RESOLUTION AND ORDER APPROVING**  
**THE TRANSFER OF SEWER ASSETS OF**  
**GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**  
**AND REQUESTING DISSOLUTION OF PUBLIC SERVICE DISTRICT**

WHEREAS, the Green Valley Community Public Service District ("District:") was originally constructed in 1982 and has, since its inception, been operated by the City of South Charleston's Sanitary Board; and

WHEREAS, the District, which currently transports sewage to the City of South Charleston for treatment by the South Charleston Sanitary Board (collectively the "City"), and contracts with the South Charleston Sanitary Board for the operation and maintenance of its sewer system, desires to sell its sewer system to the City; and

WHEREAS, the City desires to acquire the sewer system of the Green Valley Community Public Service District, and to operate the sewer system as part of its municipal system; and

WHEREAS, West Virginia Code §16-13A-18a provides that a public service district may, upon the approval of the Board of the public service district, the County Commission of the county in which the district operates, and upon approval of the Public Service Commission of West Virginia, sell its sewer system if a majority of not less than sixty percent (60%) of the Board of the district deem it to be in the best interests of the district to sell its system; and

WHEREAS, following publication of notice and the holding on August 21, 2003, of a public hearing to consider the terms and conditions of the transfer of its system to

the City of South Charleston, after which hearing and consideration it was determined that the transfer of the system to the City is in the best interests of the District and its customers, a Resolution was adopted permitting the District's Board to take all actions necessary to transfer its assets to the City, subject to approval of the County Commission of Kanawha County ("County Commission"), the Public Service Commission of West Virginia ("PSC"), and the District's bondholders; and,

WHEREAS, by Recommended Decision entered April 7, 2004 in Case No. 03-1973-PSD-S-PC, final as of April 19, 2004, the PSC, among other things, approved the purchase agreement between the District and the City, the acquisition of the District's assets and liabilities and the assumption of the District's debt by the City; and,

WHEREAS, the PSC further, in its Recommended Decision, required that the District seek from the County Commission a formal dissolution of the Green Valley Community Public Service District upon approval of the transfer of assets.

WHEREAS, it is now deemed desirable by the Board of the District to adopt a Resolution and Order approving the transfer of its sewer system to the City of South Charleston and requesting the County Commission to enter an Order dissolving the District upon assumption of its outstanding debt by the City.

NOW, THEREFORE, BE IT, AND IT IS, HEREBY, RESOLVED AND ORDERED that the Board of the Green Valley Community Public Service District does hereby approve of the transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston.

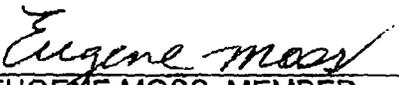
BE IT FURTHER RESOLVED AND ORDERED, that the Board of Green Valley Community Public Service District requests the County Commission of Kanawha

County, West Virginia, to enter an Order dissolving the District effective on the day that the City of South Charleston assumes the outstanding debt of the District.

Adopted on this 27<sup>th</sup> day of April, 2004

  
BETTY J. THOMPSON, CHAIRMAN

  
HAROLD D. TOLBERT, MEMBER

  
EUGENE MOSS, MEMBER

THE REGULAR MEETING OF THE  
GREEN VALLEY PSD WAS HELD ON  
AUGUST 21, 2003

The regular meeting of The Green Valley Community PSD was held on Thursday, August 21, 2003 @ 9:00 A.M. in the Board Room at #1 Rockcrest Drive, South Charleston WV. The meeting was called to order by Betty Thompson, Chairman, with the following present:

- Mrs. Betty Thompson, Chairman
- Mr. Eugene Moss, Board Member
- Mr. Harold D. Tolbert, Board Member
- Mr. Robert Rodecker, Attorney
- Mr. Carlton Lee, SCSB
- Mr. Teddy Harrison, SCSB

The meeting opened with no visitors appearing. Notice was published in the Charleston Newspapers on August 7, 2003 reflecting that the Public could attend this meeting. Mr. Rodecker read to the Board the Resolution for The City of South Charleston to acquire the District. Discussions followed the reading with a unanimous decision to vote to adapt the Resolution. All Board Members moved and signed the Resolution. Motion carried. Mr. Rodecker will file the necessary petition with the Kanawha County Commission to appear on their Agenda for their approval.

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Mrs. Thompson moved, seconded by Mr. Tolbert to approve the previous Minutes. Motion carried.

Mrs. Thompson : Nothing to report to the Board.

\*\*\*\*\*

Mr. Moss : Nothing to report to the Board.

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Mr. Tolbert : Nothing to report to the Board.

\*\*\*\*\*

Mr. Lee : Updated the Board on the situation at the Cycle Shop. He reports that the road to the Pump Station has been paved, and poles will be installed with cable to prevent parking. He also stated that the bulk of the Easement is on the property belonging to Speedway who needs to be included in the Suite. Mr. Lee also reports paving at the Pump Station at Avesta Drive near the property of Mr. Edwards who claims that the District is moving the road onto his property. Mr. Edwards signed the Easement and Mr. Rodecker will have it recorded. Mr. Lee also reports that the Whispering Oaks Mobile Home Park was sold and the new owner is interested in repairing the lines. The Sanitary Board is preparing an estimate for him. Mr. Lee also introduced Dan Halloran of MS Consultants to Larue Causey to discuss the options of moving the existing lines at the Moose Lodge. Mr. Lee recommends to continue billing Roger Young for pool usage.

\*\*\*\*\*

The following Invoices were approved for payment:

Capital State Bank	8,621.00
Ellis & Ellis	3,375.00
DEP	275.00
Eagle Surveying	62.50
Industrial Rubber Products	164.72
St Albans Municipal Utility	7.56
Robert Rodecker	544.70
E L Robinson Engineering	525.00
So Chas Sanitary Board	26,920.60
Spring Hill Hardware	27.16
Superior Signal Company	139.75
Town of Jefferson	375.40
WV Paving	10,632.00
WV American Water Company	608.85
WV Municipal Bond Commission	4,351.29
C I Thornburg	2,270.00
Eugene Moss	100.00
Betty Thompson	100.00
Harold D. Tolbert	100.00
Kanawha County Clerk	24.00
Connie Paxton	16.91
Clarence Pauley	16.81
Michael Davis	32.90
Green Valley PSD	389.50

There being no further business, Mrs. Thompson made a motion to adjourn, seconded by Mr. Tolbert.

The next scheduled meeting will be Thursday, September 25, 2003 @ 9:00 A.M.

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Chairman

---

Treasurer

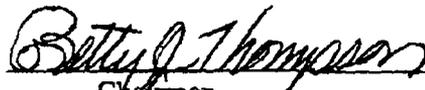
GREEN VALLEY PSD  
SPECIAL MEETING APRIL 27, 2004

A special meeting of The Green Valley Community Public Service District was held on Tuesday, April 27, 2004 at 9:00 A.M. The meeting was called to order by Betty Thompson, Chairman of the Board, with the following present:

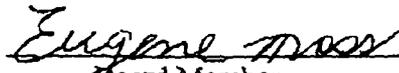
Mrs. Betty Chairman, Chairman  
Mr. Eugene Moss, Board Member  
Mr. Harold D. Tolbert, Board Member  
Mr. Robert Rodecker, Attorney  
Mr. Carlton Lee, SCSB  
Mr. Matt White, SCSB

A unanimous vote of The Board Members of the Green Valley PSD does hereby adopt the Resolution and the Order approving the Transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston. The Board also requests that the County Commission of Kanawha County West Virginia, enter an Order dissolving the District effective the day that The South Charleston Sanitary Board assumes the outstanding debt of the District. Motion carried. Mr. Rodecker presented two copies of the Resolution for signature, and will submit to County Commission to be placed on their next Agenda.

There being no further business, Mrs. Thompson moved to adjourn, seconded by Mr. Tolbert.

  
Chairman

  
Board Member

  
Board Member

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 23rd day of October, 2003, the following Order was made and entered:

**SUBJECT: A RESOLUTION AND ORDER PERTAINING TO THE TRANSFER OF SEWER ASSETS OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**

The following motion was offered by, DAVE HARDY Commissioner.

WHEREAS, the Green Valley Community Public Service District was originally constructed in 1982 and has, since its inception, been operated by the City of South Charleston's Sanitary Board, and

WHEREAS, the Green Valley Community Public Service District, which currently transports sewage to the City of South Charleston for treatment by the South Charleston Sanitary Board, and contracts with the South Charleston Sanitary Board for the operation and maintenance of its sewer system, desires to sell its sewer system to the City of South Charleston; and

WHEREAS, the City of South Charleston desires to acquire the sewer system of the Green Valley Community Public Service District, and to operate the sewer system as part of its municipal system; and

WHEREAS, West Virginia Code § 16-13A-18a provides that a public service district may, upon the approval of the Board of the public service district, the County Commission of the county in which the district operates, and upon approval of the Public Service Commission of West Virginia, sell its sewer system if a majority of not less than sixty percent (60%) of the Board of the district deem it to be in the best interests of the district to sell its system; and

WHEREAS, after publication of notice, the Board of the Green Valley Community Public Service District held a public hearing on August 21, 2003, to consider the terms and conditions of the transfer of its system to the City of South Charleston, and based upon the results of such hearing and its consideration of the terms and conditions of such transfer, which provide that the Sanitary Board will acquire the District's system and, upon retirement of the debt of the District will establish rates for the customers of the District that are the same as the rates to the customers located within the city limits of the City of South Charleston, has determined that the transfer of the system to the City of South Charleston is in the best interests of the District and its customers.

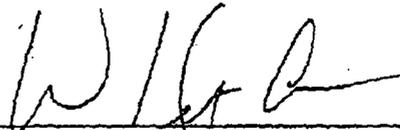
WHEREAS, it is now deemed desirable by said County Commission to adopt a Resolution and Order approving the transfer of the sewer system of Green Valley Community Public Service District to the City of South Charleston under certain conditions.

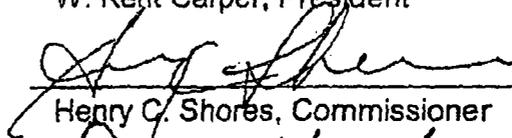
NOW, THEREFORE BE IT RESOLVED AND ORDERED, by the County Commission of Kanawha County that the County Commission does hereby approve of the transfer of the sewer assets of the Green Valley Community Public Service District to the City of South Charleston, conditioned upon the District obtaining the necessary approval of the Public Service Commission of West Virginia.

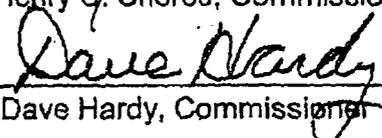
The adoption of the foregoing motion having been moved by, DAVE HARDY, Commissioner, and duly seconded by, HENRY C. SHORES, Commissioner, the vote thereon was as follows:

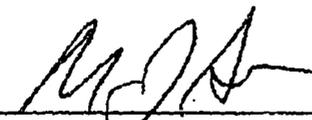
W. Kent Carper, President	<u>AYE</u>
Henry C. Shores, Commissioner	<u>AYE</u>
Dave Hardy, Commissioner	<u>AYE</u>

WHEREUPON, W. Kent Carper, President declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

  
\_\_\_\_\_  
W. Kent Carper, President

  
\_\_\_\_\_  
Henry C. Shores, Commissioner

  
\_\_\_\_\_  
Dave Hardy, Commissioner

Approved By:   
\_\_\_\_\_  
County Attorney

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 29th day of July, 2004, the following order was made and entered:

**SUBJECT: MERGER OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT WITH THE CITY OF SOUTH CHARLESTON'S SANITARY SEWER SYSTEM AND THE DISSOLUTION OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT.**

The following motion was offered by HENRY C. SHORES,  
COMMISSIONER :

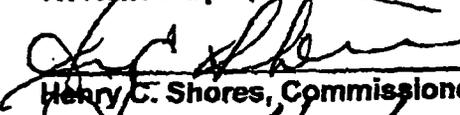
The County commission of Kanawha County, West Virginia, having held a Public Hearing on the merger of the Green Valley Community Public Service District with the City of South Charleston and the subsequent dissolution of the Green Valley Community Public Service District upon completion of the merger on or about the 29th day of July, 2004, pursuant to West Virginia Code, Chapter 16, Article 13A, Section 2, does hereby ORDER that the said Green Valley Community Public Service District be merged with the sewer system of The City of South Charleston, that the completion of the merger the said Green Valley Community Public Service District be dissolved and that the President and Clerk are authorized to execute the Escrow Agreement.

The adoption of the foregoing motion having been moved by HENRY C. SHORES Commissioner, and duly seconded by W. KENT CARPER, Commissioner, the vote thereon was as follows:

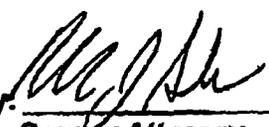
W. Kent Carper, President	<u>AYE</u>
Henry C. Shores, Commissioner	<u>AYE</u>
Dave Hardy, Commissioner	<u>AYE</u>

WHEREUPON, W, Kent Carper, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

  
 \_\_\_\_\_  
 W. Kent Carper, President

  
 \_\_\_\_\_  
 Henry C. Shores, Commissioner

  
 \_\_\_\_\_  
 Dave Hardy, Commissioner

Approved By:   
 \_\_\_\_\_  
 County Attorney

DEED 2605 446  
 Recorded In Above Book and Page  
 06/18/2004 10:29:57 AM  
 Alma Y. King  
 County Clerk  
 Kanawha County, WV  
 Deed Tax 0.00  
 Recording Fee 11.00  
 TOTAL 11.00

**CONFIRMATORY QUITCLAIM DEED  
 OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**

THIS CONFIRMATORY QUITCLAIM DEED, made this 17th day of June, 2004, by and between Green Valley Community Public Service District, a public corporation and political subdivision of the State of West Virginia, party of the first part, and the City of South Charleston, a municipal corporation and political subdivision of the State of West Virginia, party of the second part;

WHEREAS, on August 21, 2003, the Green Valley Community Public Service District adopted a Resolution authorizing the Board of the District to undertake all actions necessary to transfer the assets of the District to the City of South Charleston, subject to the approval of the County Commission of Kanawha County, West Virginia, and the Public Service Commission of West Virginia, and receipt of bondholder approval and authorizing the Chairman of the District to execute any and all documents necessary to carry out the provisions of the Resolution; and,

WHEREAS, the County Commission of Kanawha County, West Virginia, entered an Order On October 23, 2003, approving the transfer of the Green Valley Community Public Service District's sewer assets to the City of South Charleston conditioned upon the District obtaining the necessary approval of the Public Service Commission of West Virginia; and,

WHEREAS, the Public Service Commission of West Virginia, by Recommended Decision entered April 7, 2004 in Case No. 03-1973-PSD-S-PC, final as of April 19, 2004, approved the acquisition of the Green Valley

Return to:  
 Samme Gee, Esquire  
 Jackson & Kelly  
 Post Office Box 553  
 Charleston, WV 25322

Community Public Service District's assets and liabilities and the assumption of the District's debt by the City of South Charleston conditioned upon the approval of the acquisition by the District's and City's bondholders; and

WHEREAS, by Resolution and Order adopted April 27, 2004, the Board of the Green Valley Community Public Service District approved of the transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston and requested that the County Commission of Kanawha County, West Virginia, enter an Order dissolving the District effective on the day that the City of South Charleston assumes the outstanding debt of the District; and, acquisition by the District's and City's bondholders; and

WHEREAS, the bondholders of the Green Valley Community Public Service District and the City of South Charleston have approved the acquisition.

NOW, THEREFORE, in consideration of the premises and One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the party of the second part all of its right, title and interest in and to any and all real estate and interests in real estate, together with all improvements situate thereon and the appurtenances thereunto belonging, situate in Kanawha County, West Virginia, specifically including, but not limited to, the real estate, with such improvements and appurtenances, described in Exhibit A attached hereto and incorporated herein by reference.

This conveyance is made subject to all exceptions, reservations, restrictions, easements, conditions and rights-of-way contained or mentioned in prior instruments of record affecting the subject property.

The undersigned party of the first part hereby declares that this conveyance is not subject to the West Virginia Excise Tax on the privilege of transferring real property because it is a conveyance from one political subdivision of the State of West Virginia to another political subdivision of the State of West Virginia.

IN WITNESS WHEREOF, said Green Valley Community Public Service District has caused its name to be signed and corporate seal to be affixed hereto by its proper officer thereunto duly authorized, all as of the day and year first above written.

GREEN VALLEY COMMUNITY  
PUBLIC SERVICE DISTRICT

By Betty J. Thompson  
Its Chairman

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

I, Elizabeth Gardner, a Notary Public in and for the County and State aforesaid, do certify that Betty J. Thompson, who signed the writing hereto annexed, bearing date the 17<sup>th</sup> day of June, 2004, on behalf of GREEN VALLEY

COMMUNITY PUBLIC SERVICE DISTRICT, a public corporation, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said corporation.

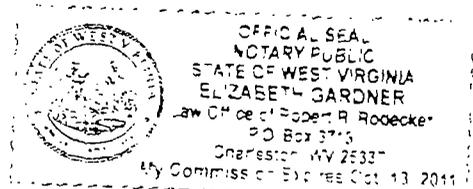
Given under my hand and official seal this the 17<sup>th</sup> day of June, 2004.

My commission expires October 13, 2011.

  
Notary Public

This document was prepared by:

Robert R. Rodecker, Esquire  
WV State Bar No. 3145  
Post Office Box 3713  
Charleston, West Virginia 25337



DEED 2605 450

**EXHIBIT A**

**REAL ESTATE**

All those parcels of land located in Jefferson District, Kanawha County, West Virginia, of record in the Office of the Clerk of Kanawha County as follows:

<b>DEED BOOK</b>	<b>PAGE NO.</b>
1986	674
1986	678
1986	683
1986	687
2021	710
2021	716
2021	721
2021	726
2054	595
2059	690
2059	696

This instrument was presented to the Clerk of the County  
Commission of Kanawha County, West Virginia, on **JUN 18 2004**  
and the same is admitted to record.

Teste:  Clerk  
Kanawha County Commission

**CONFIRMATORY BILL OF SALE OF  
GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**

THIS CONFIRMATORY BILL OF SALE, made this 17th day of June, 2004, by and between Green Valley Community Public Service District, a public corporation and political subdivision of the State of West Virginia, party of the first part, hereinafter sometimes referred to as the "Seller," and the City of South Charleston, a municipal corporation and political subdivision of the State of West Virginia, party of the second part, hereinafter sometimes referred to as the "Purchaser;"

WHEREAS, on August 21, 2003, the Green Valley Community Public Service District adopted a Resolution authorizing the Board of the District to undertake all actions necessary to transfer the assets of the District to the City of South Charleston, subject to the approval of the County Commission of Kanawha County, West Virginia, and the Public Service Commission of West Virginia, and receipt of bondholder approval and authorizing the Chairman of the District to execute any and all documents necessary to carry out the provisions of the Resolution; and,

WHEREAS, the County Commission of Kanawha County, West Virginia, entered an Order On October 23, 2003, approving the transfer of the Green Valley Community Public Service District's sewer assets to the City of South Charleston conditioned upon the District obtaining the necessary approval of the Public Service Commission of West Virginia; and,

**Return to:**  
Samme Gee, Esquire  
Jackson & Kelly  
Post Office Box 553  
Charleston, WV 25322

DEED 2605 441  
Recorded In Above Book and Page  
06/18/2004 10:29:06 AM  
Alma Y. King  
County Clerk  
Kanawha County, WV  
Recording Fee 6.00  
TOTAL 6.00

WHEREAS, the Public Service Commission of West Virginia, by Recommended Decision entered April 7, 2004 in Case No. 03-1973-PSD-S-PC, final as of April 19, 2004, approved the acquisition of the Green Valley Community Public Service District's assets and liabilities and the assumption of the District's debt by the City of South Charleston conditioned upon the approval of the acquisition by the District's and City's bondholders; and

WHEREAS, the bondholders of the Green Valley Community Public Service District and the City of South Charleston have approved the acquisition; and,

WHEREAS, by Resolution and Order adopted April 27, 2004, the Board of the Green Valley Community Public Service District approved of the transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston and requested that the County Commission of Kanawha County, West Virginia, enter an Order dissolving the District effective on the day that the City of South Charleston assumes the outstanding debt of the District; and,

WHEREAS, this Confirmatory Bill of Sale to evidence the transfer of all personal property, tangible or intangible, and interests in personal property of Green Valley Community Public Service District to the City of South Charleston is being executed and delivered pursuant to the authority granted to the Chairman by the Resolution adopted by the Board of the District on August 21, 2003.

WITNESSETH, that for the sum of One and 00/100 Dollar (\$1.00), cash in hand paid by the Purchaser to the Seller, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Seller does hereby sell, assign, transfer, set over and deliver to Purchaser all personal property, including, but not limited to, all inventory, accounts receivable, deposit accounts, certificates of deposit, other evidences of indebtedness of a third party to the Seller, claims, causes of action, agreements, including, but not limited to, any indemnification agreements, contracts, equipment, supplies, vehicles, furniture, fixtures, furnishings, improvements, and any other tangible or intangible personal property, and any interest in personal property owned by the Seller, wherever located and of whatever nature, specifically including, but not limited to, the personal property described in Exhibit A attached hereto and incorporated herein by reference.

Seller hereby warrants to Purchaser that Seller has clear and unencumbered title to the personal property transferred by this Bill of Sale, except for the lien of the holders of the Seller's Subordinate Sewer Revenue Bonds, Series 1982, dated July 27, 1982, Sewer Revenue Bonds, Series 2000A (West Virginia SRF Program), dated September 7, 2000, and Sewer Refunding Revenue Bonds, Series 2001A, dated September 13, 2001, which Bonds are being assumed by the Purchaser.

The Seller shall deliver possession of the aforesaid personal property to Purchaser on the date of this Bill of Sale.

IN WITNESS WHEREOF, said Green Valley Community Public Service District has caused its name to be signed and corporate seal to be affixed hereto by its proper officer thereunto duly authorized, all as of the day and year first above written.

GREEN VALLEY COMMUNITY  
PUBLIC SERVICE DISTRICT

By Betty J. Thompson  
Its Chairman

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

I, Elizabeth Gardner, a Notary Public in and for the County and State aforesaid, do certify that Betty J. Thompson, who signed the writing hereto annexed, bearing date the 17th day of June, 2004, on behalf of GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT, a public corporation, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said corporation.

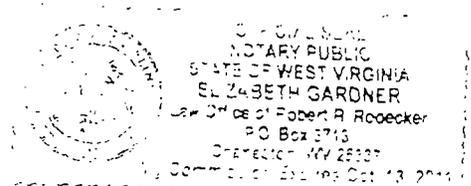
Given under my hand and official seal this the 17th day of June, 2004.

My commission expires October 13, 2011.

Elizabeth Gardner  
Notary Public

This document was prepared by:

Robert R. Rodecker, Esquire  
WV State Bar No. 3145  
Post Office Box 3713  
Charleston, West Virginia 25337



**EXHIBIT A**

1. Accounts
  
2. Miscellaneous Personal Property

This instrument was presented to the Clerk of the County  
Commission of Kanawha County, West Virginia, on **JUN 18 2004**  
and the same is admitted to record.

Teste: *Alma H. King* Clerk  
Kanawha County Commission

ASSIGN	201	213	
Recorded In Above Book and Page			
06/18/2004	10:25:40 AM		
Alma Y. King			
County Clerk			
Kanawha County, WV			
Deed Tax			0.00
Recording Fee			6.00
TOTAL			6.00

**CONFIRMATORY ASSIGNMENT OF  
RIGHTS OF WAY AND EASEMENTS OF  
GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**

THIS CONFIRMATORY ASSIGNMENT OF RIGHTS OF WAY AND EASEMENTS, made this 17<sup>th</sup> day of June, 2004, by and between Green Valley Community Public Service District, a public corporation and political subdivision of the State of West Virginia, party of the first part, hereinafter sometimes referred to as the "Assignor," and the City of South Charleston, a municipal corporation and political subdivision of the State of West Virginia, party of the second part, hereinafter sometimes referred to as the "Assignee;"

WHEREAS, on August 21, 2003, the Green Valley Community Public Service District adopted a Resolution authorizing the Board of the District to undertake all actions necessary to transfer the assets of the District to the City of South Charleston, subject to the approval of the County Commission of Kanawha County, West Virginia, and the Public Service Commission of West Virginia, and receipt of bondholder approval and authorizing the Chairman of the District to execute any and all documents necessary to carry out the provisions of the Resolution; and,

WHEREAS, the County Commission of Kanawha County, West Virginia, entered an Order On October 23, 2003, approving the transfer of the Green Valley Community Public Service District's sewer assets to the City of South Charleston conditioned upon the District obtaining the necessary approval of the Public Service Commission of West Virginia; and,

**Return to:**  
Samme Gee, Esquire  
Jackson & Kelly  
Post Office Box 553  
Charleston, WV 25322

WHEREAS, the Public Service Commission of West Virginia, by Recommended Decision entered April 7, 2004 in Case No. 03-1973-PSD-S-PC, final as of April 19, 2004, approved the acquisition of the Green Valley Community Public Service District's assets and liabilities and the assumption of the District's debt by the City of South Charleston conditioned upon the approval of the acquisition by the District's and City's bondholders; and

WHEREAS, the bondholders of the Green Valley Community Public Service District and the City of South Charleston have approved the acquisition; and,

WHEREAS, by Resolution and Order adopted April 27, 2004, the Board of the Green Valley Community Public Service District approved of the transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston and requested that the County Commission of Kanawha County, West Virginia, enter an Order dissolving the District effective on the day that the City of South Charleston assumes the outstanding debt of the District; and,

WHEREAS, this Confirmatory Assignment of Rights of Way and Easements to evidence the transfer of all right, title and interest in and to any and all rights of way and easements owned by, or reserved to, Green Valley

Community Public Service District to the City of South Charleston is being executed and delivered pursuant to the authority granted to the Chairman by the Resolution adopted by the Board of the District on August 21, 2003,

WITNESSETH, that for the sum of One and 00/100 Dollar (\$1.00), cash in hand paid by the Assignee to the Assignor, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Assignor does hereby assign, transfer, set over and deliver to Assignee all of its right, title and interest in any and all rights of way and easements owned by, or reserved to, Green Valley Community Public Service District, including all of those conveyed to the Assignor by conveyances of record in the Office of the Clerk of The County Commission of Kanawha County, West Virginia, by Sewer User Agreements or by any other conveyances, recorded or unrecorded, without limitation.

IN WITNESS WHEREOF, said Green Valley Community Public Service District has caused its name to be signed and corporate seal to be affixed hereto by its proper officer thereunto duly authorized, all as of the day and year first above written.

GREEN VALLEY COMMUNITY  
PUBLIC SERVICE DISTRICT

By Betty J. Thompson  
Its Chairman

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

I, Elizabeth Gardner, a Notary Public in and for the County and State aforesaid, do certify that Betty J. Thompson, who signed the writing hereto annexed, bearing date the 17<sup>th</sup> day of June, 2004, on behalf of GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT, a public corporation, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said corporation.

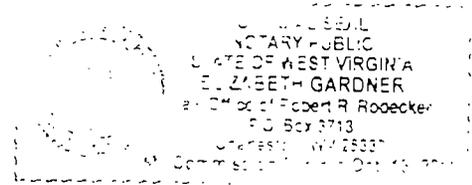
Given under my hand and official seal this the 17<sup>th</sup> day of June, 2004.

My commission expires October 13, 2011.

*Elizabeth Gardner*  
Notary Public

This document was prepared by:

Robert R. Rodecker, Esquire  
WV State Bar No. 3145  
Post Office Box 3713  
Charleston, West Virginia 25337



This instrument was presented to the Clerk of the County  
Commission of Kanawha County, West Virginia, on JUN 18 2004  
and the same is admitted to record.

Teste: *Alma J. King* Clerk  
Kanawha County Commission

**CONFIRMATORY ASSIGNMENT OF JUDGMENTS AND LIENS  
OF GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**

THIS CONFIRMATORY ASSIGNMENT OF JUDGMENTS AND LIENS, made this 17<sup>th</sup> day of June, 2004, by and between Green Valley Community Public Service District, a public corporation and political subdivision of the State of West Virginia, party of the first part, hereinafter sometimes referred to as the "Assignor," and the City of South Charleston, a municipal corporation and political subdivision of the State of West Virginia, party of the second part, hereinafter sometimes referred to as the "Assignee;"

WHEREAS, on August 21, 2003, the Green Valley Community Public Service District adopted a Resolution authorizing the Board of the District to undertake all actions necessary to transfer the assets of the District to the City of South Charleston, subject to the approval of the County Commission of Kanawha County, West Virginia, and the Public Service Commission of West Virginia, and receipt of bondholder approval and authorizing the Chairman of the District to execute any and all documents necessary to carry out the provisions of the Resolution; and,

WHEREAS, the County Commission of Kanawha County, West Virginia, entered an Order On October 23, 2003, approving the transfer of the Green Valley Community Public Service District's sewer assets to the City of South Charleston conditioned upon the District obtaining the necessary approval of the Public Service Commission of West Virginia; and,

**Return to:**  
Samme Gee, Esquire  
Jackson & Kelly  
Post Office Box 553  
Charleston, WV 25322

ASSIGN 201 218  
Recorded In Above Book and Page  
06/18/2004 10:27:52 AM  
Alma Y. King  
County Clerk  
Kanawha County, WV  
Deed Tax 0.00  
Recording Fee 6.00  
TOTAL 6.00

WHEREAS, the Public Service Commission of West Virginia, by Recommended Decision entered April 7, 2004 in Case No. 03-1973-PSD-S-PC, final as of April 19, 2004, approved the acquisition of the Green Valley Community Public Service District's assets and liabilities and the assumption of the District's debt by the City of South Charleston conditioned upon the approval of the acquisition by the District's and City's bondholders; and

WHEREAS, the bondholders of the Green Valley Community Public Service District and the City of South Charleston have approved the acquisition; and,

WHEREAS, by Resolution and Order adopted April 27, 2004, the Board of the Green Valley Community Public Service District approved of the transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston and requested that the County Commission of Kanawha County, West Virginia, enter an Order dissolving the District effective on the day that the City of South Charleston assumes the outstanding debt of the District; and,

WHEREAS, this Confirmatory Assignment of Judgments and Liens to evidence the transfer of all right, title and interest in and to any and all judgments and liens obtained in the course of collecting debts due Green Valley Community Public Service District to the City of South Charleston is being executed and delivered pursuant to the authority granted to the Chairman by the Resolution adopted by the Board of the District on August 21, 2003.

WITNESSETH, that for the sum of One and 00/100 Dollar (\$1.00), cash in hand paid by the Assignee to the Assignor, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Assignor does hereby assign, transfer, set over and deliver to Assignee all of its right, title and interest in and to any and all judgments and liens obtained in the course of collecting debts due Green Valley Community Public Service District.

IN WITNESS WHEREOF, said Green Valley Community Public Service District has caused its name to be signed and corporate seal to be affixed hereto by its proper officer thereunto duly authorized, all as of the day and year first above written.

GREEN VALLEY COMMUNITY  
PUBLIC SERVICE DISTRICT

By Betty J. Thompson  
Its Chairman

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

I, Elizabeth Gardner, a Notary Public in and for the County and State aforesaid, do certify that Betty J. Thompson, who signed the writing hereto annexed, bearing date the 17<sup>th</sup> day of June, 2004, on behalf of GREEN VALLEY

COMMUNITY PUBLIC SERVICE DISTRICT, a public corporation, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said corporation.

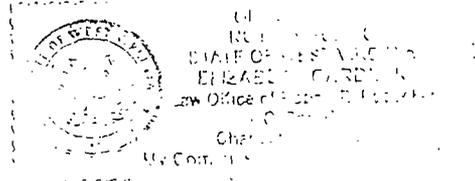
Given under my hand and official seal this the 17<sup>th</sup> day of June, 2004.

My commission expires October 13, 2011.

*Elizabeth Gardner*  
Notary Public

This document was prepared by:

Robert R. Rodecker, Esquire  
WV State Bar No. 3145  
Post Office Box 3713  
Charleston, West Virginia 25337



This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on JUN 18 2004 and the same is admitted to record.

Teste: *Alma J. Jorg* Clerk  
Kanawha County Commission

ASSIGN 201 217  
Recorded In Above Book and Page  
06/18/2004 10:26:49 AM  
Alma Y. King  
County Clerk  
Kanawha County, WV  
Deed Tax  
Recording Fee  
#071

0.00  
6.00  
6.00

**CONFIRMATORY ASSIGNMENT OF INTANGIBLES OF  
GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT**

THIS CONFIRMATORY ASSIGNMENT OF INTANGIBLES, made this 17<sup>th</sup> day of June, 2004, by and between Green Valley Community Public Service District, a public corporation and political subdivision of the State of West Virginia, party of the first part, hereinafter sometimes referred to as the "Assignor" or "Green Valley", and the City of South Charleston, a municipal corporation and political subdivision of the State of West Virginia, party of the second part, hereinafter sometimes referred to as the "Assignee;"

WHEREAS, on August 21, 2003, the Green Valley Community Public Service District adopted a Resolution authorizing the Board of the District to undertake all actions necessary to transfer the assets of the District to the City of South Charleston, subject to the approval of the County Commission of Kanawha County, West Virginia, and the Public Service Commission of West Virginia, and receipt of bondholder approval and authorizing the Chairman of the District to execute any and all documents necessary to carry out the provisions of the Resolution; and,

WHEREAS, the County Commission of Kanawha County, West Virginia, entered an Order On October 23, 2003, approving the transfer of the Green Valley Community Public Service District's sewer assets to the City of South Charleston conditioned upon the District obtaining the necessary approval of the Public Service Commission of West Virginia; and,

WHEREAS, the Public Service Commission of West Virginia, by Recommended Decision entered April 7, 2004 in Case No. 03-1973-PSD-S-PC, final as of April 19, 2004,

SHARLINE GEE, Esquire  
Jackson & Kelly  
Post Office Box 553  
Charleston, WV 25322

Return to:

approved the acquisition of the Green Valley Community Public Service District's assets and liabilities and the assumption of the District's debt by the City of South Charleston conditioned upon the approval of the acquisition by the District's and City's bondholders; and

WHEREAS, the bondholders of the Green Valley Community Public Service District and the City of South Charleston have approved the acquisition; and,

WHEREAS, by Resolution and Order adopted April 27, 2004, the Board of the Green Valley Community Public Service District approved of the transfer of its sewer assets and assumption of its outstanding debts by the City of South Charleston and requested that the County Commission of Kanawha County, West Virginia, enter an Order dissolving the District effective on the day that the City of South Charleston assumes the outstanding debt of the District; and,

WHEREAS, this Confirmatory Assignment of Intangibles is being executed to evidence the transfer of all right, title and interest of Green Valley Community Public Service District to the City of South Charleston in and to the intangible personal property of Green Valley Community Public Service District used exclusively in rendering sewer service to the customers of Green Valley Community Public Service District, including but not limited to:

- A. Public Service Commission certificates of convenience and necessity:

1. Right of Green Valley to serve existing customers as approved from time to time by the Public Service Commission of West Virginia.
  2. Authority to Transfer Assets to the City of South Charleston pursuant to Joint Application and by Order of the Commission dated April 19, 2004, in PSC Case No. 03-1973-PSD-S-PC.
- B. All revenues accrued but unbilled at the date of closing.
- C. All right, title, and interest in, to, and under notes, customer accounts receivable and other receivables of Green Valley arising exclusively from the operation of Green Valley's system.
- D. All books and records relating exclusively to the operations of the system, including, but not limited to, all books of account, journals and ledgers, files, correspondence, memoranda, maps, plats, customer lists, supplier lists, building and machinery diagrams, plans, continuing property records, customer deposit list, customer account histories, and all other records maintained pursuant to requirements of the Public Service Commission.
- E. As of the date of closing, all right, title, and interest of the Assignor in and to all debts, choses in action, claims and causes of action (whether or not contingent), and all other intangible personal property of like kind and character relating exclusively to the business of the Assignor, whether evidenced in writing or not and whether identified on the books and records of the Assignor or not.

WITNESSETH, that for the sum of One and 00/100 Dollar (\$1.00), cash in hand paid by the Assignee to the Assignor, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Assignor does hereby assign, transfer, set over and deliver to Assignee all of its right, title and interest in and to any and all intangibles obtained in the course of the operation of Green Valley Community Public Service District.

IN WITNESS WHEREOF, said Green Valley Community Public Service District has caused its name to be signed and corporate seal to be affixed hereto by its proper officer thereunto duly authorized, all as of the day and year first above written.

GREEN VALLEY COMMUNITY  
PUBLIC SERVICE DISTRICT

By Betty J. Thompson  
Its Chairman

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

I, Elizabeth Gardner, a Notary Public in and for the County and State aforesaid, do certify that Betty J. Thompson, who signed the writing hereto annexed, bearing date the 17th day of June, 2004, on behalf of GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT, a public corporation, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said corporation.

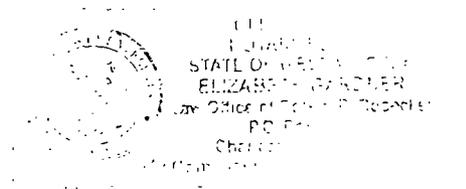
Given under my hand and official seal this the 17<sup>th</sup> day of June, 2004.

My commission expires October 13, 2011.

Elizabeth Gardner  
Notary Public

This document was prepared by:

Robert R. Rodecker, Esquire  
WV State Bar No. 3145  
Post Office Box 3713  
Charleston, West Virginia 25337



This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on JUN 18 2004 and the same is admitted to record.

Teste: Alma H. Jones Clerk  
Kanawha County

JUL - 6 1982

LOAN AGREEMENT

WATER DEVELOPMENT AUTHORITY

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"), and the GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT, a public service district created and existing under Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended, and a public corporation and political subdivision of the State of West Virginia (the "Governmental Agency").

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 20, Article 5C, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered to make loans to governmental agencies for the acquisition or construction of water development projects by such governmental agencies and to issue water development revenue bonds of the State of West Virginia to finance, in whole or in part, by loans to governmental agencies, one or more water development projects, all subject to such provisions and limitations as are contained in the Act; and

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State of West Virginia to construct, own and operate such a water development project and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds and bond anticipation notes or other short-term indebtedness issued by such Governmental Agency; and

WHEREAS, the United States Environmental Protection Agency (the "EPA") has awarded a "Step III" grant offer pursuant to the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, for the construction of a water development project by the Governmental Agency (the "Project") at the location and as more particularly described and set forth in the Application for Loan with attachments and exhibits, dated September 25, 1980, completed by the Governmental Agency and filed with the Authority, as revised and supplemented (the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, the Governmental Agency has also received commitments for such other grants, loans and other financial

assistance with respect to such water development project as are described and set forth in Schedule A of the Application; and

WHEREAS, the Authority intends to issue its Water Development Revenue Bonds (Sewage Systems Loan Program), 1982 Series A (the "1982 Series A Bonds"), in accordance with the provisions of the Act and the resolution of the Authority duly adopted on November 29, 1978 (the "Bond Resolution"), as supplemented by a series resolution authorizing the 1982 Series A Bonds, the proceeds of such 1982 Series A Bonds to be used by the Authority to purchase the bonds of certain municipalities and public service districts, including the Governmental Agency, which comply with the requirements established by the Authority, subject, however, to the ability of the Authority to sell the 1982 Series A Bonds and to the extent of the availability of the proceeds of such 1982 Series A Bonds; and

WHEREAS, the Governmental Agency has requested a loan from the Authority to be evidenced by revenue bonds issued by the Governmental Agency and purchased by the Authority, the proceeds of such loan to be used by the Governmental Agency to pay the portion of the cost of the Project which is not paid from the sources stated in the Application or to refund certain bond anticipation notes or other short-term indebtedness issued in anticipation of said revenue bonds and any additional costs of the Project not so paid; and

WHEREAS, the Authority has made all findings required by Section 5 of the Act with respect to the Project and is willing to make said loan to the Governmental Agency, subject to the terms and provisions hereinafter contained;

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," "water development revenue bond," "cost," "governmental agency," and "water development project" have the definitions and meanings ascribed to them in the Act; provided, that "water development project" means only a "wastewater facility," as also defined in the Act.

1.2 "Consulting Engineers" means the consulting engineer designated in the Application and any successor thereto.

1.3 "Governmental Agency Bonds" means, collectively, the Local Bonds and the Supplemental Bonds, both as hereinafter defined.

1.4 "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.

1.5 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended, to evidence the Loan, and which will be purchased by the Authority with a portion of the proceeds of its 1982 Series A Bonds, in accordance with the provisions of this Loan Agreement.

1.6 "Project" means the water development project hereinabove referred to, to be or being constructed by the Governmental Agency with, among other funds, the proceeds of the WDA Loans, as hereinafter defined, or with the proceeds of the bond anticipation notes or other short-term indebtedness refunded with the proceeds of the WDA Loans, as hereinafter defined.

1.7 "Supplemental Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended, to evidence the Supplemental Loan, as hereinafter defined, and which will be purchased by the Authority with funds other than the proceeds of its 1982 Series A Bonds, in accordance with the provisions of this Loan Agreement.

1.8 "Supplemental Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Supplemental Bonds, pursuant to this Loan Agreement.

1.9 "System" means the complete sewage system and works owned by the Governmental Agency and any additions, betterments and improvements thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

1.10 "WDA Loans" means, collectively, the Loan and the Supplemental Loan.

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

## ARTICLE II

### Identification of Project; Ownership of Project; Rights of Access Thereto; Governmental Agency Financing

2.1 The Project undertaken by the Governmental Agency shall generally consist of the acquisition, construction and installation of the facilities described in the Application constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority having found that the Project is consistent with the applicable comprehensive plan of water management approved by the Director of the West Virginia Department of Natural Resources (or in the process of preparation by such Director) and consistent with the standards set by the West Virginia Water Resources Board for the waters of the State of West Virginia affected thereby.

2.2 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 shall have such rights of access to the Project site and Project facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority in respect of the Project pursuant to the pertinent provisions of the Act.

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 such mortgage lien or other security interest as is provided for in the statute authorizing the issuance of the Governmental Agency Bonds.

## ARTICLE III

### Conditions to WDA Loans; Issuance of Governmental Agency Bonds

3.1 The agreement of the Authority to make the Loan is subject to the Authority's issuing and delivering the 1982 Series A Bonds and subject to the requirements of Section 3.4 hereof and to the 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 a date mutually agreed upon by the Authority and the Governmental Agency and which date shall not be prior to one (1) business day before the scheduled maturity of the Governmental Agency's bond anticipation notes or other short-term indebtedness issued in anticipation of the Governmental Agency Bonds, if any (or earlier redemption date thereof if such notes or other short-term indebtedness are in fact called for redemption), nor later than twenty-seven (27) months from the date the 1982 Series A Bonds are delivered to the initial purchasers thereof; provided that, if such Local Bonds are not delivered on or before the date so mutually agreed upon, the Authority may use monies for the purchase of local bonds of other governmental agencies in accordance with 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 delivered to the Authority for purchase the Governmental Agency Bonds described in Section 3.2 hereof;

(c) The Governmental Agency shall have 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;

(d) The Governmental Agency shall have obtained all requisite orders of and approvals from the West Virginia Public Service Commission necessary for the issuance of the Governmental Agency Bonds, construction of the Project and imposition of the rates required to comply with the provisions of Subsection 4.1(b)(iii) hereof and shall have taken any other action required for the imposition of such rates;

(e) The Governmental Agency shall have obtained all requisite permits necessary for the construction of the Project from the EPA and the West Virginia Department of Natural Resources;

(f) The Governmental Agency shall have obtained a Step III grant offer from the EPA; and

(g) The Governmental Agency shall have received a certificate, in form and substance satisfactory to the Authority, from the consulting engineer designated by the Authority, regarding the engineering report for the Project.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority and the rules, regulations and procedures promulgated from time to time by EPA, it is hereby agreed that the Authority shall make the WDA Loans to the Governmental Agency and the Governmental Agency shall accept the WDA Loans 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 WDA Loans by purchasing the Governmental Agency Bonds in the principal amount set forth in Schedule X hereto and providing proceeds of not less than \$935,000, such Governmental Agency Bonds to consist of a mix of Local Bonds and Supplemental Bonds as will result in annual debt service on the Governmental Agency Bonds of not in excess of \$105,000. The Local Bonds will be purchased by the Authority at a price of not less than seventy percent (70%) of the principal amount thereof, and the Supplemental Bonds will be purchased by the Authority at a price equal to one hundred percent (100%) of the principal amount thereof, all as more particularly set forth on Schedule X hereto. The Local Bonds and the Supplemental Bonds shall be issued and sold to the Authority simultaneously. The Governmental Agency represents that the proceeds of the Governmental Agency Bonds will, together with the funds from the sources set forth in the Application, including any bond anticipation notes or other short-term indebtedness issued in anticipation of the Governmental Agency Bonds, and any other funds available to the Governmental Agency and approved by the Authority, pay the entire cost of the Project and refund said bond anticipation notes or other short-term indebtedness.

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

3.4 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Authority for loans to finance water development projects and that the obligation of the Authority to make any such loan is subject to the sale and the availability of proceeds of the 1982 Series A Bonds at the time the Governmental Agency has fulfilled all of the terms and conditions of this Loan Agreement and to the right of the Authority to make such loans to other governmental agencies as in the aggregate shall permit the fullest and most timely utilization of such proceeds to enable the Authority to pay debt service on the 1982 Series A Bonds.

3.5 In the event the earnings on that portion of the proceeds of the 1982 Series A Bonds issued to purchase the Local Bonds are not sufficient to pay the interest accruing on

said portion of the 1982 Series A Bonds pending issuance and delivery of the Local Bonds, the Governmental Agency agrees to issue additional Supplemental Bonds in principal amount equal to such deficiency (as determined by the Authority) and sell such additional Supplemental Bonds to the Authority and assign the proceeds thereof to the Authority, which shall use such proceeds to reimburse itself for such deficiency.

#### ARTICLE IV

Governmental Agency Bonds; Security for WDA Loans;  
Repayment of WDA Loans; Interest on WDA Loans;  
Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the WDA Loans, authorize the issuance of and issue the Governmental Agency Bonds pursuant to an official action of the Governmental Agency in accordance with the applicable statute of the State of West Virginia (the "Local Act"), which shall, as adopted, contain provisions and covenants in substantially the form as follows:

(a) That the revenues generated from the operation of the System will be used monthly first to pay operation and maintenance expenses of the System; second, to the extent not otherwise limited by an outstanding local resolution, to provide debt service on the Local Bonds, which shall include the establishment of a reserve account for the payment of the Local Bonds into which shall be deposited an amount equal to 20% of all amounts required to be deposited for debt service until such reserve account equals the maximum amount of principal and interest which will come due on such Local Bonds in any year; third, to create a renewal and replacement, or similar, fund in an amount equal to 2-1/2% of the gross revenues from the System, exclusive of the 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 aforesaid reserve account; and, fourth, to pay debt service on the Supplemental Bonds or to purchase Local Bonds on the open market, or to redeem Local Bonds, or to pay debt service on obligations junior and subordinate to the Local Bonds (other than the Supplemental Bonds). The gross revenues of the System shall always be used for purposes of the System.

(b) Covenants substantially as follows:

(i) That the Governmental Agency Bonds shall be secured by the net revenues from the System;

(ii) That the Supplemental Bonds shall be subordinate to the Local Bonds as to lien and source of payment.

(iii) 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 reasonable expenses of operation, repair and maintenance of the System and leave a balance each year equal to at least 130% of the maximum amount required for debt service on all obligations, including the Governmental Agency Bonds, payable from the revenues of the System;

(iv) That the Governmental Agency will complete, operate and maintain the System in good condition;

(v) That 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 Governmental Agency Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(vi) 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 financed by such parity bonds, shall not be less than 130% of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued; provided, however, that additional parity bonds may be issued to complete the Project without regard to the foregoing;

(vii) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System;

(viii) That the Governmental Agency will not render any free services of the System;

(ix) That any bondholder 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 Governmental Agency Bonds, the right to obtain the appointment of a receiver to administer the System as provided by law;

(x) That all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(xi) That, in the event the Governmental Agency owns a waterworks system (the "Water System"), it will, to the full extent permitted by law, discontinue and shut off the services and facilities of the System and the Water System to all delinquent users of services of the System and will not restore the services of either system until all delinquent charges for the services of the System have been fully paid;

(xii) That the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xiii) That the Governmental Agency shall annually cause the records of the System to be audited by a certified public accountant;

(xiv) That the Governmental Agency shall annually adopt a detailed budget of the estimated expenditures for operation and maintenance of the System during the succeeding fiscal year;

(xv) That, to the extent authorized by the laws of the State, prospective users of the System shall be required to connect thereto;

(xvi) That, except to the extent used to refund notes or other short-term indebtedness issued in anticipation thereof, the proceeds of Governmental Agency Bonds, except for accrued interest, must be deposited in a construction fund on which the holder of the Governmental Agency Bonds shall have a lien until such proceeds are applied to the construction of a water development project.

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 A.

4.2 The WDA Loans shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of all the fees, charges and other revenues of the Governmental Agency from the System remaining after the payment of operation and maintenance expenses and as otherwise provided in the Local Act, subject only to such reservations and exceptions as are described in Schedule X hereto or are otherwise expressly permitted in writing by the Authority.

4.3 The principal of the WDA Loans shall be repaid by the Governmental Agency annually on the day and in the years provided in Schedule X hereto, and interest payments on the Loan shall be made by the Governmental Agency on a semi-annual basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date of the delivery to the Authority of the Local Bonds, at a coupon rate or rates per annum which shall be equal to the coupon rate or rates per annum borne by the 1982 Series A Bonds for corresponding maturities issued to provide the funds to make the Loan; provided, however, that in no event shall the coupon interest rate or the interest cost exceed any statutory limitation with regard to the issuance of the Local Bonds. The Supplemental Loan will not bear interest.

4.5 The Governmental Agency Bonds shall be delivered to the Authority in fully registered form, exchangeable as provided in the Local Act at the expense of the Governmental Agency.

4.6 The Governmental Agency agrees to pay from time to time, as required by the Authority, the Governmental Agency's allocable share of the administrative expenses (based on the percentage of the Governmental Agency's Local Bonds to all other local bonds purchased by the Authority and then outstanding) of the Authority relating to all loans to be made by the Authority to governmental agencies with the proceeds of the 1982 Series A Bonds. Such administrative expenses shall be as determined by the Authority and shall include without limitation program expenses and fees paid to the trustee and paying agents for such revenue bonds.

4.7 As long as the Authority is the registered owner of all of the Governmental Agency Bonds outstanding, the Governmental Agency will not redeem such Governmental Agency Bonds outstanding without the written consent of the Authority, and any such redemption of Local Bonds authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the Authority's 1982 Series A Bonds and the redemption premium payable on the 1982 Series A Bonds redeemable as a consequence of such redemption of Local Bonds. Nothing in this Loan Agreement shall be construed to prohibit the Authority from refunding its 1982 Series A Bonds, and such refunding need not be based upon or result in any benefit to the Governmental Agency.

## ARTICLE V

### Acquisition of Site of Eligible Project; Certain Construction Requirements

5.1 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Governmental Agency shall do all things necessary to acquire the proposed site of the Project and to construct the Project in accordance with the plans, designs and specifications prepared for the Governmental Agency by the Consulting Engineers.

5.2 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 representatives, to inspect all books, documents, papers and records relating to the Project 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 administration of the WDA Loans or of Federal and State grants or other sources of financing for the Project.

5.3 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.

5.4 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the

life of the construction contract, workmen's 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 builders 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.

5.5 The Governmental Agency shall provide and maintain competent and adequate resident engineering services satisfactory to 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, EPA 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.

#### ARTICLE VI

Certain Covenants of the Governmental Agency;  
Imposition and Collection of User Charges;  
Payments to be Made by  
Governmental Agency to the Authority

6.1 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 WDA Loans, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, of which the Project constitutes a whole or a part, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(iii) hereof.

6.2 In the event the Governmental Agency defaults in the payment of any of said fees and charges to the Authority, the amount of such default shall bear interest at the coupon

rate of the Local Bonds, from the date of the default until the date of the payment thereof.

6.3 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Governmental Agency 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, upon notice by the Authority, 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.

6.4 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 Section 6a of the Act, including without limitation the right to directly impose, enforce and collect charges upon users of the System of which the Project constitutes a whole or a part.

## ARTICLE VII

### Other Agreements of the Governmental Agency

7.1 The Governmental Agency hereby acknowledges to the Authority its understanding of the provisions of the Act, vesting in the Authority certain powers, rights and privileges in respect of water development projects in the event of default by governmental agencies in the terms and covenants of loan agreements, and the Governmental Agency hereby covenants and agrees that, if the Authority should in futuro have recourse to said rights and powers, the Governmental Agency 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.

7.2 To the extent required by law, the Governmental Agency hereby covenants and agrees to secure approval of the Authority and all other State agencies having jurisdiction before applying for Federal financial assistance for pollution abatement in order to maximize the amounts of such Federal financial assistance received or to be received for all water development projects in the State of West Virginia.

7.3 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority or other State, Federal or local bodies in regard to the construction, operation, maintenance and use of the Project.

7.4 The Governmental Agency hereby warrants and represents that all information provided to the Authority in this Loan Agreement, in its Application for the WDA Loans or in any other application or documentation with respect to financing the Project was at the time provided, 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 WDA Loans and receiving the Governmental Agency 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 WDA Loans shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application for the WDA Loans or in any supporting documentation or has violated any of the terms of this Loan Agreement.

7.5 The Governmental Agency hereby covenants that, to the extent the proceeds of the Governmental Agency Bonds are used to refund notes or other short-term indebtedness of the Governmental Agency issued in anticipation of the issuance of the Governmental Agency Bonds (the "refunding proceeds"), the yield to the Governmental Agency upon any investment of the refunding proceeds shall be restricted and may in no event exceed the yield on the Governmental Agency Bonds. "Yield" shall be calculated in the manner provided in Treasury Regulations §§ 1.103-13 and 1.103-14.

7.6 The Governmental Agency hereby agrees to cooperate with the Authority in amending this Loan Agreement if required by the terms of sale of the 1982 Series A Bonds; provided, that the maximum annual debt service set forth in Section 3.2 shall not be increased by more than five percent (5%).

## ARTICLE VIII

### Maintenance and Operation

8.1 The Governmental Agency agrees that it will at all times provide operation and maintenance of the Project to

comply with the water quality standards established by the West Virginia Department of Natural Resources and EPA. The Governmental Agency agrees that qualified operating personnel properly certified by the State of West Virginia will be retained to operate the Project during the entire term of this Loan Agreement.

8.2 The Governmental Agency agrees that it will permit the Authority and EPA and their respective agents to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the Project at any reasonable time following completion of construction of the Project and commencement of operation thereof.

## ARTICLE IX

### Miscellaneous

9.1 Schedule X shall be attached to this Loan Agreement at the time of execution hereof by the Authority and shall be approved by an official action of the Governmental Agency supplementing the Local Act.

9.2 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.

9.3 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.

9.4 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.

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

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 Governmental Agency, but this Loan Agreement shall not be binding on the Authority until executed by it.

GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT

(SEAL)

By

John W. Ford  
Its Chairman, Public Service Board

Attest:

Date:

Michael Cassio  
Michael Cassio  
Its Secretary, Public Service Board

6/4/82  
John

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By

Edgar W. Henry  
Its Director

Attest:

Date:

Janice B. Bryant  
Janice B. Bryant  
Its Secretary-Treasurer

June 9, 1982

EXHIBIT A

[Opinion of Bond Counsel for Governmental Agency]

[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 "Governmental Agency"), a public service district and a public corporation and political subdivision of the State of West Virginia, created and existing under Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement (the "Loan Agreement"), dated \_\_\_\_\_, 19\_\_, between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of two separate series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, 19\_\_ (the "Governmental Agency Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The series of Governmental Agency Bonds described in the Loan Agreement as Local Bonds is in the principal amount of \$ \_\_\_\_\_, issued in the form of one bond registered as to principal and interest to the Authority, interest payable April 1 and October 1 of each year, beginning \_\_\_\_\_, 19\_\_, at the respective rate or rates and with principal payable in installments on October 1 in each of the years, all as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
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The series of Governmental Agency Bonds described in the Loan Agreement as the Supplemental Bonds is in the principal amount of \$ \_\_\_\_\_, issued in the form of one bond registered as to principal to the Authority, without interest thereon, with principal payable in installments on October 1 in each of the years, as follows:

Year

Installment

The Governmental Agency 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 Chapter 16, Article 13A, of the West Virginia Code of 1931, as amended (the "Code Provision"), under which the Governmental Agency Bonds are issued and the Loan Agreement that has been undertaken, including all schedules and exhibits to the Loan Agreement. The Governmental Agency Bonds have been authorized by a bond resolution (the "Local Act") duly adopted by the Governmental Agency, which contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement. The Governmental Agency 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 that:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding 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 public service district and political subdivision of the State of West Virginia, with full power and authority to construct, acquire, operate and maintain the project referred to in the Loan Agreement and to issue and sell the Governmental Agency Bonds, all under the Code Provision and other applicable provisions of law.

4. The Governmental Agency has legally and effectively adopted the Local Act and all other necessary resolutions in connection with the issuance and sale of the Governmental Agency Bonds.

5. The Governmental Agency 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 lien on and pledge of the net revenues of the system referred to in the Local Act, all in accordance with the terms of the Governmental Agency Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. The Governmental Agency has reserved the right to issue additional bonds ranking on a parity with the Local Bond, as provided in the Local Act.

7. The Governmental Agency Bonds are, by statute, exempt from taxation by the State of West Virginia and the other taxing bodies of the State, and under the laws, regulations, rulings and decisions of the United States of America, as presently written and applied, the interest on the Local Bond is exempt from Federal income taxation.

No opinion is given herein as to the enforceability of remedies with respect to the Governmental Agency Bonds under any applicable bankruptcy, insolvency, moratorium or other laws affecting creditors' rights.

We have examined executed Local Bond numbered R-1 and Supplemental Bond numbered S-1, and in our opinion the form of said bonds and their execution are regular and proper.

Very truly yours,

SCHEDULE X  
GREEN VALLEY COMMUNITY PUBLIC SERVICE DISTRICT

Description of Governmental Agency Bonds

Principal Amount of Local Bonds                   \$835,000  
 Purchase Price of Local Bonds                   \$705,575  
 Principal Amount and Purchase Price  
 of Supplemental Bonds                           \$250,000

Interest on Local Bonds payable on April 1 and October 1 in each year beginning with the first semi-annual interest payment date after delivery of Local Bonds to WDA until Local Bonds are paid in full, at coupon interest rate as follows. Principal of Local Bonds and Supplemental Bonds payable on October 1 in each of years as follows:

Year	Coupon Interest Rate of		Principal Amount of	
	Local Bonds	Local Bonds	Local Bonds	Supplemental Bonds
1963				\$ 6,756.76
1984				\$ 6,756.76
1985				\$ 6,756.76
1986				\$ 6,756.76
1987	10.00%		\$ 5,000	\$ 6,756.76
1968	10.50%		\$ 5,000	\$ 6,756.76
1989	10.75%		\$ 5,000	\$ 6,756.76
1990	11.00%		\$ 5,000	\$ 6,756.76
1991	11.25%		\$ 5,000	\$ 6,756.76
1992	11.50%		\$ 5,000	\$ 6,756.76
1993	11.60%		\$ 5,000	\$ 6,756.76
1994	11.70%		\$ 5,000	\$ 6,756.76
1995	11.80%		\$ 5,000	\$ 6,756.76
1996	11.90%		\$ 5,000	\$ 6,756.76
1997	12.00%	\$10,000	\$10,000	\$ 6,756.76
1998	12.00%	\$10,000	\$10,000	\$ 6,756.76
1999	12.00%	\$10,000	\$10,000	\$ 6,756.76
2000	12.00%	\$10,000	\$10,000	\$ 6,756.76
2001	12.00%	\$10,000	\$10,000	\$ 6,756.76
2002	12.00%	\$15,000	\$15,000	\$ 6,756.76
2003	12.00%	\$15,000	\$15,000	\$ 6,756.76
2004	12.00%	\$15,000	\$15,000	\$ 6,756.76
2005	12.00%	\$20,000	\$20,000	\$ 6,756.76
2006	12.00%	\$20,000	\$20,000	\$ 6,756.76
2007	12.00%	\$25,000	\$25,000	\$ 6,756.76
2008	12.00%	\$25,000	\$25,000	\$ 6,756.76
2009	12.00%	\$30,000	\$30,000	\$ 6,756.76
2010	12.00%	\$35,000	\$35,000	\$ 6,756.76
2011	12.00%	\$40,000	\$40,000	\$ 6,756.76
2012	12.00%	\$40,000	\$40,000	\$ 6,756.76
2013	10.00%	\$50,000	\$50,000	\$ 6,756.76
2014	10.00%	\$50,000	\$50,000	\$ 6,756.76
2015	10.00%	\$60,000	\$60,000	\$ 6,756.76
2016	10.00%	\$65,000	\$65,000	\$ 6,756.76
2017	10.00%	\$70,000	\$70,000	\$ 6,756.76
2018	10.00%	\$75,000	\$75,000	\$ 6,756.76
2019	10.00%	\$85,000	\$85,000	\$ 6,756.76

Principal Amount of outstanding indebtedness as of June 1, 1982:

\$0

SRF-BPA-1  
(4/6/00)

BOND PURCHASE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND BOND PURCHASE AGREEMENT (the "Bond Purchase Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Bureau of Environment (the "DEP"), and the local government designated below (the "Local Government").

GREEN VALLEY COMMUNITY PSD  
(Local Government)

WITNESSETH:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to acquire bonds of particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program:

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to utilize moneys from the Fund to purchase the bonds of local governments to provide the financing for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

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

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

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for Purchase of Bonds with attachments and exhibits and an Amended Application for Purchase of Bonds also with attachments and exhibits (together, as further revised and supplemented, the "Application"). which Application is incorporated herein by this reference;

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

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

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

## ARTICLE I

### Definitions

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

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

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

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

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

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

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

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

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

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

1.11 Additional terms and phrases are defined in this Bond Purchase Agreement as they are used.

## ARTICLE II

### The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Bond Purchase Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other

security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, 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 Local Bonds proceeds or of any State and federal grants or other sources of financing for the Project.

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project

facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this Bond Purchase Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal

or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the 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 DEP.

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

### ARTICLE III

#### Conditions to Purchase of Local Bonds; Issuance of Local Bonds

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

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

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

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

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the proceeds of the Local Bonds will refund an interim construction financing, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and

DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Bond Purchase Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall purchase the Local Bonds of the Local Government and the Local Government shall issue and sell the Local Bonds to the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall purchase the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Local Bonds shall be secured and shall be repaid in the manner hereinafter provided in this Bond Purchase Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Closing." Notwithstanding the foregoing, the Date of Closing shall in no event occur more than ninety (90) days after the date of execution of this Bond Purchase Agreement by the Authority.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for financing of wastewater treatment projects and that the obligation of the Authority to purchase the Local Bonds is subject to the Local Government's fulfilling all of the terms and conditions of this Bond Purchase Agreement on or prior to the Date of Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all bonds will be purchased in conjunction with the SRF Regulations and with the prior approval of DEP.

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

#### ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to purchase the Local Bonds, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues will be used monthly, in the order of priority listed below:

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3)

of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or

parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Government shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the SRF Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and DEP; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or

construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that the Local Government is in compliance with the terms and provisions of the Local Act and this Bond Purchase Agreement and that the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for all Local Bonds;

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

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

Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

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

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

## ARTICLE V

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

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

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Bond Purchase Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Bond Purchase Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Local Bonds next due, from the date of the default until the date of the payment thereof.

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

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this Bond Purchase Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Bond Purchase Agreement.

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

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

6.4 The Local Government hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Local Government fails to make any such rebates as required, then the Local Government shall pay any and all penalties.

obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

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

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The Local Government hereby agrees to file with the Authority and DEP upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Schedules X and Y shall be attached to this Bond Purchase Agreement by the Authority as soon as practicable after the Date of Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

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

7.3 This Bond Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Bond Purchase Agreement.

7.4 No waiver by any party of any term or condition of this Bond Purchase Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor

shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Bond Purchase Agreement.

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

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

7.7 This Bond Purchase Agreement shall terminate upon the earlier of:

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

(ii) the end of ninety (90) days after the date of execution hereof by the Authority if the Local Government has failed to deliver the Local Bonds to the Authority;

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

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

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

GREEN VALLEY COMMUNITY PSD

[Name of Local Government]

(SEAL)

By: Betty J. Thompson  
Its: Chairman

Attest:

Date: 06/19/00

Harold D. Tolbert  
Its Secretary

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: August Turner  
Its: Chief

Date: 6-19-00

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Zumbach  
Its: Director

Attest:

Date: June 14, 2000

Barbara B. Meadows  
Secretary-Treasurer

00832/00372  
4/6/00

EXHIBIT A

[Form of Performance Certificate]

[TO BE PROVIDED BY DEP]

EXHIBIT B

[Form of Monthly Financial Report]

[Name of Local Government]

[Name of Bond Issue]

Fiscal Year - \_\_

Report Month: \_\_\_\_\_

<u>ITEM</u>	<u>CURRENT</u> <u>MONTH</u>	<u>TOTAL</u> <u>YEAR TO</u> <u>DATE</u>	<u>BUDGET</u> <u>YEAR TO</u> <u>DATE</u>	<u>BUDGET</u> <u>YEAR MINUS</u> <u>YEAR TO</u> <u>DATE</u>
1. Gross Revenues Collected				
2. Operating Expenses				
3. Other Bond Debt Payments (including Reserve Account Deposits)				
4. SRF Bond Payments (include Reserve Account Deposits)				
5. Renewal and Replacement Fund Deposit				

Witnesseth my signature this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[Name of Local Government]

By: \_\_\_\_\_  
Authorized Officer

### Instructions for Completing Monthly Financial Report

1. You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual gross revenues for the current month and the total amount year to date in the respective columns. Divide the budgeted annual gross revenues by 12. For example, if gross revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $1200/12$ ). This is the incremental amount for the Budget Year to Date column.
2. In Item 2, provide the amount of actual operating expenses for the current month and the total amount year to date in the respective columns. The SRF administrative fee should be included in the operating expenses. Divide the budgeted annual operating expenses by 12. For example, if operating expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $900/12$ ). This is the incremental amount for the Budget Year to Date column.
3. In Item 3, provide the principal, interest and reserve account payments for all the outstanding bonds of the Local Government other than this Bond.
4. In Item 4, provide the principal, interest and reserve account payments for this Bond. You need to call the Municipal Bond Commission for the exact amount of these payments and when they begin.
5. In Item 5, provide the amount deposited into the Renewal and Replacement Fund each month. This amount is equal to 2.5% of gross revenues minus the total reserve account payments included in Items 3 and 4. If gross revenues are \$12,000, the Renewal and Replacement Fund should have an amount of \$300 (2.5% of \$12,000), LESS the amount of all reserve account payments in Items 3 & 4. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.
6. The Local Government must complete the Monthly Financial Report and forward it to the DEP by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the construction of the Project and for 2 years following the completion of the Project. DEP will notify the Local Government when the Monthly Financial Report no longer needs to be filed.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, \_\_\_\_\_, hereby certify as follows:

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

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

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

Schedule A attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof<sup>2</sup>, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Bond Purchase Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
By \_\_\_\_\_

West Virginia License No. \_\_\_\_

[SEAL]

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

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

## EXHIBIT E

### SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT - The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, ground breaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

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

C. TITLE OPINION on or before bond closing date.

EXHIBIT F

[Monthly Payment Form]

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest \$ \_\_\_\_\_

Principal \$ \_\_\_\_\_

Total: \$ \_\_\_\_\_

Reserve Account: \$ \_\_\_\_\_

Witness my signature this \_\_\_\_ day of \_\_\_\_\_.

[Name of Local Government]

By: \_\_\_\_\_  
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Closing]

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

West Virginia Division of Environmental Protection  
617 Broad Street  
Charleston, WV 25301

Ladies and Gentlemen:

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

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

The Local Bonds are issued for the purposes of (i) \_\_\_\_\_, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of \_\_\_\_\_ of the

Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond \_\_\_\_\_ duly adopted or enacted by the Local Government on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted by the Local Government on \_\_\_\_\_ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Bond Purchase Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Bond Purchase Agreement.

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

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

2. The Bond Purchase Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

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

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

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

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

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

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds	<u>\$ 1,160,000</u>
Purchase Price of Local Bonds	<u>\$ 1,160,000</u>

The Local Bonds shall bear no interest. Commencing June 1, 2002, principal of the Local Bonds is payable quarterly, with an administrative fee of ½%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal only and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

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

Sewer Revenue Bonds, Series 1982, dated July 27, 1982, in the original principal amount of \$835,000.

SCHEDULE Y

<p align="center"><b>Green Valley Community Public Service District (West Virginia)</b>  <i>Loan of \$1,160,000</i>  <i>30 Years, 0% Interest Rate, 0.5% Administrative Fee</i>  <i>Closing Date: September 7, 2000</i></p> <p align="center"><b>DEBT SERVICE SCHEDULE</b></p>			
Date	Principal	Coupon	Total P+I
12/01/2000	-	-	-
3/01/2001	-	-	-
6/01/2001	-	-	-
9/01/2001	-	-	-
12/01/2001	-	-	-
3/01/2002	-	-	-
6/01/2002	9,667.00	-	9,667.00
9/01/2002	9,667.00	-	9,667.00
12/01/2002	9,667.00	-	9,667.00
3/01/2003	9,667.00	-	9,667.00
6/01/2003	9,667.00	-	9,667.00
9/01/2003	9,667.00	-	9,667.00
12/01/2003	9,667.00	-	9,667.00
3/01/2004	9,667.00	-	9,667.00
6/01/2004	9,667.00	-	9,667.00
9/01/2004	9,667.00	-	9,667.00
12/01/2004	9,667.00	-	9,667.00
3/01/2005	9,667.00	-	9,667.00
6/01/2005	9,667.00	-	9,667.00
9/01/2005	9,667.00	-	9,667.00
12/01/2005	9,667.00	-	9,667.00
3/01/2006	9,667.00	-	9,667.00
6/01/2006	9,667.00	-	9,667.00
9/01/2006	9,667.00	-	9,667.00
12/01/2006	9,667.00	-	9,667.00
3/01/2007	9,667.00	-	9,667.00
6/01/2007	9,667.00	-	9,667.00
9/01/2007	9,667.00	-	9,667.00
12/01/2007	9,667.00	-	9,667.00
3/01/2008	9,667.00	-	9,667.00
6/01/2008	9,667.00	-	9,667.00
9/01/2008	9,667.00	-	9,667.00
12/01/2008	9,667.00	-	9,667.00
3/01/2009	9,667.00	-	9,667.00
6/01/2009	9,667.00	-	9,667.00
9/01/2009	9,667.00	-	9,667.00
12/01/2009	9,667.00	-	9,667.00
3/01/2010	9,667.00	-	9,667.00
6/01/2010	9,667.00	-	9,667.00
9/01/2010	9,667.00	-	9,667.00
12/01/2010	9,667.00	-	9,667.00
3/01/2011	9,667.00	-	9,667.00
6/01/2011	9,667.00	-	9,667.00
9/01/2011	9,667.00	-	9,667.00
12/01/2011	9,667.00	-	9,667.00
3/01/2012	9,667.00	-	9,667.00

**Green Valley Community Public Service District (West Virginia)**

*Loan of \$1,160,000*

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

*Closing Date: September 7, 2000*

**DEBT SERVICE SCHEDULE**

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Total P+I</b>
6/01/2012	9,667.00	-	9,667.00
9/01/2012	9,667.00	-	9,667.00
12/01/2012	9,667.00	-	9,667.00
3/01/2013	9,667.00	-	9,667.00
6/01/2013	9,667.00	-	9,667.00
9/01/2013	9,667.00	-	9,667.00
12/01/2013	9,667.00	-	9,667.00
3/01/2014	9,667.00	-	9,667.00
6/01/2014	9,667.00	-	9,667.00
9/01/2014	9,667.00	-	9,667.00
12/01/2014	9,667.00	-	9,667.00
3/01/2015	9,667.00	-	9,667.00
6/01/2015	9,667.00	-	9,667.00
9/01/2015	9,667.00	-	9,667.00
12/01/2015	9,667.00	-	9,667.00
3/01/2016	9,667.00	-	9,667.00
6/01/2016	9,667.00	-	9,667.00
9/01/2016	9,667.00	-	9,667.00
12/01/2016	9,667.00	-	9,667.00
3/01/2017	9,667.00	-	9,667.00
6/01/2017	9,667.00	-	9,667.00
9/01/2017	9,667.00	-	9,667.00
12/01/2017	9,667.00	-	9,667.00
3/01/2018	9,667.00	-	9,667.00
6/01/2018	9,667.00	-	9,667.00
9/01/2018	9,667.00	-	9,667.00
12/01/2018	9,667.00	-	9,667.00
3/01/2019	9,667.00	-	9,667.00
6/01/2019	9,667.00	-	9,667.00
9/01/2019	9,667.00	-	9,667.00
12/01/2019	9,667.00	-	9,667.00
3/01/2020	9,667.00	-	9,667.00
6/01/2020	9,667.00	-	9,667.00
9/01/2020	9,667.00	-	9,667.00
12/01/2020	9,667.00	-	9,667.00
3/01/2021	9,667.00	-	9,667.00
6/01/2021	9,667.00	-	9,667.00
9/01/2021	9,667.00	-	9,667.00
12/01/2021	9,667.00	-	9,667.00
3/01/2022	9,667.00	-	9,667.00
6/01/2022	9,666.00	-	9,666.00
9/01/2022	9,666.00	-	9,666.00
12/01/2022	9,666.00	-	9,666.00
3/01/2023	9,666.00	-	9,666.00
6/01/2023	9,666.00	-	9,666.00
9/01/2023	9,666.00	-	9,666.00

**Green Valley Community Public Service District (West Virginia)**

*Loan of \$1,160,000*

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

*Closing Date: September 7, 2000*

**DEBT SERVICE SCHEDULE**

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Total P+I</b>
12/01/2023	9,666.00	-	9,666.00
3/01/2024	9,666.00	-	9,666.00
6/01/2024	9,666.00	-	9,666.00
9/01/2024	9,666.00	-	9,666.00
12/01/2024	9,666.00	-	9,666.00
3/01/2025	9,666.00	-	9,666.00
6/01/2025	9,666.00	-	9,666.00
9/01/2025	9,666.00	-	9,666.00
12/01/2025	9,666.00	-	9,666.00
3/01/2026	9,666.00	-	9,666.00
6/01/2026	9,666.00	-	9,666.00
9/01/2026	9,666.00	-	9,666.00
12/01/2026	9,666.00	-	9,666.00
3/01/2027	9,666.00	-	9,666.00
6/01/2027	9,666.00	-	9,666.00
9/01/2027	9,666.00	-	9,666.00
12/01/2027	9,666.00	-	9,666.00
3/01/2028	9,666.00	-	9,666.00
6/01/2028	9,666.00	-	9,666.00
9/01/2028	9,666.00	-	9,666.00
12/01/2028	9,666.00	-	9,666.00
3/01/2029	9,666.00	-	9,666.00
6/01/2029	9,666.00	-	9,666.00
9/01/2029	9,666.00	-	9,666.00
12/01/2029	9,666.00	-	9,666.00
3/01/2030	9,666.00	-	9,666.00
6/01/2030	9,666.00	-	9,666.00
9/01/2030	9,666.00	-	9,666.00
12/01/2030	9,666.00	-	9,666.00
3/01/2031	9,666.00	-	9,666.00
6/01/2031	9,666.00	-	9,666.00
9/01/2031	9,666.00	-	9,666.00
12/01/2031	9,666.00	-	9,666.00
3/01/2032	9,666.00	-	9,666.00
<b>Total</b>	<b>1,160,000.00</b>	<b>-</b>	<b>1,160,000.00 *</b>

\*Plus \$731 one-half percent administrative fee paid quarterly. Total fee paid over the life of the loan is \$87,720.

June 18, 2004

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

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

Re: The City of South Charleston  
Sewer Revenue Bonds, Series 2004 A  
(West Virginia Water Development Authority)

Ladies and Gentlemen:

We have served as bond counsel to The City of South Charleston (“the Issuer”), a municipal corporation, in connection with the issuance of its Sewer Revenue Bonds, Series 2004 A (West Virginia Water Development Authority), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement dated June 9, 1982, including all schedules and exhibits attached thereto (the “Loan Agreement”), by and between Green Valley Community Public Service District (the “District”) and the West Virginia Water Development Authority (the “Authority”), in connection with the District’s Subordinate Sewer Revenue Bonds, Series 1982 (the “Series 1982 Bonds”) and (ii) the Bonds issued by the Issuer to evidence the assumption of the District’s Series 1982 Bonds in connection with the Issuer’s acquisition of the District’s sewerage system, pursuant to the purchase agreement dated November 20, 2003 (the “Purchase Agreement”), by and between the Issuer and the District. The Bonds are issued in the principal amount of \$108,108.04, in the form of one bond, registered as to principal only to the Authority. The principal of the Bonds shall continue to be payable annually on October 1 of each year, all as set forth in the Schedule X attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16,

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Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), to evidence the Issuer's assumption of the District's Series 1982 Bonds.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been assumed by the Issuer. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

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

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire the District's assets and assume the District's Series 1982 Bonds, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Loan Agreement has been duly assumed by the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.
3. 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 Issuer without the written consent of the Authority.
4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the assumption of the District's Series 1982 Bonds and the issuance of the Bonds to replace the Series 1982 Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

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

8. The Purchase Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding agreement of the Issuer, enforceable in accordance with the terms thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

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

Very truly yours,





June 18, 2004

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

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

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

Re: The City of South Charleston  
Sewer Revenue Bonds, Series 2004 B  
(West Virginia SRF Program)

Ladies and Gentlemen:

We have served as bond counsel to The City of South Charleston (“the Issuer”), a municipal corporation, in connection with the issuance of its Sewer Revenue Bonds, Series 2004 B (West Virginia SRF Program), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement dated June 14, 2000, including all schedules and exhibits attached thereto (the “Loan Agreement”), by and among Green Valley Community Public Service District (the “District”), the West Virginia Water Development Authority (the “Authority”) and the West Virginia Department of Environmental Protection (the “DEP”), in connection with the District’s Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program) (the “Series 2000 A Bonds”) and (ii) the Bonds issued by the Issuer to evidence the assumption of the District’s Series 2000 A Bonds in connection with the Issuer’s acquisition of the District’s sewerage system, pursuant to the purchase agreement dated November 20, 2003 (the “Purchase Agreement”), by and between the Issuer and the District. The Bonds are issued in the principal amount of \$1,072,997, in the form of one bond, registered as to principal only to the Authority. The principal of the Bonds shall continue to be payable

M0428129.1

The City of South Charleston  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
June 18, 2004  
Page 2

quarterly on March 1, June 1, September 1, and December 1 of each year, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall continue to be subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), to evidence the Issuer's assumption of the District's Series 2000 A Bonds.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been assumed by the Issuer. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

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

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire the District's assets and assume the District's Series 2000 A Bonds, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been assumed by the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the assumption of the District's Series 2000 A Bonds and the issuance of the Bonds to replace the Series 2000 A Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

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

8. The Purchase Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding agreement of the Issuer, enforceable in accordance with the terms thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds

The City of South Charleston  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
June 18, 2004  
Page 4

under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated 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,

A handwritten signature in black ink that reads "Josh Kelly PLLC". The signature is written in a cursive, flowing style.

06/15/04  
001793/00309



June 18, 2004

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309

Re: The City of South Charleston  
Sewer Revenue Bonds, Series 2004 C  
(Capital State Bank)

Ladies and Gentlemen:

We have served as bond counsel to The City of South Charleston (“the Issuer”), a municipal corporation, in connection with the issuance of its Sewer Revenue Bonds, Series 2004 C (Capital State Bank), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the authorization of the Bonds issued by the Issuer to evidence the assumption of the Sewer Refunding Revenue Bonds, Series 2001 A (the “Series 2001 A Bonds”), of Green Valley Community Public Service District (the “District”), in connection with the Issuer’s acquisition of the District’s sewerage system, pursuant to the purchase agreement dated November 20, 2003 (the “Purchase Agreement”), by and between the Issuer and the District. The Bonds are issued in the principal amount of \$271,200.08, in the form of one bond, registered as to principal and interest to Capital State Bank, with interest at the rate of 5.8% per annum. The principal of and interest on the Bonds shall continue to be payable on the 10<sup>th</sup> day of each month, all as set forth in the debt service schedule attached to and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16,

M0428132.1

The City of South Charleston  
Capital State Bank  
June 18, 2004  
Page 2

Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), to evidence the Issuer's assumption of the District's Series 2001 A Bonds.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance when used herein.

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

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

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire the District's assets and assume the District's Series 2001 A Bonds, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the assumption of the District's Series 2001 A Bonds and the issuance of the Bonds to replace the Series 2001 A Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Ordinance.

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

5. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

6. The Purchase Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding agreement of the Issuer, enforceable in accordance with the terms thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

The City of South Charleston  
Capital State Bank  
June 18, 2004  
Page 4

We have examined the executed and authenticated 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,

A handwritten signature in black ink that reads "Jack Kelly PLLC". The signature is written in a cursive, flowing style.

06/15/04  
001793/00309



Richard A. Robb, Mayor

# The City of South Charleston

P.O. Box 8597

South Charleston, West Virginia 25303

Phone: (304) 744-5301

Fax: (304) 744-6587

June 18, 2004

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

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

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

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309

Jackson Kelly PLLC  
P. O. Box 553  
Charleston, WV 25322

Re: The City of South Charleston  
Sewer Revenue Bonds,  
Series 2004 A (West Virginia Water Development  
Authority),  
Series 2004 B (West Virginia SRF Program) and  
Series 2004 C (Capital State Bank)

Ladies and Gentlemen:

I am City Attorney for The City of South Charleston in Kanawha County, West Virginia (the "Issuer"), in connection with the acquisition of all the assets of Green Valley Community Public Service District (the "District") and the assumption of all the bonds,

The City of South Charleston  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
Capital State Bank  
Jackson Kelly PLLC  
June 18, 2004  
Page 2

obligations and liabilities of the District by the Issuer. As such City Attorney, I have examined copies of the approving opinions of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement dated June 9, 1982, including all schedules and exhibits attached thereto, by and between the District and the West Virginia Water Development Authority (the "Authority"), and a loan agreement dated June 14, 2000, including all schedules and exhibits attached thereto, by and among the District, the Authority and the West Virginia Department of Environmental Protection (the "DEP") (collectively, the "Loan Agreement"), a Bond Ordinance duly passed by the Issuer on June 3, 2004, effective June 17, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 17, 2004 (collectively, the "Ordinance"), a Petition of the Sanitary Board duly adopted on May 18, 2004, a purchase agreement dated November 20, 2003 (the "Purchase Agreement"), by and between the Issuer and the District, and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire the District's assets and assume the District's Bonds, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law. The Sanitary Board has been duly created by the Issuer and is presently existing as a sanitary board under the Act.

2. The Loan Agreement has been assumed by the Issuer and constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. The Mayor, City Clerk and members of the Council and the Sanitary Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

The City of South Charleston  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
Capital State Bank  
Jackson Kelly PLLC  
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4. The Ordinance has been duly adopted and enacted by the Issuer and is in full force and effect.

5. The Purchase Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding agreement of the Issuer, enforceable in accordance with the terms thereof.

6. The execution and delivery of the Bonds and the assumption of the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement, the Purchase Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

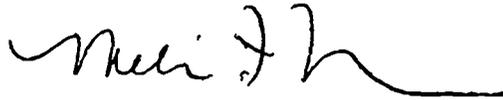
7. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition of the District's assets, the assumption of the District's Bonds, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the Public Service Commission of West Virginia, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

8. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Purchase Agreement, the Bonds and the Ordinance, the acquisition of the District's assets, the assumption of the District's Bonds, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

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

The City of South Charleston  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
Capital State Bank  
Jackson Kelly PLLC  
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Very truly yours,

A handwritten signature in black ink, appearing to read "Melissa F. Newberry", with a long horizontal flourish extending to the right.

Melissa F. Newberry  
CITY ATTORNEY

06/15/04  
001793/00309

 **SPILMAN THOMAS & BATTLE**. PLLC  
ATTORNEYS AT LAW

June 18, 2004

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

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

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

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309

Jackson Kelly PLLC  
P. O. Box 553  
Charleston, WV 25322

Re: The City of South Charleston  
Sewer Revenue Bonds,  
Series 2004 A (West Virginia Water Development Authority),  
Series 2004 B (West Virginia SRF Program) and  
Series 2004 C (Capital State Bank)

Ladies and Gentlemen:

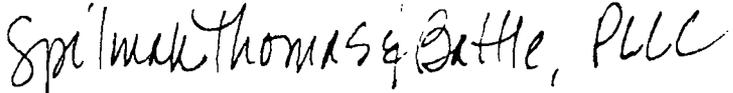
We are special counsel to the City of South Charleston (the "Issuer") and its Sanitary Board in connection with certain matters before the Public Service Commission of West Virginia (the "PSC"). As such counsel, we are of the opinion that the Issuer has received the Recommended Decision entered on April 7, 2004 in Case No. 03-1973-PSD-S-PC, which became a Final Order of the PSC on April 18, 2004 (the "PSC Order"), approving the purchase agreement between the Issuer and Green Valley Community Public Service District (the "District"), the acquisition of all the assets of the District and the assumption of all bonds, obligations and liabilities of the District by the Issuer. The time for appeal of the

The City of South Charleston, et al.  
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PSC Order has expired prior to the date hereof without any appeal having been filed. The PSC Order remains in full force and effect.

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

Very truly yours,

  
Spilman Thomas & Battle, PLLC

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KELSHLAW@YAHOO.COM

AREA CODE 304  
343-1654

FACSIMILE  
343-1657

June 18, 2004

Green Valley Community Public Service District  
P.O. Box 8497  
South Charleston, WV 25303

The City of South Charleston  
P.O. Box 8597  
South Charleston, WV 25303

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

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

Capital State Bank  
2402 Mountaineer Boulevard  
Charleston, WV 25309

Jackson Kelly PLLC  
P. O. Box 553  
Charleston, WV 25322

Re: The City of South Charleston  
Sewer Revenue Bonds,  
Series 2004 A (West Virginia Water Development Authority),  
Series 2004 B (West Virginia SRF Program) and  
Series 2004 C (Capital State Bank)

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Ladies and Gentlemen:

I am counsel to Green Valley Community Public Service District in Kanawha County, West Virginia (the "District"), in connection with the acquisition of all the District's assets and the assumption of all the District's bonds, obligations and

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The City of South Charleston  
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West Virginia Water Development Authority  
Capital State Bank  
Jackson Kelly PLLC  
June 18, 2004  
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liabilities by The City of South Charleston (the "Issuer"). As such counsel, I have examined copies of the approving opinions of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a purchase agreement dated November 20, 2003 (the "Purchase Agreement"), between the Issuer and the District, a Resolution duly adopted by the District on April 27, 2004, approving the transfer of all its assets and liabilities to the Issuer (the "Resolution"), and the order of The County Commission of Kanawha County approving the transfer of the District's assets and liabilities to the Issuer.

I am of the opinion that:

1. The District is duly and legally created and validly existing as a public service district, public corporation and political subdivision of the State of West Virginia, and the members and officers of the Board of the District have been duly and properly appointed and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the District in their respective capacities.
2. The Purchase Agreement has been duly authorized, executed and delivered by the District and, assuming due authorization, execution and delivery by the Issuer, constitutes a valid and binding agreement of the District, enforceable in accordance with its terms.
3. The Resolution has been duly adopted by the Board and is in full force and effect.
4. The execution and delivery of the Purchase Agreement and the consummation of the transactions contemplated by the Purchase Agreement and the Resolution, 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 District, a breach of or default under any resolution, order, agreement or other instrument to which the District is a party or by which the District or its properties are bound or any existing law, regulation, court order or consent decree to which the District is subject.
5. The District has received all approvals, consents, exemptions, orders, certificates and authorizations necessary for the transfer of the District's assets and liabilities to the Issuer, including, without limitation, the order of The County

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Commission of Kanawha County approving the transfer of the District's assets and liabilities to the Issuer and the order of the Public Service Commission of West Virginia (the "PSC"), entered on April 7, 2004, in Case No. 03-1973-PSD-S-PC, approving the Purchase Agreement, the acquisition of the District's assets and the assumption of the District's bonds and liabilities by the Issuer. The time for appeal of the PSC order has expired prior to the date hereof without any appeal having been filed. The PSC order remains in full force and effect.

6. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Purchase Agreement, the Bonds and the Resolution, the acquisition of the District's assets and the assumption of the District's bonds and liabilities by the Issuer.

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

Sincerely,



Robert R. Rodecker  
WV State Bar No. 3145