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

## BOND ORDINANCE

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CITY OF FAIRMONT

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

THE CITY OF FAIRMONT HEREBY ORDAINS AS FOLLOWS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Fairmont (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of upgrades and improvements within 20 designated areas of the Issuer's existing collection system to eliminate or reduce inflow and infiltration and to provide for the replacement and relocation

of certain antiquated collection lines, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), which the Authority administers pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), in the total aggregate principal amount of not more than $6,500,000 (the "Series 2007 A Bonds"), initially to be represented by a single bond, to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 2007 A Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2007 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2007 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2007 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 22 years.

F. It is in the best interests of the Issuer that its Series 2007 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority, and the DEP (the "Loan Agreement"), to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will initially rank prior and senior to the Series 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) will automatically upgrade to a first lien position.

The Series 2007 A Bonds will be issued on a parity with respect to liens, pledge, source of and security for payment with the Issuer's outstanding Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the "Series 2003 A Bonds"). The Series 2007 A Bonds and the Series 2003 A Bonds shall initially be junior and subordinate as to liens, pledge, source of and security for payment to the Series 1988 Bonds until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased, at which time the Series 2007 A Bonds and the Series 2003 A Bonds shall automatically upgrade to a parity first lien position. The Series 1988 Bonds and the Series 2003 A Bonds may be hereinafter collectively referred to from time to time as the "Prior Bonds".

Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and the Prior Ordinances, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

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

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

J. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2007 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final

order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2007 A Bonds or such final order will not be subject to appeal.

K. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2007 A Bonds for the purposes set forth herein.

L. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2007 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2007 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2007 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

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

"Board" means the Sanitary Board of the Issuer.

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

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

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

"Bonds" means, collectively, the Series 2007 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity with the Series 2007 A Bonds therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2007 A Bonds for all or a portion of the proceeds of the Series 2007 A Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

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

"Consulting Engineers" means Greenhorne & O'Mara, Inc., Fairmont, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Grant" means any and all grants received by the Issuer for the payment of a portion of the costs of acquiring and constructing the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

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

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

"Investment Property" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

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

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

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

"Loan Agreement" means the Loan Agreement heretofore entered into, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2007 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2007 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2007 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2007 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

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

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

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

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

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 2007 A Bonds in the Supplemental Resolution, with the written consent of the Authority and the DEP.

"Prior Bonds" means the Issuer's (i) Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds"), and (ii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the "Series 2003 A Bonds").

"Prior Ordinances" means collectively, the ordinances of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account.

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

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home

Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

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

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

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

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

"Registrar" means the Bond Registrar.

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

"Reserve Accounts" means, collectively, the respective Reserve Accounts established for the Series 2007 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2007 A Bonds.

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

"Series 1988 Bonds" means the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320.

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

"Series 2003 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543.

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

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

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

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

"Series 2007 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2007 A Bonds in the then current or any succeeding year.

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

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

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

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

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2007 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2007 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligation of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

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

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

## ARTICLE II

## AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $7,462,240, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2007 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the DEP.

The cost of the Project is estimated not to exceed $7,462,240, of which an amount not to exceed $6,500,000 will be obtained from proceeds of the Series 2007 A Bonds, $962,240 will be obtained pursuant to a Federal Assistance Grant from the Fiscal Year 2005 Appropriations Act.

## ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2007 A Bonds, funding a reserve account for the Series 2007 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2007 A Bonds of the Issuer. The Series 2007 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2007 A (West Virginia SRF Program)", in the principal amount of not more than $6,500,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2007 A Bonds remaining after funding of the Series 2007 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2007 A Bonds, if any, shall be deposited in or credited to the Series 2007 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2007 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2007 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2007 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2007 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2007 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2007 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2007 A Bonds shall be executed in the name of the Issuer by the Mayor and the City Manager, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2007 A Bonds shall cease to be such officer of the Issuer before the Series 2007 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2007 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2007 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2007 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2007 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2007 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2007 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2007 A Bonds.

The registered Series 2007 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2007 A Bonds or transferring the registered Series 2007 A Bonds are exercised, all Series 2007 A Bonds shall

be delivered in accordance with the provisions of this Bond Legislation. All Series 2007 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2007 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2007 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2007 A Bonds or, in the case of any proposed redemption of Series 2007 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2007 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2007 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2007 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2007 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2007 A Bonds shall be initially secured forthwith equally and ratably by a subordinate and junior lien on the Net Revenues derived from the operation of the System, on a parity with the Series 2003 A Bonds, until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds will automatically upgrade to a first lien position. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2007 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2007 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2007 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2007 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2007 A Bonds to the original purchasers;

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

D. An executed copy of the Loan Agreement; and

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

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

(FORM OF SERIES 2007 A BOND)

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

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That on this _____ day of _____, 2007, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1,200____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and SRF Administrative fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____, 200__, as set forth on Exhibit B attached hereto.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement (the "Loan Agreement") by and among the Issuer, the Authority and the DEP, dated _____, 200__.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2007, and a Supplemental Resolution duly adopted by the Issuer on _____, 2007 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND AND THE SERIES 2003 A BONDS (HEREINAFTER DEFINED) ARE INITIALLY ISSUED SUBORDINATE AND JUNIOR, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, DATED NOVEMBER 30, 1988, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,680,320 (THE "SERIES 1988 BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED OR THE SERIES 1988 BONDS HAVE BEEN PAID IN FULL OR OTHERWISE LEGALLY DEFEASED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2007 A BONDS AND THE SERIES 2003 A BONDS WILL AUTOMATICALLY UPGRADE TO A FIRST LIEN POSITION. THE SERIES 2007 A BONDS SHALL BE ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 26, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $485,543 (THE "SERIES 2003 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, initially junior and subordinate to the pledge of Net Revenues in favor of the Holders of the Series 1988 Bonds until automatically upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2007 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2007 A Bonds Reserve Account and unexpended proceeds of the Bonds.

Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and for so long as the Series 1988 Bonds are outstanding, to leave a balance each year equal to at least 125% of (i) the maximum annual debt service on the Series 1988 Bonds and any bonds issued on a parity therewith; and (ii) the amount due under the Investment Purchase Agreement for the Series 1988 Bonds in each fiscal year. When the Series 1988 Bonds are no longer outstanding, the Issuer has covenanted in the Bond Legislation and in the ordinance authorizing the issuance of the Series 2003 A Bonds, to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2007 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[The Remainder of This Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated as of the date set forth in the first paragraph hereof.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2007 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2007.

THE HUNTINGTON NATIONAL BANK
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2007 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor and City Manager are specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Within 60 days following the Completion Date of the Project, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE IV

[RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

(1) Revenue Fund (established by the Prior Ordinances);

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

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

(4) Series 2007 A Bonds Construction Trust Fund.

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

(1) Series 1988 Bonds Sinking Fund (established by the Prior Ordinances);

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

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

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

(5) Series 2007 A Bonds Sinking Fund; and

(6) Series 2007 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and shall be kept separate and distinct from

all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation and in the Prior Ordinances. All revenues at any time on deposit in the Revenue Fund shall be initially disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinances to pay interest on the Series 1988 Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the principal of the Series 1988 Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Reserve Account, the amount required by the Prior Ordinances to be deposited therein.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

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

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 2003 A Bonds Sinking Fund, the amounts required by the Prior Ordinances to pay the principal of the Series 2003 A Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2007 A Bonds, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2007 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2007 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

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

deposit therein, an amount equal to the Series 2007 A Bonds Reserve Requirement.

At such time as the Series 1988 Bonds Reserve Account has been fully funded or when the Series 1988 Bonds are no longer outstanding, and the Series 2007 A Bonds and the Series 2003 A Bonds hold a first lien position on a parity with the Series 1988 Bonds, all revenues at any time on deposit in the Revenue Fund shall then be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission: (i) for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinances to pay interest on the Series 1988 Bonds; and (ii) commencing 3 months prior to the first date of payment of interest on the Series 2007 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2007 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2007 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 2003 A Bonds Sinking Fund and the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the principal of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2007 A Bonds, for deposit in the Series 2007 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2007 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2007 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month

prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1988 Bonds Reserve Account and the Series 2003 A Bonds Reserve Account, the amounts required by the Prior Ordinances to be deposited therein; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2007 A Bonds, if not fully funded upon issuance of the Series 2007 A Bonds, for deposit in the Series 2007 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2007 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2007 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2007 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

Monies in the Series 2007 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2007 A Bonds as the same shall become due. Monies in the Series 2007 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2007 A Bonds as the same shall come due, when other monies in the Series 2007 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be

deposited in the Series 2007 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2007 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2007 A Bonds Reserve Account which result in a reduction in the balance of the Series 2007 A Bonds Reserve Account to below the Series 2007 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2007 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2007 A Bonds Sinking Fund or into the Series 2007 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2007 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall initially be made, with respect to the Series 1988 Bonds and thereafter, with respect to the Series 2007 A Bonds and the Series 2003 A Bonds, until such time as the Series 2007 A Bonds and the Series 2003 A Bonds are upgraded to a first lien position; at that time, all previously mentioned payments shall thereafter be made on a parity and pro rata basis with respect to the Series 2007 A Bonds, the Series 2003 A Bonds, and the Series 1988 Bonds, if then outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account created hereunder, and all required amounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2007 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required interest, if any, principal and reserve account payments with respect to the Series 2007 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission, the SRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

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

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority anytime make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

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

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

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

J. All Tap Fees shall be deposited by the Issuer, as received, in the Series 2007 A Bonds Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2007 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2007 A Bonds, there shall first be deposited with the Commission in the Series 2007 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

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

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2007 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2007 A Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2007 A Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2007 A Bonds shall be expended as directed by the DEP.

Section 6.02. Disbursements From the Series 2007 A Bonds Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2007 A Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2007 A Bonds Construction Trust Fund shall be made only after submission to, and approved from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement, in compliance with the construction schedule; and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

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

(B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

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

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

Pending such application, monies in the Series 2007 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

## ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2007 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2007 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2007 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2007 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2007 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2007 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of all Series 2007 A Bonds shall be initially secured forthwith equally and ratably by a subordinate and junior lien on the Net Revenues derived from the operation of the System, on a parity with the lien on such Net Revenues with the Series 2003 A Bonds, until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds will automatically upgrade to a first lien position. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2007 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the Final Order of the Public Service Commission of West Virginia, entered on August 31, 2006, in the following consolidated cases: Case No. 06-0348-S-CN and Case No. 06-0417-S-MA, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2007 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all

such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2007 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2007 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2007 A Bonds, immediately be remitted to the Commission for deposit in the Series 2007 A Bonds Sinking Fund, and, with the written permission of the Authority or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2007 A Bonds. Any balance remaining after the payment of the Bonds and the interest , if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Depreciation Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, in writing determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds of any such sale shall be remitted by the Issuer to the Commission for deposit in the Sinking Funds for prepayment of the Bonds. The payment of such proceeds into the Depreciation Fund and the Sinking Funds shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

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

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Until such time as the Series 1988 Bonds Reserve Account is fully funded, and except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2007 A Bonds and the Series 2003 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2007 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2007 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2007 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2007 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. The Issuer hereby covenants that it will not issue any additional bonds until the Series 1988 Bonds Reserve Account is fully funded and the Series 2007 A Bonds and Series 2003 A Bonds are on a parity with the Series 1988 Bonds, or until such time as the Series 1988 Bonds have been paid in full or legally defeased. While the Series 1988 Bonds are outstanding, the Issuer shall not issue any additional bonds without the written consent of the Authority and the DEP. When the Series 2007 A Bonds and the Series 2003 A Bonds have been elevated to a first lien position, the Issuer further covenants that no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2007 A Bonds pursuant to this Bond Legislation, without the prior written consent

of the Authority and the DEP under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2007 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or improvements to the System or refunding any outstanding Bonds of the Issuer, or both such purposes.

So long as the Series 1988 Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than 125% of the average annual amount which will become due for principal of and interest on the following:

(1) The Series 1988 Bonds;

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

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

When the Series 1988 Bonds are no longer outstanding and so long as the Series 2007 A Bonds and the Series 2003 A Bonds are still outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The Bonds then Outstanding;

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

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

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System and their source of and security for payment from said Net Revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2007 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2007 A Bonds.

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

then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

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

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2007 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2007 A Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required), and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2007 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2007 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2007 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder and under the Prior Ordinances. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect

shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and for so long as the Series 1988 Bonds are outstanding, to leave a balance each year equal to at least 125% of (i) the maximum annual debt service on the Series 1988 Bonds and any bonds issued on a parity therewith; and (ii) the amount due under the Investment Purchase Agreement for the Series 1988 Bonds in each fiscal year. When the Series 1988 Bonds are no longer outstanding, and so long as the Series 2003 A Bonds or the Series 2007 A Bonds are outstanding, the Issuer hereby covenants and agrees to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2007 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the DEP and the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance within 30 days of adoption to the Authority and the DEP and to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, the Authority and to any Holder of any Bonds, or anyone acting for and on behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the DEP and the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities

of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

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

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2007 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against

the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $600,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the

System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

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

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

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

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and has obtained all approvals for the issuance of the Series 2007 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

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

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2007 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2007 A Bonds during the term thereof is, under the terms of the Series 2007 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2007 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2007 A Bonds during the term thereof is, under the terms of the Series 2007 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2007 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2007 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2007 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2007 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2007 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2007 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2007 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2007 A Bonds held in "contingency" as set forth in the Schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2007 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

## INVESTMENT OF FUNDS; NON ARBITRAGE

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2007 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 2007 A Bonds from gross income for federal income tax purposes.

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

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

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

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

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

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

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

## ARTICLE IX

## DEFAULT AND REMEDIES

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

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2007 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2007 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2007 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2007 A Bonds and Series 2003 A Bonds shall initially be junior and subordinate to the Holders of the Series 1988 Bonds until such time when the Series 1988 Bonds Reserve Account is fully funded or the Series 1988 Bonds have been paid in full or legally defeased, and the Series 2007 A Bonds and Series 2003 A Bonds are upgraded to a first lien position.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer

under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

## PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2007 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2007 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2007 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2007 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2007 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2007 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2007 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2007 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2007 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2007 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2007 A Bonds.

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

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinances, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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

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

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Times West Virginian*, a newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2007 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: - March 27, 2007

Passed on Second Reading: - April 10, 2007

Passed on Final Reading
Following Public Hearing: - April 24, 2007

Mayor

APPROVED AS TO FORM:

City Attorney

CERTIFICATION

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

Dated: October 11, 2007.

[SEAL]

Janet L. Keller

City Clerk.

268460.00004

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

CITY OF FAIRMONT

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

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Fairmont (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective April 24, 2007 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING A PORTION OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA

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

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

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer (the "Bonds" or the "Series 2007 A Bonds"), in an aggregate principal amount not to exceed $6,500,000, and has authorized the execution and delivery of the loan agreement relating to the Series 2007 A Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Loan Agreement"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and

principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

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

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

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance except Section 2.01 of the Bond Ordinance is amended and re-written as follows:

> There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $6,578,640, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2007 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the DEP.
>
> The cost of the Project is estimated not to exceed $6,578,640, of which an amount not to exceed $5,577,760 will be obtained from proceeds of the Series 2007 A Bonds, $962,240 will be obtained pursuant to a Federal Assistance Grant from the Fiscal Year 2005 Appropriations Act and $38,640 from the Issuer.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor and the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby

authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor and the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate The Huntington National Bank, Fairmont, West Virginia, to serve as Depository Bank under the Bond Ordinance.

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

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

Section 9. The balance of the proceeds of the Series 2007 A Bonds shall be deposited in or credited to the Series 2007 A Bond Construction Trust Fund as received from the DEP from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about October 11, 2007, to the Authority pursuant to the Loan Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 13. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2007 A Bonds Sinking Fund and the Series 2007 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 25th day of September, 2007.

CITY OF FAIRMONT

By: _____
Its: Mayor

By: _____
Its: City Manager

CERTIFICATION

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

Dated: October 11, 2007.

[SEAL]

Janet I. Keller

City Clerk

268460.00004

CH907884.1

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

# LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF FAIRMONT
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

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

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

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

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

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

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

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

## ARTICLE I

### Definitions

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

## The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Government shall permit the Authority and DEP, acting by and through their Directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Government shall submit to the Authority and DEP such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to DEP and the Authority.

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

## ARTICLE III

### Conditions to Loan; Issuance of Local Bonds

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

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

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

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

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without

successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by DEP.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

## ARTICLE IV

### Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Government shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and DEP; provided, however,

that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for all Local Bonds;

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local

Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

## ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

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

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

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

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this Loan Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

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

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

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

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

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The Local Government hereby agrees to file with the Authority and DEP upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

## Miscellaneous

7.1 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

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

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

CITY OF FAIRMONT

(SEAL)

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

Attest:

Janet L. Keller
Its: Recorder

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

By:
Its: Director
Date: 9/28/07

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By:
Its: Director
Date: September 20, 2007

Attest:

Barbara B Meadows
Its: Secretary-Treasurer

000832/00372
11/01/04

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

**Name of Local Government** _____

**Name of Bond Issue(s)** _____

**Type of Project** _____ **Water** _____ **Wastewater**

**Fiscal Year** _____ **Report Month** _____

| Item | Current Month | Total Year To Date | Budget Year To Date | Budget Year To Date Minus Total Year To Date |
|---|---|---|---|---|
| 1. Gross Revenues | | | | |
| 2. Operating Expenses | | | | |
| 3. Bond Payments: | | | | |
| Type of Issue | | | | |
| Clean Water SRF | | | | |
| Drinking Water TRF | | | | |
| Infrastructure Fund | | | | |
| Water Development Authority | | | | |
| Rural Utilities Service | | | | |
| Economic Development Administration | | | | |
| Other (Identify) | | | | |
| _____ | | | | |
| _____ | | | | |
| 4. Renewal and Replacement Fund Deposits | | | | |

_____

**Name of Person Completing Form**

_____

**Address**

_____

**Telephone**

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 — You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of $1,200 are anticipated to be received for the year, each month the base would be increased by $100 ($1,200/12). This is the incremental amount for the Budget Year-to-Date column.

Item 2 — Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of $900 are anticipated to be incurred for the year, each month the base would be increased by $75 ($900/12). This is the incremental amount for the Budget Year-to-Date column.

Item 3 — Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 — Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

**The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A

attached hereto as Exhibit A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

_____

By _____

West Virginia License No. _____

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT - The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) - Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

EXHIBIT F

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Local Government] on [Date].

Sinking Fund:

| | |
|---|---|
| Interest | $____ |
| Principal | $____ |
| Total: | $____ |
| Reserve Account: | $____ |

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

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

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

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, ____, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental resolution duly adopted by the Local Government on_____(collectively, the

"Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

3. The Local Government is a duly organized and validly existing _____ _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

| | |
|---|---|
| Principal Amount of Local Bonds | $ 5,577,760 |
| Purchase Price of Local Bonds | $ 5,577,760 |

The Local Bonds shall bear no interest from the date of delivery to and including February 28, 2009. Commencing June 1, 2009, interest on the Local Bonds is payable quarterly, at a rate of 2% per annum. Commencing June 1, 2009, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

See next page.

This Bond and the Series 2003 A Bonds (hereinafter defined) are initially issued subordinate and junior, with respect to liens, pledge and source of and security for payment, and in all respects, to the issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original principal amount of $3,680,320 until such time as the Series 1988 Bonds reserve account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds will automatically upgrade to a first lien position. The Series 2007 A Bonds shall be issued on a parity with respect to liens, pledge and source of and security for payment, and in all respects, to the issuer's Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original principal amount of $485,543.

**$5,577,760**

**City of Fairmont**

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

**Closing Date: October 11, 2007**

## Debt Service Schedule

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

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

## Debt Service Schedule

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

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

SPECIMEN

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

No. AR-1 $5,577,760

KNOW ALL MEN BY THESE PRESENTS: That on this 11th day of October, 2007, the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of FIVE MILLION FIVE HUNDRED SEVENTY-SEVEN THOUSAND SEVEN HUNDRED SIXTY DOLLARS ($5,577,760), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2009, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and SRF Administrative fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2009, as set forth on Exhibit B attached hereto.

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

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on April 24, 2007, and a Supplemental Resolution duly adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND AND THE SERIES 2003 A BONDS (HEREINAFTER DEFINED) ARE INITIALLY ISSUED SUBORDINATE AND JUNIOR, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, DATED NOVEMBER 30, 1988, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,680,320 (THE "SERIES 1988 BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED OR THE SERIES 1988 BONDS HAVE BEEN PAID IN FULL OR OTHERWISE LEGALLY DEFEASED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2007 A BONDS AND THE SERIES 2003 A BONDS WILL AUTOMATICALLY UPGRADE TO A FIRST LIEN POSITION. THE SERIES 2007 A BONDS SHALL BE ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 26, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $485,543 (THE "SERIES 2003 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, initially junior and subordinate to the pledge of Net Revenues in favor of the Holders of the Series 1988 Bonds until automatically upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2007 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2007 A Bonds Reserve Account and unexpended proceeds of the Bonds.

Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and for so long as the Series 1988 Bonds are outstanding, to leave a balance each year equal to at least 125% of (i) the maximum annual debt service on the Series 1988 Bonds and any bonds issued on a parity therewith; and (ii) the amount due under the Investment Purchase Agreement for the Series 1988 Bonds in each fiscal year. When the Series 1988 Bonds are no longer outstanding, the Issuer has covenanted in the Bond Legislation and in the ordinance authorizing the issuance of the Series 2003 A Bonds, to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2007 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2007 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2007 A Bonds, including the Series 2003 A Bonds. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[The Remainder of This Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated as of the date set forth in the first paragraph hereof.

[SEAL]




Mayor




City Manager

ATTEST:




City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2007 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: October 11, 2007.

THE HUNTINGTON NATIONAL BANK
as Registrar




Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| | AMOUNT | DATE | | AMOUNT | DATE |
|---|---|---|---|---|---|
| (1) | $747,669 | October 11, 2007 | (19) | $ | |
| (2) | $ | | (20) | $ | |
| (3) | $ | | (21) | $ | |
| (4) | $ | | (22) | $ | |
| (5) | $ | | (23) | $ | |
| (6) | $ | | (24) | $ | |
| (7) | $ | | (25) | $ | |
| (8) | $ | | (26) | $ | |
| (9) | $ | | (27) | $ | |
| (10) | $ | | (28) | $ | |
| (11) | $ | | (29) | $ | |
| (12) | $ | | (30) | $ | |
| (13) | $ | | (31) | $ | |
| (14) | $ | | (32) | $ | |
| (15) | $ | | (33) | $ | |
| (16) | $ | | (34) | $ | |
| (17) | $ | | (35) | $ | |
| (18) | $ | | (36) | $ | |

TOTAL $

# EXHIBIT B

## DEBT SERVICE SCHEDULE

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

## Debt Service Schedule

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

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

## Debt Service Schedule

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

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

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

## Debt Service Schedule

Part 3 of 3

### Yield Statistics

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

### IRS Form 8038

| | |
|---|---|
| Net Interest Cost | 2.0000003% |
| Weighted Average Maturity | 12.177 Years |

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

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

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

Writer's Contact Information

October 11, 2007

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

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of
Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the City of Fairmont (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its $5,577,760 Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated September 20, 2007, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal and interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2009, to and including March 1, 2029 all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.



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

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on April 24, 2007, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

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

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a subordinate lien on and pledge of the Net Revenues of the System, junior and subordinate with respect to liens, pledge and source of and security for payment to the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds"), until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or legally defeased, at which time the Bonds and the Series 2003 A Bonds (hereinafter defined) will automatically upgrade to a first lien position on a parity with the Series 1988 Bonds, all in accordance with the terms of the Bonds and the Bond Legislation. The Bonds are issued on a parity with respect to liens, pledge, source of and security for payment with the Issuer's outstanding Sewer Revenue Bonds, Series 2003A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the

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

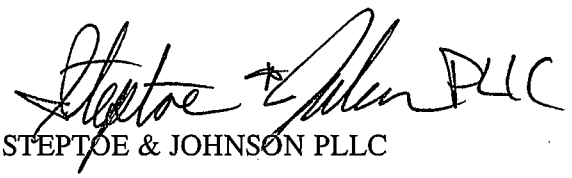
5. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax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

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

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

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

Very truly yours,



STEPTOE & JOHNSON PLLC

# CITY OF FAIRMONT

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

October 11, 2007

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

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Steptoe & Johnson PLLC
Morgantown, West Virginia

Ladies and Gentlemen:

I am City Attorney for the City of Fairmont, in Marion County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a loan agreement for the Bonds, dated October 11, 2007, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), a Bond Ordinance duly enacted by the Issuer on April 24, 2007, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation") and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, City Manager, City Clerk and members of the Council of the Issuer have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.

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

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

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

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

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

6. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds, the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues for the payment of the Bonds.

7. In reliance upon the actions and representations of Greenhorn & O'Mara, Inc., consulting engineers for the project, and to the best of my knowledge all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Bond Legislation and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,

Kevin V. Sansalone

# CITY OF FAIRMONT

CITY/COUNTY COMPLEX
P.O. Box 1428
200 Jackson Street
Fairmont, West Virginia 26555-1428
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October 11, 2007

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

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

Dear Ms. Brodersen:

Final Title Opinion

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

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

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

3. That I have investigated and ascertained the location of and am familiar with the legal descriptions of the necessary sites, including easements and/or rights of way, required for the project as set forth in the plans for the project prepared by Greenhorne & O'Mara, the consulting engineers for the Project.

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

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

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

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

Very truly yours,

Kevin V. Sansalone

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

CITY OF FAIRMONT

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

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDER
16. SPECIMEN BOND
17. CONFLICT OF INTEREST
18. GRANTS
19. PROCUREMENT OF ENGINEERING SERVICES
20. CLEAN WATER ACT
21. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR, CITY MANAGER and CITY CLERK of the City of Fairmont in Marion County, West Virginia (the "Issuer"), and the undersigned COUNSEL to the ISSUER, hereby certify this 11th day of October, 2007 in connection with the Issuer's Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated the date hereof (the "Bonds" or the "Series 2007 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance of the Issuer duly enacted April 24, 2007, and the Supplemental Resolution duly adopted September 25, 2007 (collectively, the "Bond Legislation").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Net Revenues or any grants, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other monies or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are outstanding obligations of the Issuer which will initially rank prior and senior to the Series 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased. At that time, the lien position of the Series 2007 A Bonds and the Series 2003 A Bonds (hereinafter defined) will automatically upgrade to a first lien position.

The Series 2007 A Bonds will be issued on a parity with respect to liens, pledge, source of and security for payment with the Issuer's outstanding Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the "Series 2003 A Bonds"). The Series 2007 A Bonds and the Series 2003 A Bonds shall initially be junior and subordinate as to liens, pledge, source of and security for payment to the Series 1988 Bonds until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have

been paid in full or otherwise legally defeased, at which time the Series 2007 A Bonds and the Series 2003 A Bonds shall automatically upgrade to a parity first lien position. The Series 1988 Bonds and the Series 2003 A Bonds may be hereinafter collectively referred to from time to time as the "Prior Bonds".

Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and the Prior Ordinances, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

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

5. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

Bond Ordinance

Supplemental Resolution

Loan Agreement

Public Service Commission Orders

Infrastructure and Jobs Development Council Approval

Charter and Rules of Procedure

Oaths of Office of Officers and Councilmembers

Ordinance Creating Sanitary Board and Oaths of Members

Petition of Sanitary Board

Public Service Commission Order Establishing Sewer Rates

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

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

NPDES Permit

Copies of the Ordinances and Supplemental Resolutions of the Prior Bonds

Consent of West Virginia Water Development Authority

United States Environmental Protection Agency Grant Agreement

Evidence of Insurance

Closing Memorandum

Intergovernmental Agreements for Sewer Treatment Services

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "City of Fairmont." The Issuer is a municipal corporation in Marion County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its council, consisting of a Mayor, City Manager, City Clerk and 8 council members, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

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

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

| | | |
|---|---|---|
| Chairman | - | S. Scott Sears |
| Member | - | J. Peale Davidson |
| Member | - | William D. Roberts |

The duly appointed and acting City Manager to the Issuer is Bruce McDaniel. The duly appointed and acting Clerk is Janet Keller. The duly appointed and acting City Attorney is Kevin Sansalone in Fairmont, West Virginia.

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

8. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction and financing of the Project or the operation of the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation and Loan Agreement is in full force and effect.

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

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

11. RATES: The Issuer's sewer rates and charges were established pursuant to a Final Order entered by the Public Service Commission of West Virginia in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA. The time for appeal of such Final Order has expired prior to the date hereof without any appeal, and such rates are currently effective.

12. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor and City Manager did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by their manual signatures, and the undersigned City Clerk did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by their manual signatures, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. BOND PROCEEDS: On the date hereof, the Issuer received $747,669 from the Authority and the DEP, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the *Times West Virginian*, a qualified newspaper published and of general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of Governing Body on the 24th day of April, 2007, at 7:00 p.m., at the City Council Chambers located at the Fairmont Public Safety Building, Fairmont, West Virginia and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

15. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, including the Final Order entered on August 31, 2006, in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA, among other things, granting to the Issuer a certificate of convenience and necessity for the Project, approving the financing for the Project, and setting the sewer rates and charges for the System. The time for appeal of the Final Order has expired prior to the date hereof without any appeal.

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

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

18. GRANTS: As of the date hereof, the Federal Assistance Grant from the Fiscal Year 2005 Appropriations Act in the amount of $962,240 is in full force and effect.

19. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

20. CLEAN WATER ACT: The Project as described in the Bond Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

21. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Blank]

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

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
|---|---|
| | Mayor |
| | City Manager |
| | City Clerk |
| | Counsel to the Issuer |

08.16.07
268460.00004

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

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
|---|---|
| _____ | Mayor |
| _____ | City Manager |
| _____ | City Clerk |
| Ken V Gonsalves | Counsel to the Issuer |

08.16.07
268460.00004

CITY OF FAIRMONT

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

CERTIFICATE OF ENGINEER

I, Steven A. Cain, Registered Professional Engineer, West Virginia License No. 15264, of Greenhorne & O'Mara, Inc., Fairmont, West Virginia, hereby certify on this 11th day of October, 2007 as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of the City of Fairmont (the "Issuer") to be constructed primarily in Marion County, West Virginia, which acquisition and construction are being permanently financed in part by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance enacted by the Issuer on April 24, 2007, as supplemented, and the Loan Agreement, by and among the Issuer, the West Virginia Department of Environmental Protection ("DEP") and the West Virginia Water Development Authority (the "Authority"), dated September 20, 2007 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying certain costs of issuance of the Bonds and related costs.

3. To the best of our knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 22 years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B, attached hereto as Exhibit A and Kevin Sansalone, City Attorney, has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda

to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain the critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all applicable permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of Issuer's certified public accountants, Bennett & Dobbins PLLC, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

[Remainder of Page Intentionally Blank]

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

GREENHORNE & O'MARA, INC.

(SEAL) 


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

268460.00004

CITY OF FAIRMONT
SEWER REVENUE BONDS
SCHEDULE B

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

City of Fairmont

DATE: 9/7/07

Greenhorne & O'Mara, Inc.

DATE: 9-7-07

**Bennett & Dobbins PLLC**
CERTIFIED PUBLIC ACCOUNTANTS

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

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

October 11, 2007

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

City of Fairmont
Fairmont, West Virginia

West Virginia Water Development
Authority
Charleston, West Virginia

West Virginia Department of
Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges of the sanitary sewer system (the "System") of the City of Fairmont (the "Issuer") as set forth in the Final Order of the Public Service Commission of West Virginia entered on August 31, 2006, in consolidated case numbers 06-0348-S-CN and 06-0417-S-MA, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Greenhorne & O'Mara, Inc., it is our opinion that such rates and charges will be sufficient to produce Net Revenues equal to not less than 125% of (i) the maximum annual debt service on the Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program) (the "Bonds"), dated the date hereof, issued in the original aggregate principal amount of $5,577,760 to the West Virginia Water Development Authority, and all other obligations secured by or payable from the revenues of the System on a parity with the Bonds, including the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds"), and Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the "Series 2003 A Bonds") (collectively, the "Prior Bonds"); and (ii) the amount due under the Investment Purchase Agreement, in each Fiscal Year, as defined in the ordinance authorizing the Series 1988 Bonds.

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

Very truly yours,

*Bennett & Dobbins PLLC*

Bennett & Dobbins PLLC

CITY OF FAIRMONT

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

CERTIFICATE AS TO ARBITRAGE

The undersigned Mayor of the City of Fairmont in Marion County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of the $5,577,760 Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, dated the date hereof (the "Bonds"), hereby certifies on the 11th day of October, 2007 as follows:

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

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

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

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

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

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

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

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

8. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend in excess of 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment, or has already done so. Acquisition and construction of the Project and allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion and, with the exception of proceeds deposited in the Series 2007 A Bonds Reserve Account, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before November 1, 2008, except as otherwise required for rebate to the United States under Section 148(f) of the Code. Acquisition and construction of the Project is expected to be completed by May 1, 2009.

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

SOURCES

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

USES

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

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

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

(1) Revenue Fund;

(2) Depreciation Fund;

(3) Operation and Maintenance Fund;

(4) Series 2007 A Bonds Construction Trust Fund;

(5) Series 2007 A Bonds Sinking Fund; and

(6) Series 2007 A Bonds Reserve Account.

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

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

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

(3) The balance of the proceeds of the Series 2007 A Bonds will be deposited in the Series 2007 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 2007 A Bonds and related costs.

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

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

12. Moneys held in the Series 2007 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2007 A Bonds Sinking Fund and Series 2007 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2007 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. [RESERVED]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

WITNESS my signature on the date first written above

CITY OF FAIRMONT

Mayor

268460.00004

WV MUNICIPAL BOND COMMISSION
#8 Capitol Street
Terminal Building, Suite 500
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: October 11, 2007

(See Reverse for Instructions)

ISSUE: City of Fairmont, Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program)

ADDRESS: Post Office Box 1428, Fairmont, West Virginia 26555 COUNTY: Marion

PURPOSE OF ISSUE: New Money: X
Refunding: _____

REFUNDS ISSUE(S) DATED: N/A

ISSUE DATE: October 11,2 007

CLOSING DATE: October 11, 2007

ISSUE AMOUNT: $ 5,577,760

RATE: 2%; Administrative Fee 1.0%

1ST DEBT SERVICE DUE: June 1, 2009

1ST PRINCIPAL DUE: June 1, 2009

1ST DEBT SERVICE AMOUNT: $84,765.80

PAYING AGENT: Municipal Bond Commission

BOND
COUNSEL: Steptoe & Johnson PLLC
Contact Person: Vincent A. Collins, Esquire
Phone: (304) 598-8161

UNDERWRITERS
COUNSEL: Jackson Kelly PLLC
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK: The Huntington National Bank
Contact Person: Margaret Byrd
Phone: (304) 363-5800

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT
Contact Person: Bruce McDaniel
Position: City Manager
Phone: (304) 366-6211

OTHER:
West Virginia Department of Environmental Protection
Contact Person: Mike Johnson, P.E.
Function: Program Manager
Phone: (304) 926-0499

DEPOSITS TO MBC AT CLOSE:
By: _____ Wire
_____ Check

____ Accrued Interest: $_____
____ Capitalized Interest: $_____
____ Reserve Account: $_____
____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE
By: _____ Wire
_____ Check
_____ IGT

____ To Escrow Trustee: $_____
____ To Issuer $_____
____ To Cons. Invest. Fund $_____
____ To Other: _____ $_____

NOTES: Reserve account to be funded over 10 years.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED: _____
TRANSFERS REQUIRED: _____

CH907877.1

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the West Virginia Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes."

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at closing are required, please submit this form before closing. If no significant facts change by closing, no resubmission at closing is required. If, however, there are changes, please submit an updated form, with changes noted, at closing.

If you should have any questions concerning this form, please call the Commission.

CITY OF FAIRMONT

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

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

The Huntington National Bank, Fairmont, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Fairmont (the "Issuer") enacted by the Issuer on April 24, 2007, and a Supplemental Resolution adopted by the Issuer on September 25, 2007 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated October 11, 2007, issued in the original aggregate principal amount of $5,577,760 (the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 11th day of October, 2007.

THE HUNTINGTON NATIONAL BANK

By: Margaret M Byrd
Its: Authorized Officer

268460.00004

CITY OF FAIRMONT

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

ACCEPTANCE OF DUTIES AS REGISTRAR

The Huntington National Bank, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Fairmont Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated October 11, 2007, issued in the original aggregate principal amount of $5,577,760 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 11th day of October, 2007.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

268460.00004

CITY OF FAIRMONT

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

CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of the City of Fairmont (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bond, Series 2007 A (West Virginia SRF Program), of the Issuer, dated October 11, 2007, in the principal amount of $5,577,760, numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of Huntington National Bank, as Registrar.

WITNESS my signature on this 11th day of October, 2007.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

268460.00004

CITY OF FAIRMONT

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

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 11th day of October, 2007, by and between the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $5,577,760 Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted April 24, 2007, and a Supplemental Resolution of the Issuer duly adopted September 25, 2007 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

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

REGISTRAR: The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

9. This document may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

CITY OF FAIRMONT

By: _____
Its: Mayor

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

268460.00004

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

ORDINANCE NO. 796

CITY OF FAIRMONT,

SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988

SUPPLEMENTAL AND AMENDATORY ORDINANCE

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11/21/88
FMTSR2-B

ORDINANCE NO. _____

CITY OF FAIRMONT

SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 680 OF THE CITY OF FAIRMONT, ENACTED AUGUST 13, 1985; AUTHORIZING THE REFUNDING OF A PORTION OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1985, OF THE CITY OF FAIRMONT, WEST VIRGINIA; AUTHORIZING THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $13,500,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 680 TO PERMIT THE REFUNDING OF LESS THAN ALL OF SUCH SERIES 1985 BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE ADOPTION OF A SUPPLEMENTAL RESOLUTION AND THE FORM OF AND EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT AND OTHER INSTRUMENTS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS

WHEREAS, the City of Fairmont (the "City") owns and operates a municipal sewerage system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, extensions and improvements for the System by issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Sewerage System Refunding Revenue Bonds, Series 1985, dated September 15, 1985, issued in the original aggregate principal amount of $7,370,000, and now outstanding in the principal amount of $7,185,000, the last maturity being November 1, 2011 (the "Prior Bonds"), as provided in an ordinance enacted August 13, 1985, and designated "Ordinance No. 680" and supplemented by a supplemental resolution adopted September 17, 1985 (such ordinance, as so supplemented, herein called the "Prior Ordinance");

WHEREAS, under the provisions of Chapter 16, Article 13 of the Official West Virginia Code of 1931, as amended (the "Act"), the City is authorized and empowered to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds;

WHEREAS, the City is advised that interest savings should be realized if a portion of the Prior Bonds is refunded, due to present favorable market conditions and interest rates, but that refunding more than such portion would not create any additional interest savings;

WHEREAS, such savings will be applied to certain needed additions, betterments and improvements for the System;

WHEREAS, the City has determined that it would therefore be to the benefit of the City and its inhabitants to refund such portion of the Prior Bonds to the first redemption date at which the Prior Bonds may be redeemed at par, being November 1, 1995, in the manner set forth herein and in the Escrow Deposit Agreement and Investment Purchase Agreement (as such terms are defined herein) by the issuance of a series of bonds to be designated "City of Fairmont Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988" (the "Series 1988 Bonds"), limited to the aggregate principal amount of $13,500,000, such Series 1988 Bonds to be on a parity with the Prior Bonds, the issuance thereof not effecting a defeasance of the Prior Ordinance, and containing such other terms and provisions as are hereinafter provided;

WHEREAS, the Prior Ordinance provides, in Section 6.08 thereof, that additional parity Bonds may be issued to refund the entirety of one or more series of Bonds issued pursuant thereto, but the City has determined that refunding of the entire series of the Prior Bonds would result in little or no savings to the City, and it is in the best interests of the City to refund only a portion of the Prior Bonds and to issue the Series 1988 Bonds on a parity with the Prior Bonds, which will remain Outstanding;

WHEREAS, in order to permit the partial refunding of the Prior Bonds and realize interest cost savings, the City has determined that the Prior Ordinance should be amended to permit issuance of parity Bonds for the purpose of refunding all or any portion of one or more series of Bonds issued pursuant to the Prior Ordinance;

WHEREAS, the City has determined that such amendment of the Prior Ordinance will not be materially adverse to any Holder of the Prior Bonds, and has obtained the express written consent of AMBAC Indemnity Corporation, as insurer of the Prior Bonds, to such amendment, and such amendment is therefore permitted under the terms of the Prior Ordinance;

WHEREAS, the City has determined that all payments into the respective funds and accounts provided for in the Prior Ordinance on account of the Prior Bonds Outstanding, and any other payments provided for in the Prior Ordinance have been made in full and will be made in full to the date of delivery of the Series 1988 Bonds;

WHEREAS, the City has obtained all consents required pursuant to the Prior Ordinance for the refunding of such portion of the Prior Bonds and for the issuance of the Series 1988 Bonds on a parity with the Prior Bonds, which will remain outstanding following such refunding;

WHEREAS, pursuant to the Act, the City has heretofore established a Sanitary Board and the Sanitary Board has petitioned the Council to provide for the refunding of such portion of the Prior Bonds as hereinafter provided; and

WHEREAS, the City now desires to authorize the refunding of such portion of Prior Bonds as aforesaid, and to provide for the financing thereof by the issuance of the Series 1988 Bonds as hereinafter provided;

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS:

## ARTICLE I

## DEFINITIONS; STATUTORY AUTHORITY; FINDINGS

Section 1.01. Definitions. All capitalized terms used herein and not otherwise defined in the recitals hereto shall have the meanings set forth in the Prior Ordinance. In addition, the following terms shall have the meanings set forth below with respect to the Series 1988 Bonds notwithstanding the fact that such terms may have different meanings under the Prior Ordinance, in this Supplemental and Amendatory Ordinance unless the context expressly requires otherwise:

"AMBAC Indemnity" means AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company.

"Bonds" means collectively, the Prior Bonds, the Series 1988 Bonds, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained in the Prior Ordinance, as supplemented and amended by this Ordinance.

"Bond Year" means the 12 month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year except that the first Bond Year shall begin on the Closing Date.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1988 Bonds, in substantially the form set forth in Exhibit A hereto.

"Closing Date" means the date upon which there is an exchange of the Series 1988 Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of refunding a portion of the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, the cost of municipal bond insurance, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Series 1988 Bonds and the refunding of a portion of the Prior Bonds.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Depository Bank" means the bank to be designated, as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the City as Depository Bank.

"DTC-eligible" means, with respect to the Series 1988 Bonds and as hereafter deemed appropriate, meeting the qualifications prescribed by the Depository Trust Company, New York, New York.

"Escrow Agent" means the escrow agent for the Escrow Fund established pursuant to the Escrow Deposit Agreement.

"Escrow Deposit Agreement" means the agreement to be entered into between the City and the Bond Commission as the Escrow Agent, providing for the ultimate payment of a portion of the Prior Bonds, the disposition of moneys in the various funds and accounts under the Prior Ordinance and matters in connection therewith, the form of which shall be approved by the Supplemental Resolution.

"Escrow Fund" means the fund designated as such in the Escrow Deposit Agreement.

"Event of Default" means any occurrence or event specified in Section 7.01.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Series 1988 Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Series 1988 Bond, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

"Government Obligations" means direct obligations of (including obligations issued or held in book entry form on the books of) the Department of Treasury of the United States of America.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the City as a result of the sale of the Series 1988 Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1988 Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the City, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1988 Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are deemed to become proceeds of the Series 1988 Bonds ratably as original proceeds of the Series 1988 Bonds and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds,

investment proceeds or transferred proceeds (as referenced in clauses (i) through (iii) above) which are held in any fund to the extent that the City reasonably expects to use such fund to pay Debt Service;

(v) Amounts in any fund established hereby as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Series 1988 Bonds by the City;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1988 Bonds; and

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

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income under Section 103 of the Code, for federal income tax purposes.

"Investment Purchase Agreement" means the agreement among the City, the Escrow Agent and the Securities Provider providing for the purchase by the City of certain securities with a portion of the Net Revenues.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy issued by AMBAC Indemnity insuring the payment when due of the principal of and interest on the Series 1988 Bonds as provided therein.

"Net Proceeds" means the face amount of the Series 1988 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Accounts.

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Series 1988 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1988 Bonds.

"Nonrefunded Prior Bonds" means the Outstanding Prior Bonds which will not be refunded by the Series 1988 Bonds.

"Ordinance" means the Prior Ordinance, as amended and supplemented by this Supplemental and Amendatory Ordinance, as it may hereafter from time to time be further amended or supplemented.

"Original Purchaser" means Butcher & Singer Inc., Philadelphia, Pennsylvania, a corporation, as the purchasers of the Series 1988 Bonds directly from the City, or such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 1988 Bonds directly from the City, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the City shall agree to the purchase of the Series 1988 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adoped by the Council at the time of approval of such sale of said Series 1988 Bonds.

"Outstanding," when used with reference to Series 1988 Bonds and as of any particular date, describes all Series 1988 Bonds theretofore and thereupon being issued and delivered except (a) any Series 1988 Bond cancelled by the Registrar at or prior to said date; (b) any Series 1988 Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Supplemental and Amendatory Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Series 1988 Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Series 1988 Bondholders or Series 1988 Bonds for the purpose of consents, notices and the like, any Series 1988 Bond registered to the City.

"Paying Agent" means the Registrar and any other paying agent for the Series 1988 Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12.

"Prior Bonds" shall have the meaning defined in the premises hereof.

"Prior Ordinance" shall have the meaning defined in the premises hereof.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Series 1988 Bonds, has the same meaning as the term

"issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 1988 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1988 Bonds of each maturity is sold or, if the Series 1988 Bonds are privately placed, the price paid by the first buyer of the Series 1988 Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1988 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 1988 Bonds.

"Qualified Investments" means and includes any of the following for all purposes other than (i) investments in escrow accounts, and (ii) investing, and receiving credit for, accrued and capitalized interest:

(a) Government Obligations;

(b) Obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

Export - Import Bank
Farmers Home Administration
General Services Administration
U. S. Maritime Administration
Small Business Administration
Government National Mortgage Association (GNMA)
U. S. Department of Housing & Urban Development (PHA's)
Federal Housing Administration;

(c) Bonds, notes or other evidences of indebtedness rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(d) U. S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a

rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(e) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's Investors Service and which matures not more than 270 days after the date of purchase;

(f) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation;

(g) Pre-refunded municipal obligations defined as follows:

> Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on the escrow, in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service, Inc. or any successors thereto; or (B)(i) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (1) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates

pursuant to such irrevocable instructions, as appropriate, and (ii) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(h) Investment agreements approved in writing by AMBAC Indemnity Corporation (supported by appropriate opinions of counsel) and specifically including the Investment Purchase Agreement;

(i) Other forms of Investments approved in writing by AMBAC Indemnity, including, but not limited to, the West Virginia "restricted consolidated fund" (Fund No. 140) managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

(j) The Investment Purchase Agreement.

"Qualified Investments" means and includes any of the following:

(a) Cash; or

(b) Government Obligations.

"Record Date" means the 15th day of the month preceding any interest payment date with respect to the Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Series 1988 Bonds, and any successor thereto appointed in accordance with Section 8.08.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Securities Provider" means the bank or other financial institution which shall purchase the securities in accordance with the Investment Purchase Agreement, and which shall be designated in the Supplemental Resolution.

"Series 1988 Bonds" means the Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, of the City originally authorized to be issued pursuant to this Supplemental and Amendatory Ordinance.

"Sinking Fund" means the City of Fairmont 1988 Sewerage System Bonds Sinking Fund created by Section 4.02.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 1988 Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Series 1988 Bonds produces an amount equal to the purchase price of such Nonpurpose Investment or the Series 1988 Bonds, all computed as prescribed in applicable Regulations.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Additional terms and phrases are defined in this Supplemental and Amendatory Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Supplemental and Amendatory Ordinance; and the term "hereafter" means after the date of enactment of this Supplemental and Amendatory Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Supplemental and Amendatory Ordinance so numbered.

Section 1.02. Authority for this Supplemental and Amendatory Ordinance. This Supplemental and Amendatory Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The Prior Bonds are currently outstanding in the aggregate principal amount of $7,085,000.

B. The City derives Revenues from the System, and, except for the pledge thereof to secure and pay the Prior Bonds, said Revenues are not pledged or encumbered in any manner.

C. The estimated Revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, upon the partial refunding of the Prior Bonds, as further prescribed herein, to provide for the repair, maintenance and operation of the System, the payment of interest upon all bonds issued pursuant to the Act and to create a sinking fund, as hereinafter provided, to pay the principal thereof as and when the same become due and reasonable reserves therefor, to provide an adequate depreciation fund, as hereinafter provided, and to make all other payments provided for in the Ordinance.

D. Based upon the assumed principal amount, maturity schedule and interest rates for the Series 1988 Bonds presented to the City by the Original Purchaser, the Series 1988 Bonds show a net saving to the City after deducting all expenses of the refunding.

E. The City shall not sell the Series 1988 Bonds without setting forth in the Supplemental Resolution the determination set forth in paragraph D, above, based upon the actual principal amount, maturity schedule and interest rates for the Series 1988 Bonds, and the City shall not issue the Series 1988 Bonds without having obtained from an independent certified public accountant a certification that the amount of saving stated to be achieved by the refunding shall in fact be saved, based upon his review, comparison and analysis of the net interest cost in dollars of the Series 1988 Bonds and the net interest cost in dollars of that portion of the Prior Bonds to be refunded.

F. Subject to the determination and certification required by paragraph E, above, it is in the best interests of the City, and the inhabitants thereof, that the City issue the Series 1988 Bonds and secure the Series 1988 Bonds by a pledge and assignment of the Net Revenues derived from the operation of the

System and as further set forth herein, all on a parity with the Prior Bonds Outstanding following such refunding.

G. The Series 1988 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in Exhibit A attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Supplemental and Amendatory Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

H. The Series 1988 Bonds are authorized as "additional parity bonds" pursuant to Section 6.08 of the Prior Ordinance, as amended hereby, and shall be payable from the Net Revenues on a parity with the Prior Bonds remaining Outstanding following the refunding and any other additional parity bonds which may be issued from time to time pursuant to the Prior Indenture.

I. All things necessary to make the Series 1988 Bonds, when authenticated by the Registrar and issued as in this Supplemental and Amendatory Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 1988 Bonds, will be timely done and duly performed.

J. The Sanitary Board of the City has presented a petition to the City for enactment of this Supplemental and Amendatory Ordinance and issuance of the Series 1988 Bonds.

K. The enactment of this Supplemental and Amendatory Ordinance, and the execution and issuance of the Series 1988 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the City is a part or by which it may be bound or affected.

Section 1.04. Supplemental and Amendatory Ordinance Constitutes Contract. In consideration of the acceptance of the Series 1988 Bonds by those who shall own or hold the same from time to time, this Supplemental and Amendatory Ordinance shall be deemed to be and shall constitute a contract between the City and such Series 1988 Bondholders, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the legal Holders of any and all of such Series 1988 Bonds all of which shall be of equal rank and without preference, priority or distinction between any one bond and the coupons, if any, thereon and any other Series 1988 Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.05. Provisions of Prior Ordinance Apply. This Supplemental and Amendatory Ordinance is supplemental to and amendatory of the Prior Ordinance. For convenience many, but not all, provisions of the Prior Ordinance are repeated herein. In the event of a conflict between any provision of this Supplemental and Amendatory Ordinance and the Prior Ordinance, this Supplemental and Amendatory Ordinance shall prevail with respect to the Series 1988 Bonds. This Supplemental and Amendatory Ordinance and the Prior Ordinance shall be read together.

Section 1.06. Amendment of Prior Ordinance. A. Section 6.08 of the Prior Ordinance is hereby amended to read as follows, with all deleted language struck out and new language underlined:

> Section 6.08. Additional Parity Bonds. No additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.
>
> No such additional parity Bonds shall be issued except for the purpose of financing the costs of the construction of additions, betterments or improvements to the System or refunding ~~the entirety~~ all or a portion of one or more series of Bonds issued pursuant hereto, or both such purposes.
>
> No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the clerk of the City a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such additional parity Bonds, shall not be less than 125% of the average annual amount which will become due for principal of and interest on the following:
>
> (1) The Series 1985 Bonds;

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the City, the time for appeal of which shall have expired prior to the date of delivery of such additional parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Clerk of the City prior to the issuance of such additional parity Bonds. The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineers and the Independent Accountants, and filed with said City clerk, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired prior to issuance of such additional parity Bonds.

Not later than simultaneously with the delivery of such additional parity Bonds, the City shall have entered into written contracts for the immediate construction of such additions, betterments or improvements to the System which are to be financed by such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 1985 Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1985 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the

limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The City shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

No additional parity Bonds shall be valid unless authenticated pursuant to Section 3.03. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by Section 3.14 with respect to the Series 1985 Bonds, modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds. All additional parity Bonds shall mature on the date in the respective years of maturity, and the semiannual interest thereon shall be payable on such dates of each year, as shall be established with respect to the Series 1985 Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the Revenues of the System is subject to the prior and superior lien of the Bonds on such Revenues. The City shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Bonds except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The City may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service

required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Original Purchaser of the Series 1985 Bonds and anything to the contrary in this Section 6.08 notwithstanding, additional parity Bonds may be authorized and issued by the City pursuant to a Supplemental Resolution solely to complete the Project in accordance with the plans and specifications therefor, in the event that the amounts on deposit in the Construction Fund should be insufficient, together with other funds lawfully available therefor, to pay all costs of construction of the Project; provided, however, that, prior to the issuance of such additional parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the clerk of the City a certificate to the effect that additional funds are necessary for such purpose. All such additional parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such additional parity Bonds shall be in years and amounts suggested by such Original Purchaser of the Series 1985 Bonds.

## ARTICLE II

## AUTHORIZATION OF REFUNDING

Section 2.01. Authorization of Refunding. On the date of issuance of the Series 1988 Bonds, a substantial portion of the net proceeds thereof will be deposited in the Escrow Fund. The Amounts in the Escrow Fund, together with earnings thereon, will be applied to pay the principal of, and interest on, certain of the Prior Bonds, as provided in the Escrow Deposit Agreement. Thereafter, the City shall make certain payments to the Securities Provider pursuant to the Investment Purchase Agreement. Amounts deposited with the Securities Provider, together with earnings thereon, shall be applied by the Escrow Agent, upon receipt thereof, to redeem, on November 1, 1995, certain of the Prior Bonds, as provided in the Escrow Deposit Agreement. The lien of the Prior Ordinance on the Net Revenues of the System and on the funds and accounts created by such Prior Ordinance shall not be discharged as of the date of issuance of the Series 1988 Bonds. Rather, such lien shall continue for the equal and ratable benefit of the holders of the Prior Bonds and the Series 1988 Bonds so long as any thereof remain Outstanding.

## ARTICLE III

## THE SERIES 1988 BONDS

Section 3.01. Authorization for Issuance of Series 1988 Bonds. There is hereby authorized to be issued hereunder an issue of Bonds, to be designated "City of Fairmont Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988" (the "Series 1988 Bonds"), in an aggregate principal amount not to exceed $13,500,000. The Series 1988 Bonds shall be issued subject to the terms, conditions and limitations established in the Prior Ordinance, this Supplemental and Amendatory Ordinance and the Supplemental Resolution.

Section 3.02. Terms of Series 1988 Bonds. The Series 1988 Bonds shall be numbered from R-1 consecutively upward commencing with earliest maturity. The Series 1988 Bonds shall be dated such date upon original issuance; shall be in such aggregate principal amount; shall be capital appreciation bonds and shall not bear interest, shall be payable on such date or dates; shall mature on such dates and in such amounts; shall have such redemption provisions; and shall have such other terms, all as the City shall prescribe herein and in the Supplemental Resolution.

Section 3.03. Conditions to Delivery of Series 1988 Bonds. The Series 1988 Bonds shall be executed in the form and manner hereinabove recited and delivered to the Registrar for authentication and registration, but only upon receipt by the Registrar of the following or substantially similar documents, instruments and opinions, satisfactory to Bond Counsel:

(1) A direction and authorization to the Registrar, signed by an Authorized Officer, directing the authentication of the Series 1988 Bonds and the delivery thereof to the Original Purchaser;

(2) A certified copy of this Supplemental and Amendatory Ordinance and the Supplemental Resolution authorizing (i) the issuance, execution, authentication, sale and delivery of the Series 1988 Bonds, (ii) the execution and delivery of the Escrow Deposit Agreement, the Investment Purchase Agreement and a purchase contract between the City and the Original Purchaser, and (iii) the appointment of the Escrow Agent, Securities Provider, Depository Bank, Registrar and Paying Agent;

(3) An Opinion of Counsel for the City as to such matters as Bond Counsel may reasonably request;

(4) Evidence satisfactory to the Registrar that the City has deposited in the appropriate funds and accounts all of the amounts specified in the Escrow Deposit Agreement;

(5) A verification report of Independent Accountants in form and substance satisfactory to the City and Bond Counsel, as to the refunding of the Prior Bonds, including the sufficiency of the Escrow Fund, the verification of yield on the Refunded Prior Bonds, the Series 1988 Bonds and the verification of savings to be achieved by the refunding;

(6) The unqualified approving opinion upon the Series 1988 Bonds by Bond Counsel; and

(7) Such other documentation as may be required by Bond Counsel or the Registrar.

Section 3.04. Execution of Series 1988 Bonds. The Series 1988 Bonds shall be executed in the name of the City by the Mayor and the City Manager, by their manual or facsimile signatures, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Series 1988 Bonds shall cease to be such officer of the City before the Series 1988 Bonds so signed and sealed have been actually sold and delivered, such Series 1988 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 1988 Bonds had not ceased to hold such office. Any Series 1988 Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Series 1988 Bonds shall hold the proper office in the City, although at the date of such Series 1988 Bonds such person may not have held such office or may not have been so authorized.

Section 3.05. Authentication and Registration. No Series 1988 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Supplemental and Amendatory Ordinance unless and until the Certificate of Authentication and Registration on such Series 1988 Bond, substantially in the form set forth in Exhibit A attached hereto and incorporated herein by reference, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Series 1988 Bond shall be conclusive evidence that such Series 1988 Bond has been authenticated, registered and delivered under this Supplemental and

Amendatory Ordinance. The Certificate of Authentication and Registration on any Series 1988 Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 1988 Bonds issued hereunder.

Section 3.06. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 1988 Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Series 1988 Bonds, shall be conclusively deemed to have agreed that such Series 1988 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Series 1988 Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 1988 Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Series 1988 Bonds.

The Series 1988 Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Series 1988 Bond, there shall be issued at the option of the Holder or the transferee another fully registered Series 1988 Bond or fully registered Series 1988 Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Series 1988 Bond and of the same series, interest rate and maturity of said transferred Series 1988 Bond.

In all cases in which the privilege of transferring or exchanging a Series 1988 Bond is exercised, Series 1988 Bonds shall be delivered in accordance with the provisions of this Supplemental and Amendatory Ordinance. All Series 1988 Bonds surrendered in any such transfer or exchange shall forthwith be cancelled by the Registrar. Transfers of Series 1988 Bonds and exchanges of Series 1988 Bonds in the event of partial redemption of Series 1988 Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Series 1988 Bonds, the Registrar may impose a service charge. For every such transfer or exchange of Series 1988 Bonds, the Registrar may make a charge sufficient to reimburse its office

for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Series 1988 Bonds that have been called for redemption.

Section 3.07. Series 1988 Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 1988 Bond shall become mutilated or be destroyed, stolen or lost, the City may execute, in the discretion of Council, and the Registrar shall authenticate, register and deliver any new Series 1988 Bond of like series, maturity and principal amount as the Series 1988 Bond so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Series 1988 Bond or in lieu of and substitution for the Series 1988 Bond destroyed, stolen or lost, and upon the Holder's furnishing the City and the Registrar proof of his ownership thereof and that said Series 1988 Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City or the Registrar may prescribe and paying such expenses as the City or the Registrar may incur. The name of the Series 1988 Bondholder listed in the Bond Register shall constitute proof of ownership. All Series 1988 Bonds so surrendered shall be submitted to and cancelled by the Registrar, and evidence of such cancellation shall be given to the City. If such Series 1988 Bond shall have matured or be about to mature, instead of issuing a substitute Series 1988 Bond the City, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Series 1988 Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Series 1988 Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Series 1988 Bonds be at any time found by any one, and such duplicate Series 1988 Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the Revenues pledged herein with all other Series 1988 Bonds issued hereunder.

Section 3.08. Notice of Redemption. Unless waived by any Holder of the Series 1988 Bonds to be redeemed, official notice of any such redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Original Purchaser and the registered owner of the Series 1988 Bond or

Series 1988 Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

(1) The redemption date,

(2) The redemption price,

(3) If less than all outstanding Series 1988 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Series 1988 Bonds to be redeemed,

(4) That on the redemption date the Redemption Price and interest accrued will become due and payable upon each such Series 1988 Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Series 1988 Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Registrar, and

(6) Such other information, if any, as shall be required for DTC-Eligible Series 1988 Bonds.

Prior to any redemption date, the City shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Series 1988 Bonds or portions of Series 1988 Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Series 1988 Bonds or portions of Series 1988 Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Series 1988 Bonds or portions of Series 1988 Bonds shall cease to bear interest. Upon surrender of such Series 1988 Bonds for redemption in accordance with said notice, such Series 1988 Bonds shall be paid by the Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Series 1988 Bond, there shall be prepared for the registered owner a new Series 1988 Bond or Series 1988 Bonds of the same maturity in the amount of the unpaid

principal. All Series 1988 Bonds which have been redeemed shall be cancelled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Series 1988 Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Series 1988 Bonds for which there was no such failure.

In addition to the foregoing notice, further notice as set out below shall be given by the Registrar, at the instruction of the City, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(1) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Series 1988 Bonds being redeemed; (ii) the date of issue of the Series 1988 Bonds as originally issued; (iii) the rate of interest borne by each Series 1988 Bond being redeemed; (iv) the maturity date of each Series 1988 Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Series 1988 Bonds being redeemed.

(2) Each further notice of redemption shall be sent at least 35 days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Series 1988 Bonds (such depositories now being Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, Pacific Securities Depository Trust Company of San Francisco, California and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania).

(3) Each such further notice shall be published one time in the Bond Buyer of New York, New York or, if such publication is unlikely to reach a substantial number of the holders of the Series 1988 Bonds, in some other financial newspaper or journal which regularly carries notices of redemption of other obligations similar to the Series 1988 Bonds, such publication to be made at least 30 days prior to the date fixed for redemption.

(4) Upon the payment of the redemption price of Series 1988 Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Series 1988 Bonds being redeemed with the proceeds of such check or other transfer.

redemption having been given in the manner hereinabove provided, the Series 1988 Bonds, or portions thereof, shall on the date fixed for redemption be deemed paid, and interest on such Series 1988 Bonds, or portions thereof, shall cease to accrue; and upon presentation and surrender of such Series 1988 Bonds at the office specified in such notice, such bonds, or portions thereof, shall be paid at the designated redemption price.

Section 3.09. Persons Treated as Owners. The City, the Registrar and any agent of the City or the Registrar may treat the person in whose name any Series 1988 Bond is registered as the owner of such Series 1988 Bond for the purpose of receiving payment of the principal of and interest on such Series 1988 Bond and for all other purposes whether or not such Series 1988 Bond is overdue.

Section 3.10. Form of Series 1988 Bonds. The Series 1988 Bonds shall be substantially in the form set forth in Exhibit A attached thereto and incorporated herein by reference, with such appropriate variations, omissions and insertions as are permitted or required by this Supplemental and Amendatory Ordinance or the Supplemental Resolution or as are deemed necessary by the Registrar and the City, including, if requested by the Original Purchaser, any variations necessary to render the Series 1988 Bonds DTC-eligible.

Section 3.11. Disposition of Proceeds of Series 1988 Bonds. Upon the issuance and delivery of the Series 1988 Bonds, the City shall forthwith deposit the net proceeds (after payment of underwriters' discount and insurance premium) thereof as follows:

A. The amount of the Series 1988 Bond proceeds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish refunding of the designated portion of the Prior Bonds (which amount shall be set forth in the Escrow Deposit Agreement) shall be deposited in the Escrow Fund.

B. The amount of Series 1988 Bonds which shall be specified in the Supplemental Resolution shall be deposited with the Depository Bank in the Series 1988 Bonds Costs of Issuance Fund and shall be drawn out, used and applied by the City solely to pay costs of issuance of the Series 1988 Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the City.

Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this Supplemental and Amendatory Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose, such unapplied proceeds shall be transferred by the City to the Construction Fund established by the Prior Ordinance.

C. The balance of the proceeds of the Series 1988 Bonds shall be deposited in the Construction Fund established by the Prior Ordinance and applied to the acquisition and construction of additions, betterments and improvements for the System at the direction of the Sanitary Board of the City.

## ARTICLE IV

## SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. In addition to the funds and accounts heretofore established by the Prior Ordinance and the Escrow Fund established by the Escrow Deposit Agreement, the following special fund is created with, and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the City and from each other, and used solely for the purposes provided herein:

(1) Series 1988 Bonds Costs of Issuance Fund; and

(2) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. In addition to the funds and accounts heretofore established by the Prior Ordinance, the following special fund is hereby established with and shall be held by the Bond Commission:

(1) Series 1988 Bonds Sinking Fund.

Section 4.03. System Revenues and Application Thereof. So long as any of the Series 1988 Bonds shall be Outstanding and unpaid, the City covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The City shall first, each month, transfer from the Revenue Fund and Deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) Thereafter, from the moneys remaining in the Revenue Fund, the City shall next:

(i) On the first day of each month beginning on the first day of that month which is 7 months prior to the first interest payment

date on the Nonrefunded Prior Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Nonrefunded Prior Bonds on the next ensuing semiannual interest payment date and which interest will not be paid from the Escrow Fund, less any investment earnings on sums previously deposited in the Sinking Fund for the purpose of making interest payments; provided, that "next ensuing semiannual interest payment date" shall not refer to the interest payment date on which any such deposit is made;

(ii) On the first day of each month, remit to the Bond Commission for deposit in the Sinking Fund, or in the Redemption Account therein if the Nonrefunded Prior Bonds next maturing are Term Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Nonrefunded Prior Bonds on the next ensuing principal payment or mandatory redemption date and which will not be paid from the Escrow Fund, less any investment earnings on sums previously deposited in the Sinking Fund for the purpose of making principal payments; provided, that "next ensuing principal payment or mandatory redemption date" shall not refer to the principal payment or mandatory redemption date on which any such deposit is made;

(iii) On the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment of the Series 1988 Bonds, remit to the Bond Commission for deposit in the Series 1988 Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on the Series 1988 Bonds on the next ensuing principal payment date, less any investment earnings on sums previously deposited in the Series 1988 Bonds Sinking Fund for the purpose of making principal payments; provided, that "next ensuing principal payment or mandatory redemption date" shall not refer to the principal payment or mandatory redemption date on which any such deposit is made; and

(iv) On the first day of each month, remit to the Escrow Agent, the amounts due in accordance with the Escrow Deposit Agreement and the Investment Purchase Agreement.

(3) The City shall also, from the Revenue Fund, remit to the Bond Commission on such dates or at such other times, as the Bond Commission shall require, such additional sums as shall be necessary to pay the fiscal agency charges due for paying the Bonds and the interest thereon.

(4) Moneys in the Series 1988 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1988 Bonds as the same shall become due. Pending such use, such moneys shall be invested in accordance with Article V.

(5) The City shall not be required to make any further payments into the Series 1988 Bonds Sinking Fund when the aggregate amount of funds in the Series 1988 Bonds Sinking Fund is at least equal to the aggregate principal amount of Series 1988 Bonds issued pursuant to this Supplemental and Amendatory Ordinance then Outstanding, plus the amount of interest due or thereafter to become due on the Series 1988 Bonds then Outstanding.

(6) The payments into the Series 1988 Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Supplemental and Amendatory Ordinance.

(7) Except as expressly changed herein, all provisions of Article IV of the Prior Ordinance shall remain in full force and effect.

(8) If on any monthly payment date the Revenues of the System are insufficient to make the required deposits as described in Section 4.03(A)(2) hereof, the deficiency shall be incurred and made up on a parity basis on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made on such ensuing payment dates.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1988 Bonds Sinking Fund created hereunder, and all amounts required for said Series 1988 Bonds Sinking Fund shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Series 1988 Bonds, as provided in Section 3.11, by the City at the times provided herein. All remittances made by the City to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The moneys on deposit in the Revenue Fund in excess of the sum insured by the maximum amounts insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of municipal funds under the laws of the State.

D. Anything to the contrary herein notwithstanding, when the aggregate sum in the Series 1988 Bonds Sinking Fund is sufficient to pay and redeem all the Series 1988 Bonds Outstanding and all interest accrued and to accrue thereon and any applicable redemption premiums, the City shall cause all the Series 1988 Bonds to be paid or called and redeemed at the earliest practicable date permitted pursuant to the provisions hereof as to redemption of Series 1988 Bonds.

## ARTICLE V

## INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The City shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Supplemental and Amendatory Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Supplemental and Amendatory Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The City shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The City may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. With respect to all funds and accounts, valuation shall occur monthly.

(B) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 1988 Bonds and invested only in cash or Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(C) "Value," as used in this Section 5.01, means the value of any Qualified Investments calculated as follows:

(i) As to Qualified Investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such Qualified Investments so published on or most recently prior to such time of determination;

(ii) As to Qualified Investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such Qualified Investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such Qualified Investments or the bid price published by a nationally recognized pricing service;

(iii) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(iv) As to any Qualified Investment not specified above: the value thereof established by prior agreement between the Issuer and AMBAC Indemnity.

Section 5.02. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Series 1988 Bonds in such manner and to such extent as may be necessary, so that such Series 1988 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Series 1988 Bonds and continued compliance after the date of issuance of the Series 1988 Bonds with the requirements of Section 148 of the Code and Regulations thereunder) so that the interest on such Series 1988 Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(C) of the Code, the City covenants that it is a governmental unit with general taxing powers; that the Series 1988 Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the

Net Proceeds of the Series 1988 Bonds are to be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the City during the calendar year in which the Series 1988 Bonds are issued will not exceed $5,000,000, determined in accordance with Section 148(f)(4)(C) of the Code and the Regulations promulgated thereunder. For purposes of this Section 5.03 and for purposes of applying Section 148(f)(4)(C) of the Code, the City and all entities which issue obligations on behalf of the City shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this Section 5.03 and Section 148(f)(4)(C) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(C) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the City is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the City shall take the following actions:

A. EARNINGS FUND AND REBATE FUND. All interest earnings and profits on amounts in all funds and accounts established under this Supplemental and Amendatory Ordinance, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than $100,000 which shall be retained in the fund or account from which such earnings or profits arose to the extent not otherwise provided herein, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the City shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such day is not a business day (or such earlier date as may be required by the Code), the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on

the next interest payment date and for such purpose, Debt Service due from the City on such date shall be credited by an amount equal to the amount so transferred. Notwithstanding the foregoing, the City shall withdraw moneys from the Earnings Fund, if needed for the purpose of paying Debt Service or principal of or interest on the Series 1988 Bonds. In the event of withdrawal of any moneys from the Earnings Fund the City shall restore such withdrawal from the first Gross Revenues available therefor, after payment of Debt Service or principal of or interest on the Series 1988 Bonds.

B. DUTIES OF CITY IN GENERAL. The City shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 30 days following the last day of the first Bond Year, the City shall calculate, and shall provide written notice to the Original Purchaser and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 30 days following the last day of each Bond Year and within 30 days following the maturity date of the Series 1988 Bonds, the City shall calculate, and shall provide written notice to the Original Purchaser and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the City in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) of the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Series 1988 Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Series 1988 Bonds shall be determined based on the actual Yield of the Series 1988 Bonds during the period between the Closing Date of the Series 1988 Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Series 1988 Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than $100,000.

D. PAYMENT TO THE UNITED STATES. The City shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The City shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Series 1988 Bonds, the City shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any

amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor.

E. FURTHER OBLIGATIONS OF ISSUER. The City shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the City shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The City shall keep, and retain for a period of 6 years following the retirement of the Series 1988 Bonds, records of the determinations made pursuant to this Section 5.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 5.03, the City and the Depository Bank (at the expense of the City) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the City further covenants to comply with all Regulations from time to time in effect and applicable to the Series 1988 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and to the extent necessary to comply with such Regulations, to take such actions, or refrain from taking such actions as may be necessary, regardless of whether such actions may be contrary to any of the provisions of this Section 5.03.

## ARTICLE VI

## ADDITIONAL COVENANTS OF THE CITY

Section 6.01. General Covenants of the City. All the covenants, agreements and provisions of this Supplemental and Amendatory Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1988 Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Supplemental and Amendatory Ordinance, the City hereby covenants and agrees with the Holders of the Series 1988 Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Series 1988 Bonds, or the interest thereon, is Outstanding and unpaid.

Section 6.02. Series 1988 Bonds not to be Indebtedness of the City. The Series 1988 Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Revenues of the System, the moneys in the Series 1988 Bonds Sinking Fund or the unexpended proceeds of the Series 1988 Bonds all as herein provided. No Holder or Holders of any Series 1988 Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay said Series 1988 Bonds or the interest thereon.

Section 6.03. Series 1988 Bonds Secured by Pledge of Net Revenues on Parity with Prior Bonds. The payment of the debt service of all of the Series 1988 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, to the extent necessary to make the payments required under Section 4.03 but on a parity with respect to lien on and sources of and security for payment with the Prior Bonds (including payments to be made pursuant to the Investment Purchase Agreement). The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Series 1988 Bonds herein authorized, and to make the payments into the Series 1988 Bonds Sinking Fund, and all other payments provided for in this Supplemental and Amendatory Ordinance, are hereby irrevocably pledged in the manner provided in this Supplemental and Amendatory Ordinance to the payment of the principal of the Series 1988 Bonds herein authorized as the same becomes due and for the other purposes provided in this Supplemental and Amendatory Ordinance.

Section 6.04. Tax Covenants. The City hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The City shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1988 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1988 Bonds during the term thereof is, under the terms of the Series 1988 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1988 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1988 Bonds during the term thereof is, under the terms of the Series 1988 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1988 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1988 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1988 Bonds or $5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1988 Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1988 Bonds and the interest thereon,

including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The City will take all actions that may be required of it so that the interest on the Series 1988 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.05. Designation of Series 1988 Bonds as Qualified Tax-Exempt Obligations. The City and all subordinate entities do not reasonably expect to issue more than $10,000,000 of tax-exempt obligations during the calendar year 1988 and hereby designates the Series 1988 Bonds as "qualified tax-exempt obligations," as defined in Section 265(b)(3)(B) of the Code.

Section 6.06. Covenants Relating to Municipal Bond Insurance Policy. In order to obtain a Municipal Bond Insurance Policy from AMBAC Indemnity and therefore, lower interest rates on the Series 1988 Bonds, the Issuer hereby further covenants, at the request of AMBAC Indemnity, such covenants to be controlling, notwithstanding any other provision of this Supplemental and Amendatory Ordinance, as follows:

A. CONSENT OF AMBAC INDEMNITY. Any provision of this Supplemental and Amendatory Ordinance expressly recognizing or granting rights in or to AMBAC Indemnity may not be amended in any manner which affects the rights of AMBAC Indemnity hereunder without the prior written consent of AMBAC Indemnity.

B. CONSENT OF AMBAC INDEMNITY IN ADDITION TO BONDHOLDER CONSENT. Unless otherwise provided in this Section 6.05, AMBAC Indemnity's consent shall be required in addition to Bondholder consent, when required, for the purposes of execution and delivery of any supplemental ordinance or any other action requiring Bondholder consent under this Supplemental and Amendatory Ordinance.

C. CONSENT OF AMBAC INDEMNITY UPON DEFAULT. Anything in this Supplemental and Amendatory Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, AMBAC Indemnity shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders, including, without limitation, acceleration of the principal of the Bonds as described in this Supplemental and Amendatory Ordinance and the right to annul any declaration of

acceleration, and AMBAC Indemnity shall also be entitled to approve all waivers of Events of Default.

D. ACCELERATION. Upon the occurrence of an Event of Default, any Bondholder may, with the consent of AMBAC Indemnity, and the Bondholders shall, at the direction of AMBAC Indemnity, by written notice to the Issuer and AMBAC Indemnity, declare the principal of the Series 1988 Bonds to be immediately due and payable, whereupon that portion of the principal of the Series 1988 Bonds thereby coming due and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Supplemental and Amendatory Ordinance, or in the Series 1988 Bonds to the contrary notwithstanding.

E. NOTICES TO BE GIVEN TO AMBAC INDEMNITY. While the Municipal Bond Insurance Policy is in effect, the Issuer shall furnish to AMBAC Indemnity:

(i) As soon as practicable after the filing thereof, a copy of any financial statement of the Issuer and a copy of any audit and annual report of the Issuer;

(ii) A copy of any notice to be given to the registered owners of the Series 1988 Bonds, including, without limitation, notice of any redemption of or defeasance of Series 1988 Bonds, and any certificate rendered pursuant to this Supplemental and Amendatory Ordinance, relating to the security for the Series 1988 Bonds; and

(iii) Such additional information it may reasonably request.

The Issuer will permit AMBAC Indemnity to discuss the affairs, finances and accounts of the Issuer or any information AMBAC Indemnity may reasonably request regarding the security for the Series 1988 Bonds with appropriate officers of the Issuer. The Issuer will permit AMBAC Indemnity to have access to and to make copies of all books and records relating to the Series 1988 Bonds at any reasonable time.

AMBAC Indemnity shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within 30 days after

receipt of written notice of the direction from AMBAC Indemnity shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Series 1988 Bonds.

Notwithstanding any other provision of this Supplemental and Amendatory Ordinance, the Issuer shall immediately notify AMBAC Indemnity if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default hereunder.

F. PAYMENT PROCEDURE PURSUANT TO MUNICIPAL BOND INSURANCE POLICY. As long as the Municipal Bond Insurance Policy shall be in full force and effect, the Issuer and any Paying Agent agree to comply with the following provisions:

(a) If 5 days prior to an interest payment date the Paying Agent determines that there will be insufficient funds in the funds and accounts established under the Ordinance to pay the principal of or interest on the Series 1988 Bonds on such interest payment date, the Paying Agent shall so notify AMBAC Indemnity. Such notice shall specify the amount of the anticipated deficiency, the Series 1988 Bonds to which such deficiency is applicable and whether such Series 1988 Bonds will be deficient as to principal or interest, or both. If the Paying Agent has not so notified AMBAC Indemnity 5 days prior to an interest payment date, AMBAC Indemnity will make payments of principal or interest due on the Series 1988 Bonds on or before the 5th business day next following the date on which AMBAC Indemnity shall have received notice of nonpayment from the Paying Agent.

(b) The Paying Agent shall, after giving notice to AMBAC Indemnity as provided in (a) above, make available to AMBAC Indemnity and, at AMBAC Indemnity's direction, to the United States Trust Company of New York, as insurance trustee for AMBAC Indemnity or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer maintained by the Registrar or Paying Agent and all records relating to the funds and accounts maintained under the Ordinance.

(c) The Paying Agent shall provide AMBAC Indemnity and the Insurance Trustee with a list of registered owners of Series 1988 Bonds entitled to receive principal or interest payments from AMBAC Indemnity under the terms of the Municipal Bond Insurance Policy, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of Series 1988 Bonds entitled to receive full or partial interest payments from AMBAC Indemnity and (ii) to pay principal upon Series 1988 Bonds surrendered to the Insurance Trustee by the registered owners of Series 1988 Bonds entitled to receive full or partial principal payments from AMBAC Indemnity.

(d) The Paying Agent shall, at the time it provides notice to AMBAC Indemnity pursuant to (a) above, notify registered owners of Series 1988 Bonds entitled to receive the payment of principal or interest thereon from AMBAC Indemnity (i) as to the fact of such entitlement, (ii) that AMBAC Indemnity will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment, (iii) that should they be entitled to receive full payment of principal from AMBAC Indemnity, they must surrender their Series 1988 Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Series 1988 Bonds to be registered in the name of AMBAC Indemnity) for payment to the Insurance Trustee, and not the Trustee or Paying Agent, if any, and (iv) that should they be entitled to receive partial payment of principal from AMBAC Indemnity, they must surrender their Series 1988 Bonds for payment thereon first to the Trustee or Paying Agent, if any, who shall note on such Series 1988 Bonds the portion of the principal paid by the Paying Agent, and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

(e) In the event that the Paying Agent has notice that any payment of principal of or interest on a Series 1988 Bond which has become due for payment and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in

bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Paying Agent shall, at the time AMBAC Indemnity is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from AMBAC Indemnity to the extent of such recovery if sufficient funds are not otherwise available, and the Paying Agent shall furnish to AMBAC Indemnity its records evidencing the payments of principal of and interest on the Series 1988 Bonds which have been made by the Paying Agent and subsequently recovered from registered owners and the dates on which such payments were made.

(f) In addition to those rights granted AMBAC Indemnity under this Supplemental and Amendatory Ordinance, AMBAC Indemnity shall, to the extent it makes payment of principal of or interest on Series 1988 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policy, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Registrar or Paying Agent shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Registrar or Paying Agent upon receipt from AMBAC Indemnity of proof of the payment of interest thereon to the registered owners of the Series 1988 Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Registrar or Paying Agent shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Registrar or Paying Agent upon surrender of the Series 1988 Bonds by the registered owners thereof together with proof of the payment of principal thereof.

Section 6.07. Rates. Prior to the enactment of this Supplemental and Amendatory Ordinance, just and equitable rates or charges for the use of the services and facilities of the System have been fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the clerk of the City, which copy will be open to inspection by all interested parties. The schedule or rates and charges shall at all times be adequate to produce Net Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder and to pay Operating Expenses. Such schedule of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for

such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 125% of (i) the maximum annual debt service on the Bonds; and (ii) the amount due under the Investment Purchase Agreement, in each Fiscal Year. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

The Issuer hereby covenants to increase the rates and charges for the services and facilities of the System within 90 days, in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

## ARTICLE VII

## DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 1988 Bonds:

(A) If default occurs in the due and punctual payment of the principal of any Series 1988 Bond (including that portion representing interest accreted thereon at maturity);

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part in this Supplemental and Amendatory Ordinance or any Supplemental Resolution or in the Series 1988 Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by any Series 1988 Bondholder; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Series 1988 Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Series 1988 Bondholders, including the right to require the City to perform its duties under the Act and this Supplemental and Amendatory Ordinance;

(C) Bring suit upon the Series 1988 Bonds;

(D) By action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Series 1988 Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Supplemental and Amendatory Ordinance or the rights of the Series 1988 Bondholders.

No remedy by the terms of this Supplemental and Amendatory Ordinance conferred upon or reserved to the Series 1988 Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Series 1988 Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Series 1988 Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Series 1988 Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Series 1988 Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Supplemental and Amendatory Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the City exercise all the rights and powers of the City with respect to said facilities as the City itself might do.

Whenever all that is due upon the Series 1988 Bonds issued pursuant to this Supplemental and Amendatory Ordinance and interest thereon and under any covenants of this Supplemental and Amendatory Ordinance for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or

encumbrance upon the Revenues of the System shall have been paid and made good, and all defaults under the provisions of this Supplemental and Amendatory Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any Series 1988 Bondholder shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the City and for the joint protection and benefit of the City and the Holders of the Series 1988 Bonds issued pursuant to this Supplemental and Amendatory Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and the Series 1988 Bondholders, and the curing and making good of any default under the provisions of this Supplemental and Amendatory Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of City and Series 1988 Bondholder. In case any Series 1988 Bondholder shall have proceeded to enforce any right under this Supplemental and Amendatory Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the City and such Series 1988 Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Series 1988 Bondholder shall continue as if no such proceedings had been taken.

## ARTICLE VIII

## REGISTRAR; PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 1988 Bonds shall be appointed pursuant to the Supplemental Resolution. The city manager of the City is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Registrar. The recitals of fact in the Series 1988 Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Series 1988 Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Series 1988 Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Supplemental and Amendatory Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Series 1988 Bonds and the exchange of Series 1988 Bonds in the event of partial redemption, incurred in the performance of its duties hereunder. The City shall indemnify and save the Registrar harmless against any liabilities which it may incur in the exercise and performance of its powers and duties and which are not due to its own negligence, default or willful misconduct.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Series 1988 Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Series 1988 Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 1988 Bonds or this Supplemental and Amendatory Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Series 1988 Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Supplemental and Amendatory Ordinance by giving not less than 60 days' written notice to the City and publishing notice, specifying the date when such resignation shall take effect, in an Authorized Newspaper within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a Series 1988 Bond. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the City or by the Holders of a majority in principal amount of the Series 1988 Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City or by such Series 1988 Bondholders or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Series 1988 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Series 1988 Bondholders or their attorneys duly authorized in writing and delivered to the City and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the City shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Series 1988 Bondholders. The City shall publish notice of any such appointment in an Authorized Newspaper within

20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a Series 1988 Bond. Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Series 1988 Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the City written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Series 1988 Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Supplemental and Amendatory Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Series 1988 Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Series 1988 Bonds so authenticated, and, in case any Series 1988 Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Series 1988 Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar shall also serve as the Paying Agent. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 8.02 shall also include the trusts and the duties of Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Supplemental and Amendatory Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and

obligations imposed upon it pursuant hereto by executing and delivering to the City a written acceptance thereof.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Supplemental and Amendatory Ordinance. If the position of Paying Agent shall become vacant for any reason, the City shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the City shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Series 1988 Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Supplemental and Amendatory Ordinance, be held in trust for the purposes for which they were received.

## ARTICLE IX

## DEFEASANCE; DISCHARGE OF PLEDGE OF SUPPLEMENTAL AND AMENDATORY ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Supplemental and Amendatory Ordinance. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1988 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Supplemental and Amendatory Ordinance, this Supplemental and Amendatory Ordinance and the pledges of the Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the Holders of the Series 1988 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1988 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Series 1988 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1988 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of and interest due and to become due on said Series 1988 Bonds on and prior to the maturity date thereof. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Series 1988 Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and interest to become due on said Series 1988 Bonds on and prior to such maturity dates thereof, and interest

earned from such reinvestments shall be paid over to the City as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

In the event that the principal and/or interest due on the Series 1988 Bonds shall be paid by AMBAC Indemnity pursuant to the Municipal Bond Insurance Policy, the Series 1988 Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the Net Revenues and other moneys securing the Series 1988 Bonds in the several funds and accounts described herein, and all covenants, agreements and other obligations of the Issuer to the registered owners of the Series 1988 Bonds shall continue to exist and shall run to the benefit of AMBAC Indemnity, and AMBAC Indemnity shall be subrogated to the rights of such registered owners.

## ARTICLE X

## MISCELLANEOUS

Section 10.01. Amendment of Supplemental and Amendatory Ordinance. No materially adverse amendment or modification to this Supplemental and Amendatory Ordinance, or of any Supplemental Resolution, may be made without the written consents of the Holders of 60% in aggregate principal amount of the Series 1988 Bonds then Outstanding and AMBAC Indemnity, which must be filed with the Clerk of the City before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 1988 Bond without the express written consent of the Holder of such Series 1988 Bond, nor reduce the percentage of Series 1988 Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Series 1988 Bondholders and Ownership of Series 1988 Bonds. Any request, consent, revocation of consent or other instrument which this Supplemental and Amendatory Ordinance may require or permit to be signed and executed by Series 1988 Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Series 1988 Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Supplemental and Amendatory Ordinance if made in the following manner, or in any other manner satisfactory to the City or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Series 1988 Bondholder or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, trust company or financial firm or corporation satisfactory to the City or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Series 1988 Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of Series 1988 Bonds held by a person executing any instrument as a Series 1988 Bondholder, the date of his holding such Series 1988 Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Holder of any Series 1988 Bond shall bind all future Holders and owners of such Series 1988 Bond in respect of anything done or suffered to be done hereunder by the City or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Supplemental and Amendatory Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the City or any Series 1988 Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Supplemental and Amendatory Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Series 1988 Bonds. All Series 1988 Bonds purchased or paid shall, if surrendered to the City, be cancelled and delivered to the Registrar, or, if surrendered to the Registrar, be cancelled by it. No such Series 1988 Bonds shall be deemed Outstanding under this Supplemental and Amendatory Ordinance and no Series 1988 Bonds shall be issued in lieu thereof. All such Series 1988 Bonds shall be cancelled and upon order of the City shall be destroyed, and a certificate evidencing such destruction shall be delivered to the City.

Section 10.05. Failure to Present Series 1988 Bonds. Anything in this Supplemental and Amendatory Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Series 1988 Bonds which remain unclaimed for 1 year after the date on which such Series 1988 Bonds have become due and payable, whether

by maturity or upon call for redemption, shall at the written request of the City be paid by the Bond Commission or said Paying Agent to the City as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Series 1988 Bonds shall look only to the City for the payment of such Series 1988 Bonds; provided, however, that, before making any such payment to the City, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the City.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the City, the Registrar, the Original Purchaser or the Depository Bank shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY

City of Fairmont
City-County Complex
200 Jackson Street
Fairmont, West Virginia 26554

REGISTRAR

[Name and address to be set forth in Supplemental Resolution]

ORIGINAL PURCHASER

Butcher & Singer Inc.
211 South Broad Street, Ninth Floor
Philadelphia, Pennsylvania 19107

DEPOSITORY BANK

[Name and address to be set forth in Supplemental Resolution]

AMBAC INDEMNITY

AMBAC Indemnity Corporation
One State Street Plaza
New York, New York 10004

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the City shall be individually or personally liable for the payment of the principal of or the interest on any Series 1988 Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Supplemental and Amendatory Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Supplemental and Amendatory Ordinance and of all Series 1988 Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Supplemental and Amendatory Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the City, the Registrar, the Paying Agent, the Holders of the Series 1988 Bonds, AMBAC Indemnity and the Original Purchaser, any right, remedy or claim under or by reason of this Supplemental and Amendatory Ordinance. All the covenants, stipulations, promises and agreements contained in this Supplemental and Amendatory Ordinance by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar, the Paying Agent, the Holders of the Series 1988 Bonds, AMBAC Indemnity and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Supplemental and Amendatory Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Supplemental and Amendatory Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Supplemental and Amendatory

Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Supplemental and Amendatory Ordinance, which abstract has been determined to contain sufficient information to give notice of the contents of such Supplemental and Amendatory Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in The Fairmont Times - West Virginian, a newspaper published and having a general circulation in the City of Fairmont, together with a notice to all persons concerned, stating that this Supplemental and Amendatory Ordinance has been adopted and that the City contemplates the issuance of the Series 1988 Bonds described in this Supplemental and Amendatory Ordinance and that any person interested may appear before the Council at the public hearing to be had at a public meeting of Council on the 11th day of October, 1988, at 7:00 p.m., in the meeting room of the Council in the City-County Complex of the City of Fairmont and present protests, and that a certified copy of this Supplemental and Amendatory Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all objections and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

This Ordinance shall become effective 30 days after enactment.

| | |
|---|---|
| Passed on first reading: | September 27, 1988 |
| Adopted following public hearing held: | October 11, 1988 |
| Second public hearing held: | October 25, 1988 |
| Effective, 30 days after adoption: | November 24, 1988 |

[SEAL]

Robert M. Trumon Jr.
Mayor

ATTEST:

Debbie M. Bowman
City Clerk

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that Ordinance No. 796 entitled:

> SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 680 OF THE CITY OF FAIRMONT, ENACTED AUGUST 13, 1985; AUTHORIZING THE REFUNDING OF A PORTION OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1985, OF THE CITY OF FAIRMONT, WEST VIRGINIA; AUTHORIZING THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $13,500,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 680 TO PERMIT THE REFUNDING OF LESS THAN ALL OF SUCH SERIES 1985 BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE ADOPTION OF A SUPPLEMENTAL RESOLUTION AND THE FORM OF AND EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT AND OTHER INSTRUMENTS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS

was introduced at a regular meeting of Council of the City of Fairmont, West Virginia, held September 27, 1988. The Ordinance being lengthy and technical in nature and there being no request by the majority of councilmembers present that the proposed Ordinance be read in its entirety, the Clerk read a synopsis of the Ordinance prepared by Bond Counsel in accordance with Ordinance No. 614 adopted November 15, 1983, amending the City Charter. Notice was published in The Fairmont Times - West Virginian, on September 30, 1988, pursuant to Charter provision Section 2.13(d) and a public hearing was held October 11, 1988. There being no request that said proposed Ordinance be read in its entirety, the Clerk publicly read the title only and copies were available to the public as required by Ordinance No. 499. Said Ordinance was duly passed and adopted by the Council of said City on October 11, 1988.

The abstract and notice of public hearing that Ordinance No. 796 was adopted on October 11, 1988, were published in The Fairmont Times - West Virginian on October 12, 1988, and a second abstract and notice of public hearing was published in said

newspaper on October 19, 1988. The public hearing was held October 25, 1988. There being no objections to the Ordinance being put into effect, it was signed by the undersigned officials and filed in the Office of the Clerk of said City of Fairmont, West Virginia.

Adopted by Council of the City of Fairmont, October 25, 1988.

Robert M. Tennant Jr.
Mayor

ATTEST:

Debra M. Bowan
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

James C. Watkins
Attorney for the Sanitary Sewer Board of the City of Fairmont

APPROVED AS TO FORM:

Kenneth A. Egan
City Attorney

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the City Council of the CITY OF FAIRMONT at a regular meeting of the City Council held at 7:00 p.m., on October 25, 1988, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper published and of general circulation in the City of Fairmont, the first publication having been not less than 10 days prior to such public hearing.

Dated this 30th day of November, 1988.

[SEAL]

DEBRA M. BOWMAN
City Clerk

EXHIBIT A

[FRONT OF BOND]

No. R-_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BOND,
SERIES 1988

| Yield to Maturity | Maturity Date | Bond Date | CUSIP NO. |
|---|---|---|---|

Registered Owner: _____

Stated Value at Maturity: _____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Stated Value at Maturity specified above, which Stated Value at Maturity includes the principal of and interest on this Bond, at the Yield to Maturity specified above. The Stated Value at Maturity of this Bond is payable in any coin or currency which, on the date of payment thereof, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender of this Bond at the office of _____, _____, _____, as Paying Agent and Registrar (the "Registrar").

This Bond is one of a series of bonds, in the aggregate Stated Value at Maturity of $_____ (the "Bonds"), of like tenor and effect, except as to number, denomination, yield and date of maturity, dated _____, 1988, issued to (i) refund a portion of the City's Sewerage System Refunding Revenue Bonds,

Series 1985, outstanding in the total aggregate principal amount of $_____ (the "Prior Bonds"), which Prior Bonds were issued to finance or refinance the cost of construction of certain additions, betterments and improvements to the sewerage system of the City (hereinafter referred to as the "System"); (ii) to pay a portion of the costs of certain additions, betterments and improvements for the System (as hereinafter defined); and (iii) to pay costs of issuance of the Bonds and costs relating to such refunding. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the City Council of the City on August 13, 1985, supplemented and amended by a supplemental resolution adopted September 17, 1985, a supplemental and amendatory ordinance enacted October 25, 1988, and a supplemental resolution adopted October 25, 1988 (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

The Bonds are not subject to redemption prior to maturity.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HEREIN.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the

Registrar duly executed by the Registered Owner or its attorney duly authorized in writing.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Ordinance.

This Bond shall not be entitled to any benefit under the Ordinance or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

This Bond is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

All provisions of the Ordinance and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and its City Manager, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Facsimile Signature)
Mayor

(Facsimile Signature)
City Manager

ATTEST:

(Facsimile Signature)
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION
AND REGISTRATION

This Bond is one of the Bonds of the Series designated therein, described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above on the date set forth below. Imprinted on the reverse hereof is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: _____, _____.

_____,
as Registrar

By _____
Its Authorized Officer

[REVERSE OF BOND]

The Bonds are payable only from and are secured on a parity in all respects with the Prior Bonds outstanding, including payments to be made pursuant to the Investment Purchase Agreement, as defined in the Ordinance, by (i) the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System; (ii) all moneys in the Series 1988 Bonds Sinking Fund established under the Ordinance; and (iii) unexpended proceeds of the Bonds, and the City hereby and in the Ordinance pledges such revenues and moneys to such payment. Said Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1988 Bonds Sinking Fund and said unexpended Bond proceeds. Neither the credit nor the taxing power of the City or any political subdivision thereof is pledged for the payment of the principal of or interest on this Bond. Under the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to produce revenues net of such operating expenses equal to at least 125% of (i) the maximum annual debt service on the Bonds, the Prior Bonds outstanding and any additional bonds hereafter issued on a parity with the Bonds; and (ii) the amount due under the Investment Purchase Agreement in each fiscal year. Such required payments on behalf of the Bonds and the Investment Purchase Agreement shall constitute a first charge upon all the revenues of the System, but on parity with respect to lien and sources of and security for payment with each other and the nonrefunded Prior Bonds. The City has entered into certain further covenants with the registered owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is hereby made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon (if any) shall be applied solely to the purposes set forth above, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the registered owners of the Bonds.

(Form of)

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration of the within Bond with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

The Registrar will not affect transfer of this Bond unless the information concerning the transferee requested below is provided. The transferor should complete whichever of the following is applicable.

INDIVIDUAL:

Name and Address:

_____
_____
_____

Social Security Number: _____
(Include information for all joint owners if the Bond is held by joint account)

CORPORATION OR PARTNERSHIP:

Name and Address:

_____
_____
_____

Tax Identification Number: _____

TRUST:

Name of Trust:

_____
_____
_____

Name and Address of Settlor:

_____
_____
_____

Name and Address of Trustee:

_____
_____
_____

Tax Identification Number of Trust: _____

Tax Identification Number or Social Security Number of Settlor: _____

NOMINEE:

Name and Address:

_____

_____

_____

Tax Identification Number or Social Security Number: _____

(If the Bond is to be registered in nominee name, then include information for the principal.)

11/21/88
FMTSR2/3-A/A

CITY OF FAIRMONT

$11,065,000 Sewerage System Refunding Revenue
Capital Appreciation Bonds, Series 1988

SUPPLEMENTAL RESOLUTION PROVIDING AS TO AMOUNT, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY; AUTHORIZING AND APPROVING A BOND PURCHASE PROPOSAL, AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT, A REGISTRAR'S AGREEMENT AND AN OFFICIAL STATEMENT RELATING TO THE BONDS; DETERMINING THAT A NET SAVINGS IS TO BE ACHIEVED BY SUCH REFUNDING; APPOINTING A REGISTRAR, PAYING AGENT, ESCROW AGENT, SECURITIES PROVIDER AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND THE REFUNDING.

WHEREAS, the City of Fairmont (the "Issuer"), in the County of Marion, State of West Virginia, is a municipal corporation of said State, the governing body of which is its Council;

WHEREAS, this Council has duly and finally enacted on October 25, 1988, a Supplemental and Amendatory Ordinance (the "Supplemental and Amendatory Ordinance") entitled:

SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 680 OF THE CITY OF FAIRMONT, ENACTED AUGUST 13, 1985; AUTHORIZING THE REFUNDING OF A PORTION OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1985, OF THE CITY OF FAIRMONT, WEST VIRGINIA; AUTHORIZING THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $13,500,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 680 TO PERMIT THE

REFUNDING OF LESS THAN ALL OF SUCH SERIES 1985 BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE ADOPTION OF A SUPPLEMENTAL RESOLUTION AND THE FORM OF AND EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT, AN INVESTMENT PURCHASE AGREEMENT AND OTHER INSTRUMENTS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS

providing for the issuance of its Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988 (the "Series 1988 Bonds"), in an aggregate principal amount not to exceed $13,500,000, for the purpose of refunding a portion of the Issuer's outstanding Sewerage System Refunding Revenue Bonds, Series 1985, dated September 15, 1985, issued in the original aggregate principal amount of $7,370,000 (the "Prior Bonds"), of which $7,185,000 principal amount is now outstanding, pursuant to an ordinance enacted August 13, 1985, and a supplemental resolution adopted September 17, 1985 (collectively, the "Prior Ordinance"), and the Supplemental and Amendatory Ordinance is supplementary to and amendatory of the Prior Ordinance and is herein called, together with the Prior Ordinance, the "Ordinance," all in accordance with Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, in accordance with the Charter of the Issuer, the Supplemental and Amendatory Ordinance shall become effective on November 24, 1988, being 30 days following the date of adoption thereof, which occurred on October 25, 1988;

WHEREAS, the Supplemental and Amendatory Ordinance provides that the exact principal amount of the Series 1988 Bonds to be sold and the exact maturities, interest rates, redemption provisions and the price of the Bonds be established, that a determination that issuance of the Series 1988 Bonds results in a net savings to the Issuer be made, that a Paying Agent, Registrar, Depository Bank, Escrow Agent and Securities Provider be designated and that an Escrow Deposit Agreement, Investment Purchase Agreement and Registrar's Agreement be provided for by resolution of this Council upon receipt of a Bond Purchase Proposal acceptable to this Council;

WHEREAS, the Series 1988 Bonds are proposed to be purchased by Butcher & Singer, Inc. (the "Original Purchaser"),

pursuant to a Bond Purchase Proposal dated October 25, 1988 (the "Proposal"); and

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Proposal, the Escrow Deposit Agreement, the Investment Purchase Agreement and the Registrar's Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 1988 Bonds, hereinafter described, be approved, that the price of the Series 1988 Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amount of the Series 1988 Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 1988 Bonds be herein provided for;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRMONT HEREBY RESOLVES:

Section 1. Pursuant to the Ordinance and the Act, this Resolution is adopted and there are hereby authorized and ordered to be issued the Series 1988 Bonds in the aggregate principal amount (stated value at maturity) of $11,065,000, with a stated value at issuance of $3,680,320.50. The Series 1988 Bonds shall be dated November 30, 1988, upon original issuance, shall bear interest (expressed as "Yield to Maturity"), payable only at maturity, and shall mature on November 1, of each of the years as follows:

| Maturity | Stated Value at Issuance | Stated Value at Maturity | Yield to Maturity | Maturity | Stated Value at Issuance | Stated Value at Maturity | Yield to Maturity |
|---|---|---|---|---|---|---|---|
| 1996 | $298,975 | $500,000 | 6.60% | 2004 | $239,020 | $760,000 | 7.40% |
| 1997 | 277,770 | 500,000 | 6.70 | 2005 | 217,229 | 755,000 | 7.50 |
| 1998 | 257,570 | 500,000 | 6.80 | 2006 | 198,354 | 755,000 | 7.60 |
| 1999 | 238,380 | 500,000 | 6.90 | 2007 | 180,770 | 755,000 | 7.70 |
| 2000 | 328,091 | 745,000 | 7.00 | 2008 | 166,017 | 755,000 | 7.75 |
| 2001 | 306,538 | 755,000 | 7.10 | 2009 | 154,880 | 760,000 | 7.75 |
| 2002 | 282,060 | 755,000 | 7.20 | 2010 | 142,597 | 755,000 | 7.75 |
| 2003 | 259,041 | 755,000 | 7.30 | 2011 | 133,030 | 760,000 | 7.75 |

Section 2. The Series 1988 Bonds shall not be subject to optional or mandatory redemption prior to maturity.

Section 3. All other provisions relating to the Series 1988 Bonds shall be as provided in the Ordinance, and the

Series 1988 Bonds shall be in substantially the form provided in the Ordinance.

Section 4. The Proposal between the Original Purchaser and the Issuer, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager on this day of the Proposal on behalf of the Issuer are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Proposal with such changes, insertions and omissions as may be approved by the Mayor and City Manager. Execution of the Proposal by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section. The price of the Series 1988 Bonds, pursuant to the Proposal, shall be $3,606,714.09 (which represents the principal amount of the Series 1988 Bonds less the Original Purchaser's discount of $73,606.41 and original issue discount of $7,384,679.50), there being no interest accrued on the Series 1988 Bonds.

Section 5. The Escrow Deposit Agreement by and between the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent, to be dated as of the date of delivery of the Series 1988 Bonds, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor and City Manager shall execute and deliver the Escrow Deposit Agreement with such changes, insertions and omissions as may be approved by the Mayor and City Manager. Execution of the Escrow Deposit Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 6. The Investment Purchase Agreement, by and among the Issuer, the Escrow Agent and First Fidelity Bank, N.A., New Jersey to be dated as of the date of delivery of the Series 1988 Bonds, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor and City Manager shall execute and deliver the Investment Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor and the City Manager. The execution of the Registrar's Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 7. The Official Statement dated October 25, 1988, to be substantially in the form of the Draft Official Statement described below, and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor and City Manager shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Mayor and the City Manager. The execution of the Official Statement by the Mayor and City Manager shall be conclusive

evidence of any approval required by this Section. The distribution by the Original Purchaser of the Draft Official Statement dated October 20, 1988, substantially in the form submitted to this meeting is hereby ratified and approved.

Section 8. The Registrar's Agreement to be dated as of the date of delivery of the Series 1988 Bonds, by and between the Issuer and the Registrar designated herein, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor and City Manager shall execute and deliver the Registrar's Agreement with such changes, insertions and omissions as may be approved by the Mayor and the City Manager. The execution of the Registrar's Agreement by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 9. The Issuer does hereby appoint and designate (i) City National Bank of Fairmont, Fairmont, West Virginia, for the purpose of serving in the capacities of Registrar, Paying Agent and Depository Bank; and (ii) the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Escrow Agent under and pursuant to the Escrow Deposit Agreement and the Ordinance.

Section 10. The Mayor, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1988 Bond issue, hereby and by the Ordinance approved and provided for, including, if needed, subscription forms for the purchase of United States Government Securities, a commitment for the Municipal Bond Insurance Policy and other documents to the end that the Series 1988 Bonds may be delivered at the earliest practical date to the Original Purchaser, pursuant to the Proposal.

Section 11. Under the provisions of the Act, and as provided in the Ordinance and the Series 1988 Bonds, the Series 1988 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely from the revenues derived from the operation of the sewerage system of the Issuer and the funds and accounts established by the Ordinance and neither the credit nor the taxing power of the Issuer is pledged for, and no tax shall ever be levied for, payment of the Bonds and the interest thereon.

Section 12. Based upon the actual principal amount, maturity schedule and interest rates for the Series 1988 Bonds, as set forth in Paragraph (1) hereof, it is hereby determined that the Series 1988 Bonds show a net savings to the Issuer after deducting

all expenses of the refunding. Prior to delivery of the Series 1988 Bonds, the Issuer shall have obtained from an independent certified public accountant a certification that the amount of savings stated to be achieved by the refunding shall in fact be correct, based upon his review, comparison and analysis of the net interest cost in dollars of the Series 1988 Bonds and the net interest cost in dollars of the Prior Bonds being refunded. The City Manager is hereby authorized and directed to employ an independent certified public accountant satisfactory to the Original Purchaser to supply the certification required herein and to take other actions required in connection with the refunding.

Section 13. The net proceeds of the Series 1988 Bonds shall be deposited in accordance with the Supplemental Ordinance as follows:

| | |
|---|---|
| Deposit to Escrow Fund | $3,158,700.00 |
| Bond Insurance Premium | 75,592.17 |
| Deposit to Cost of Issuance Fund | 75,000.00 |
| Deposit to Construction Fund | 297,421.92 |
| Total Net Proceeds | $3,606,714.09 |

Section 14. The City Manager, Mayor, City Clerk and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all further actions necessary to cause the Series 1988 Bonds to be insured by AMBAC Indemnity Corporation or such other municipal bond insurance company as is acceptable to the Original Purchaser. Any rebate received by the Issuer in connection with municipal bond insurance on the Prior Bonds shall be deposited by the Issuer in accordance with the Escrow Deposit Agreement.

Section 15. This Resolution shall be effective on November 24, 1988, being 30 days following the date of enactment of the Ordinance.

Adopted this 25th day of October, 1988.

[SEAL]

Robert M. Simmons Jr
Mayor, City of Fairmont

City Manager, City of Fairmont

ATTEST:

Debra M. Bohrer
City Clerk

APPROVED AS TO FORM:

Courtney A. Ryan
City Attorney

11/21/88
FMTSR1-I

# CITY OF FAIRMONT
# SEWER REVENUE BONDS, SERIES 2003 A
# (WEST VIRGINIA SRF PROGRAM)

## BOND ORDINANCE

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CITY OF FAIRMONT

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Fairmont (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants

of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of a conventional gravity sewer collection system to serve approximately 111 residential and commercial customers in Meredith Springs/Dakota Camp area, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), which the Authority administers pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), in the total aggregate principal amount of not more than $600,000 (the "Series 2003 A Bonds"), initially to be represented by a single bond, to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 2003 A Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2003 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2003 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2003 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 30 years.

F. It is in the best interests of the Issuer that its Series 2003 A Bonds be sold to the Authority pursuant to the terms and provisions of a bond purchase agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority, and the DEP (the "Bond Purchase Agreement"), to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will initially rank prior and senior to the Series 2003 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 ( the "Prior Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. The Issuer will not issue any additional bonds until the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are on a parity with the Prior Bonds.

The Series 2003 A Bonds shall initially be subordinate and junior to the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinance, with the exception of the Series 1988 Bonds Reserve Account which is not fully funded as of the date hereof.

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

I. The Issuer has complied with all requirements of West Virginia law and the Bond Purchase Agreement relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2003 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2003 A Bonds or such final order will not be subject to appeal.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2003 A Bonds for the purposes set forth herein.

K. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2003 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2003 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2003 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

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

"Board" means the Sanitary Board of the Issuer.

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

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Purchase Agreement" means the Bond Purchase Agreement heretofore entered into, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2003 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

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

"Bonds" means, collectively, the Series 2003 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2003 A Bonds for all or a portion of the proceeds of the Series 2003 A Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

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

"Consulting Engineers" means Greenhorne & O'Mara, Inc., Fairmont, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"Depreciation Fund" means the Depreciation Fund created by the Prior Ordinance and continued hereby.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Grant" means any and all grants received by the Issuer for the payment of a portion of the costs of acquiring and constructing the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

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

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

"Investment Property" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

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

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

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

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2003 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2003 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2003 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

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

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or

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

"Operation and Maintenance Fund" means the Operation and Maintenance Fund created by the Prior Ordinance and continued hereby.

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

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 2003 A Bonds in the Supplemental Resolution, with the written consent of the Authority and the DEP.

"Prior Bonds" means the Issuer's Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320.

"Prior Ordinance" means collectively, the ordinance of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account.

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

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of

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

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

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

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

"Registrar" means the Bond Registrar.

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

"Reserve Accounts" means, collectively, the respective Reserve Account established for the Series 2003 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2003 A Bonds.

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

"Series 2003 A Bonds" means Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"Series 2003 A Bonds Construction Trust Fund" means the Series 2003 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2003 A Bonds Reserve Account" means the Series 2003 A Bonds Reserve Account established in the Series 2003 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 2003 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2003 A Bonds in the then current or any succeeding year.

"Series 2003 A Bonds Sinking Fund" means the Series 2003 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Fund established for the Prior Bonds and the Series 2003 A Bonds.

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

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

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2003 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2003 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligation of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

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

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

## ARTICLE II

## AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $1,474,475, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2003 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the DEP.

The cost of the Project is estimated not to exceed $1,474,475, of which an amount not to exceed $600,000 will be obtained from proceeds of the Series 2003 A Bonds and $872,405 will be obtained from the proceeds of a Small Cities Block Grant.

## ARTICLE III

## AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF BOND PURCHASE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2003 A Bonds, funding a reserve account for the Series 2003 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2003 A Bonds of the Issuer. The Series 2003 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2003 A (West Virginia SRF Program)", in the principal amount of not more than $600,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2003 A Bonds remaining after funding of the Series 2003 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2003 A Bonds, if any, shall be deposited in or credited to the Series 2003 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2003 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Bond Purchase Agreement. The Series 2003 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2003 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2003 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2003 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2003 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable,

corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2003 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2003 A Bonds shall cease to be such officer of the Issuer before the Series 2003 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2003 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2003 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2003 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2003 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2003 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2003 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2003 A Bonds.

The registered Series 2003 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2003 A Bonds or transferring the registered Series 2003 A Bonds are exercised, all Series 2003 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2003 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2003 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2003 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2003 A Bonds or, in the case of any proposed redemption of Series 2003 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2003 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2003 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided.

No Holder or Holders of the Series 2003 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2003 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2003 A Bonds shall be initially secured forthwith equally and ratably by a subordinate and junior lien on the Net Revenues derived from the operation of the System until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2003 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2003 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2003 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2003 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2003 A Bonds to the original purchasers;

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

D. An executed copy of the Bond Purchase Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2003 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2003 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF FAIRMONT
SEWER REVENUE BOND, SERIES 2003 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF FAIRMONT, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1,200____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative fee (as defined in the hereinafter describe Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____, 200__, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement (the "Bond Purchase Agreement") by and among the Issuer, the Authority and the DEP, dated _____, 200__.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public

sewerage system of the Issuer (the "Project"); [(ii) to fully fund the Series 2003 A Bonds Reserve Account]; and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2003, and a Supplemental Resolution duly adopted by the Issuer on _____, 2003 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS INITIALLY ISSUED SUBORDINATE AND JUNIOR, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE CAPITAL APPRECIATION BONDS, SERIES 1988, DATED NOVEMBER 30, 1988, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,680,320 (THE "PRIOR BONDS") UNTIL SUCH TIME AS THE SERIES 1988 BONDS RESERVE ACCOUNT HAS BEEN FULLY FUNDED. AT THAT TIME, THE LIEN POSITION OF THE SERIES 2003 A BONDS WILL BE UPGRADED TO A FIRST LIEN POSITION ON A PARITY WITH THE PRIOR BONDS.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, initially junior and subordinate to the pledge of Net Revenues in favor of the Holders of the Prior Bonds until upgraded as stated above, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2003 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2003 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or prior to the Bonds, including the Prior

Bonds; provided however, that so long as there exists in the Series 2003 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or prior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF FAIRMONT has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated _____, 2003.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2003 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2003.

HUNTINGTON NATIONAL BANK
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Bond Purchase Agreement. The Series 2003 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Bond Purchase Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Bond Purchase Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Bond Purchase Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Bond Purchase Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Within 60 days following the Completion Date of the Project, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE IV

[RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinance) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

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

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

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

(4) Series 2003 A Bonds Construction Trust Fund.

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

(1) Series 2003 A Bonds Sinking Fund; and

(2) Series 2003 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation and in the Prior Ordinance. All revenues at any time on deposit in the Revenue Fund shall be initially disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay interest on the Prior Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Prior Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Reserve Account, the amount required by the Prior Ordinance.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinance and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2003 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2003 A Bonds

Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, if not fully funded upon issuance of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2003 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2003 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2003 A Bonds Reserve Requirement.

At such time as the Series 1988 Bonds Reserve Account has been fully funded, and the Series 2003 A Bonds hold a first lien position on a parity with the Prior Bonds, all revenues at any time on deposit in the Revenue Fund shall then be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay interest on the Prior Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1988 Bonds Sinking Fund, the amount required by the Prior Ordinance to pay the principal of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2003 A Bonds on the next

ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2003 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1988 Bonds Reserve Account, the amount required by the Prior Ordinance; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2003 A Bonds, if not fully funded upon issuance of the Series 2003 A Bonds, for deposit in the Series 2003 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2003 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2003 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2003 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinance and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Depreciation Fund.

Monies in the Series 2003 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2003 A Bonds as the same shall become due. Monies in the Series 2003 A Bonds Reserve Account shall be used only

for the purposes of paying principal of and interest, if any, on the Series 2003 A Bonds as the same shall come due, when other monies in the Series 2003 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2003 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2003 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2003 A Bonds Reserve Account which result in a reduction in the balance of the Series 2003 A Bonds Reserve Account to below the Series 2003 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2003 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2003 A Bonds Sinking Fund or into the Series 2003 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2003 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall initially be made, with respect to the Prior Bonds and thereafter, with respect to the Series 2003 A Bonds, until such time as the Series 2003 A Bonds are upgraded to a parity position with the Prior Bonds; at that time, all previously mentioned payments shall thereafter be made on a parity and pro rata basis with respect to the Prior Bonds and Series 2003 A Bonds.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account created hereunder, and all required amounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall

be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2003 A Bonds Sinking Fund, including the Series 2003 A Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2003 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required interest, if any, principal and reserve account payments with respect to the Series 2003 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission, the SRF Administrative Fee as set forth in the Schedule Y attached to the Bond Purchase Agreement.

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

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority anytime make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

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

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

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

J. All Tap Fees shall be deposited by the Issuer, as received, in the Series 2003 A Bonds Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2003 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2003 A Bonds, there shall first be deposited with the Commission in the Series 2003 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2003 A Bonds, there shall be deposited with the Commission in the Series 2003 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2003 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2003 A Bonds, such monies shall be deposited with the Depository Bank in the 2003 A Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2003 A Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2003 A Bonds shall be expended as directed by the DEP.

Section 6.02. Disbursements From the Series 2003 A Bonds Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2003 A Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2003 A Bonds Construction Trust Fund shall be made only after submission to, and approved from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Bond Purchase Agreement, in compliance with the construction schedule; and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

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

(B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

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

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

Pending such application, monies in the Series 2003 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

## ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2003 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2003 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2003 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2003 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2003 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2003 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of all Series 2003 A Bonds shall be initially secured forthwith equally and ratably by a subordinate and junior lien on the Net Revenues derived from the operation of the System until such time as the Series 1988 Bonds Reserve Account has been fully funded. At that time, the lien position of the Series 2003 A Bonds will be upgraded to a first lien position on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2003 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Bond Purchase Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the sewer rate ordinance of the Issuer enacted November 13, 2002, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2003 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take

all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Bond Purchase Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2003 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance. Additionally, so long as the Series 2003 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2003 A Bonds, immediately be remitted to the Commission for deposit in the Series 2003 A Bonds Sinking Fund, and, with the written permission of the Authority or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2003 A Bonds. Any balance remaining after the payment of the Bonds and the interest , if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Depreciation Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, in writing determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws

of the State. The proceeds of any such sale shall be remitted by the Issuer to the Commission for deposit in the Sinking Funds for prepayment of the Bonds. The payment of such proceeds into the Depreciation Fund and the Sinking Funds shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

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

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Until such time as the Series 1988 Bonds Reserve Account is fully funded and except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2003 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2003 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2003 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2003 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2003 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. The Issuer hereby covenants that it will not issue any additional bonds until the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are on a

parity with the Prior Bonds. When the Series 2003 A Bonds are on a parity with the Prior Bonds, the Issuer further covenants that no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2003 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Prior Ordinance).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2003 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or improvements to the System or refunding the Series 2003 A Bonds issued pursuant hereto, or both such purposes.

So long as the Prior Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during the 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than 125% of the average annual amount which will become due for principal of and interest on the following:

(1) The Prior Bonds;

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

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

When the Prior Bonds are no longer outstanding and so long as the Series 2003 A Bonds are still outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be

financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The Bonds then Outstanding;

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

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

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System and their source of and security for payment from said Net Revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2003 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part

thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2003 A Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

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

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2003 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2003 A Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2003 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2003 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Bond Purchase Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Bond Purchase Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Bond Purchase Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably

necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2003 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, to meet the coverage requirements set forth in the Prior Ordinance so long as the Prior Bonds are outstanding and thereafter (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2003 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 A Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2003 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with the Series 2003 A Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2003 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the DEP and the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued

operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance within 30 days of adoption to the Authority and the DEP and to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, the Authority and to any Holder of any Bonds, or anyone acting for and on behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Bond Purchase Agreement, and forward a copy of such report to the DEP and the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Bond Purchase Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Bond Purchase Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Bond Purchase Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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

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

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

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the

System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2003 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Bond Purchase Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $600,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will

be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the Bond Purchase Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service

Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

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

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and has obtained all approvals for the issuance of the Series 2003 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Bond Purchase Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Bond Purchase Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

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

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2003 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2003 A Bonds during the term thereof is, under the terms of the Series 2003 A Bonds or any underlying arrangement, directly or indirectly, secured by any

interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2003 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2003 A Bonds during the term thereof is, under the terms of the Series 2003 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2003 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2003 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2003 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2003 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2003 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2003 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of

changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2003 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2003 A Bonds held in "contingency" as set forth in the Schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2003 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

## INVESTMENT OF FUNDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2003 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 2003 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2003 A Bonds as a condition to issuance of the Series 2003 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2003 A Bonds as may be necessary in order to maintain the status of the Series 2003 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the

proceeds of the Series 2003 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the West Virginia Infrastructure and Jobs Development Council or the DEP, as the case may be, from which the proceeds of the Series 2003 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the West Virginia Infrastructure and Jobs Development Council or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2003 A Bonds and any additional information requested by the Authority.

## ARTICLE IX

## DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2003 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2003 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2003 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2003 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2003 A Bonds shall initially be junior and subordinate to the Holders of the Prior Bonds until such time when the Series 1988 Bonds Reserve Account is fully funded and the Series 2003 A Bonds are upgraded to a parity position with the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection

of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

## PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2003 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2003 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2003 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2003 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2003 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2003 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2003 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2003 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2003 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2003 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2003 A Bonds.

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

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinance, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided

that, in the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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

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

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Times West Virginian*, a newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2003 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: - April 22, 2003

Passed on Second Reading: - April 29, 2003

Passed on Final Reading
Following Public Hearing: - May 13, 2003

Mayor

APPROVED AS TO FORM:

City Attorney

CH591994.1

that. In the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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

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

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Times West Virginian*, a newspaper published and of general circulation in the City of Fairmont, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2003 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: - April 22, 2003

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Passed on Final Reading
Following Public Hearing: - May 13, 2003

Mayor

APPROVED AS TO FORM:

City Attorney

CHS91994.1

## CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF FAIRMONT on the 13th day of May, 2003.

Dated: June 26, 2003.

[SEAL]

Janet L. Keller
City Clerk

06/18/03
268460.00002

EXHIBIT A

Bond Purchase Agreement included in bond transcript as Document 3.

CITY OF FAIRMONT

Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF FAIRMONT; APPROVING AND RATIFYING THE BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Fairmont (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective May 13, 2003 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF FAIRMONT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS;

APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), of the Issuer (the "Bonds" or the "Series 2003 A Bonds"), in an aggregate principal amount not to exceed $600,000, and has authorized the execution and delivery of the bond purchase agreement relating to the Series 2003 A Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Bond Purchase Agreement"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Bond Purchase Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Bond Purchase Agreement has been presented to the Issuer at this meeting;

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bond Purchase Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

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

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $485,543. The Series 2003 A Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2034 and shall bear no interest. The principal of the Series 2003 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2004, and maturing September 1, 2034, and in the amounts as set forth in the "Schedule Y" attached to the Bond Purchase Agreement and incorporated in and made a part of the Series 2003 A Bonds. The Series 2003 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Bond Purchase Agreement, so long as the Authority shall be the registered owner of the Series 2003 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 0.5% of the principal amount of the Series 2003 A Bonds set forth in the "Schedule Y" attached to the Bond Purchase Agreement.

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

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Bond Purchase Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Bond Purchase Agreement by the Mayor and the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Bond Purchase Agreement and in the applications to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor and the City Manager, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate Branch Banking & Trust Company, Fairmont, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2003 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2003 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2003 A Bonds proceeds in the amount of $16,188 shall be deposited in the Series 2003 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2003 A Bonds shall be deposited in or credited to the Series 2003 A Bond Construction Trust Fund as received from the DEP from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about June 17, 2003, to the Authority pursuant to the Bond Purchase Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 13. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2003 A Bonds Sinking Fund and the Series 2003 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 26th day of June, 2003.

CITY OF FAIRMONT

By: _____
Its: Mayor

By: _____
Its: City Manager

October 11, 2007

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

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Gary K. Bennett, CPA, independent certified public accountant, and the opinion of Steptoe & Johnson PLLC, bond counsel, stating that the parity and coverage tests have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the West Virginia Department of Environmental Protection and the Authority, the registered owner of the entire outstanding aggregate principal amount of the Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated June 26, 2003, issued in the original aggregate principal amount of $485,543 (the "Series 2003 A Bonds") of the City of Fairmont, West Virginia (the "Issuer"), hereby consents to the issuance of the Sewer Revenue Bonds, Series 2007 A (West Virginia SRF Program), in the original aggregate principal amount of $5,577,760 (the "Bonds"), by the Issuer, under the terms of the ordinance authorizing the Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Series 2003 A Bonds. The Series 2003 A Bonds and the Bonds shall initially be junior and subordinate as to liens, pledge, source of and security for payment to the Issuer's outstanding Sewerage System Refunding Revenue Capital Appreciation Bonds, Series 1988, dated November 30, 1988, issued in the original aggregate principal amount of $3,680,320 (the "Series 1988 Bonds") until such time as the Series 1988 Bonds Reserve Account has been fully funded or the Series 1988 Bonds have been paid in full or otherwise legally defeased, at which time the Bonds and the Series 2003 A Bonds shall automatically upgrade to a parity first lien position.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Authorized Officer