MINUTES
FINANCE COMMITTEE MEETING
6:15 P.M., FEBRUARY 18, 2020
A/V CONFERENCE ROOM

Bobby Reishman, Vice Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:15 p.m., February 18, 2020, in the Audio/Visual Room in City Hall.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Bobby Reishman, Vice Chair
Brent Burton
Mary Beth Hoover
Will Laird
Keeley Steele

I. DISCUSSION:

a. Councilmember Hoover asked for unanimous consent to dispense with the reading of the minutes for the February 3, 2020 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

b. Business Improvement Districts – Lewis Payne and Susie Salisbury
Salisbury explained that a Business Improvement District (BID) is a tool that is used to finance services that improve the quality of life and economic vitality of downtowns and commercial corridors. Revenues from the assessment are directed back to the defined area to finance a myriad of enhanced services including security, maintenance, marketing, economic development, parking, beautification and special events, etc. Payne that several property owners around the Slack Plaza area have proposed to create a BID around Summers Street and Slack Plaza. Their intent is to start small and focus solely on projects that will enhance the redevelopment and management of that public space. They are asking that a sub-committee of property owners be appointed who will issue a report (how the money will be raised, the BID district location, etc.).

Mayor Goodwin said that they have the Administration's support. From the audience, Councilmember Ceperley said that it would be a wonderful opportunity for the City.

c. General Administration Updates – Health Insurance - City Manager, Jonathan Storage
In the beginning stages of preparing the Administration's upcoming budget proposal, we worked to prepare both expense and revenue projections for the next fiscal year beginning July 1st. The Administration was recently alerted to a grim projection that the City's healthcare costs would increase by $2.5M in the next year, representing the City's largest expense growth line item by far. Such ongoing healthcare costs are projected to only further rise in out-years, contributing mightily to the City's high OPEB liability and future budget deficits. As you know, the City is completely self-insured for its healthcare costs, meaning the City pays medical claims directly with tax dollars and extremely modest employee premium contributions, which have not been increased since 2011 (representing an unheard-of 9-year stagnation of premium rates). Additionally, the City has permitted a shockingly low deductible of only $300 per year.

This arrangement is unstainable. The continual rise of healthcare costs creates a compounding effect and is by no means incremental or subject to market force pendulum swings of high and low costs. The Administration is confronting this situation by reviewing alternative plans to reverse projected healthcare cost increases and save a significant amount of taxpayer funds. Moving to a more traditional style of insurance coverage will permit the Administration to continue to offer competitive health benefits to employees, while affording the Administration the opportunity to reinvest in the City's employees through salary increases. Among other options being explored, the Administration has begun conversations with PEIA representatives to evaluate advantageous options for the City's active (non-retiree) employees. This approach was successfully implemented recently by the Cabell County Commission. Additionally, the Kanawha County Commission has reported an estimated $3M in taxpayer funds will be saved when it switches its healthcare benefits to a more managed program. At this time, the Administration is planning to keep the City healthcare clinic operational and fully funded. This Administration must always be mindful to apply sound financial principles to the work we do on the Public's behalf, especially if our goals continue to focus on building a vibrant community that will last for years to come.

II. RESOLUTIONS:

a. Resolution No. 290-20 - Authorizing the Mayor or City Manager to enter into a contract with Billy C. McCallister Electronics Services in Winfield, West Virginia in the amount of $51,419.76 for the purchase of 42 Kenwood Interoperable Radios and accessories for the Charleston Police Department. The vendor has agreed to honor the WV Department of Corrections state contract prices for the City of Charleston. The price for each radio with extra batteries, charger, microphone and belt attachment will be $1,224.28. These radios will replace older, outdated radios currently being utilized by the officers.

   Be it Resolved by the Council of the City of Charleston, West Virginia:

   The Mayor or City Manager is authorized to enter into a contract with Billy C. McCallister Electronics Services in Winfield, West Virginia in the amount of $51,419.76 for the purchase of 42 Kenwood Interoperable Radios and accessories for the Charleston Police Department. The vendor has agreed to honor the WV Department of Corrections state contract prices for the City of Charleston. The price for each radio with extra batteries, charger, microphone and belt attachment will be $1,224.28.

Storage added that there is a state-wide contract procured through the state Purchasing Division. The radios will be bought funds from the 2019 DOJ Bureaus of Justice Assistance Grant.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative, Chairperson Jenkins declared Resolution No. 290-20 approved.

b. Resolution No. 292-20 - Authorizing the Mayor or City Manager to purchase 29 containers of yellow traffic marking paint and 17 containers of white traffic marking paint from Ozark Materials of Greenville, Alabama, at a total price of $21,265.20.

Be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to purchase 29 containers of yellow traffic marking paint and 17 containers of white traffic marking paint from Ozark Materials of Greenville, Alabama, at a total price of $21,265.20.

Storage added that the City Manager's Office sought competitive bids for 29, 55-gallon containers of yellow traffic marking paint and 17, 55-gallon containers of white traffic marking paint. The City received 4 bids. Ozark Materials of Greenville, Alabama was the low bidder with a price of $21,265.20. Additionally, Ozark Materials qualified for local vendor preference.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 292-20 approved.

Traffic Marking Paint
Project No. 2020-002
Bid Opening: February 10, 2020 @ 10:30am

	Ozark Materials, UC	**The Sherwin Williams Company**	**Ennis-Flint, Inc.**	**Osburn Associates, Inc.**
	591 Glendale Avenue	101 Prospect Avenue, 720GH	4161 Piedmont Pkwy, Ste 370	PO Box 912
	Greenville, AL 36037	Cleveland, OH 44115	Greensboro, NC 27410	Logan, OH 43138
	P: (334) 371-2303	P: (800) 597-2929	P: (800) 331-8118	P: (800)0523-8917
	dyana@ozarkmaterials.net	hwyinsidesales@sherwin.com	contracts@ennisflint.com	jennifert@osburns.com
Project Total	$21,265.20	$23,567.50	$24,410.10	$31,246.71
Local Vendor Preference (4%)	(850.61) $20,414.59	N/A	N/A	N/A
Project Delivery between 4-20-2020 and 4-30-2020	Yes	Yes	Yes	Yes
Successful Bidder with Local Preference Consideration	✓			

c. Resolution No. 293-20 - Authorizing the Mayor or City Manager to purchase Air Mask Systems (SCBA) for the Charleston Fire Department from Finley Fire Equipment, at a total price of $32,534.40. The purchase price was determined through a competitive bidding process, of the which the awarded bidder qualified for local vendor preference consideration.

Be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to purchase to purchase Air Mask Systems (SCBA) for the Charleston Fire Department from Finley Fire Equipment, at a total price of $32,534.40. The purchase price was determined through a competitive bidding process, of the which the awarded bidder qualified for local vendor preference consideration.

Storage added that the City Manager's Office received bids to purchase 5 air mask systems on behalf of the Charleston Fire Department. Two bids were submitted. The low bid was received by Finley Fire Equipment in the amount of $33,890. Finely qualified for a local vendor preference. The second bid was for $43,605.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 293-20 approved.

Air Mask Systems (SCBA) Fire
Project No. 2020-003
Bid Opening: February 12, 2020 @ 10:30am

	Finley Fire Equipment	**Municipal Emergency Services, Inc**	
	5255 N. State Route 60 NW	12 Turnberry Lane, 2nd floor	
	McConnelsville, OH	Sandy Hook, CT 06482	
	P: (304) 482-2944	P: (240) 428-9428	
	jparsons@finleyfire.com	rcarr@mesfire.com	
Project Total	$33,890.00	$43,605.00	
Local Vendor Preference (4%)	(1,355.60) $32534.40	N/A	
Project Completion	60 days	60 days	
Successful Bidder with Local Preference Consideration	✓		

d. Resolution No. 294-20 - Authorizing the Mayor or City Manager to execute a First Amendment to a Memorandum of Understanding between the City of Charleston and Alpha Technologies, Inc., dated February 23, 2016, according to the terms contained in the attached exhibit.

Be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to execute a First Amendment to a Memorandum of Understanding between the City of Charleston and Alpha Technologies, Inc., dated February 23, 2016, according to the terms contained in the attached exhibit.

Storage added that the purpose of this amendment is to clarify several terms within the original MOU with Alpha Technologies.
The amendment focuses on items such as: notice to various city departments of upcoming work, maintenance requirements, bonding requirements, dispute procedures and extension requests and the city's use of fiber installed by Alpha.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 294-20 approved.

<u>First Amendment to Memorandum of Understanding</u>

This FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING (this "First Amendment") constitutes the first amendment by the City of Charleston (the "City") and Alpha Technologies Inc. ("Alpha") who are the only parties to that certain Memorandum of Understanding (the "Agreement") dated as of February 23, 2016 (together the City and Alpha may be known herein as the "Parties").

WHEREAS, under the terms of the Agreement, and consistent with multiple permits obtained by Alpha since the effective date of the Agreement, Alpha has constructed and located miles of fiber optic network facilities located within the City's Public Rights-of-Way;

WHEREAS, pursuant to the non-exclusive access rights granted under Article II, Section A of the Agreement, Alpha plans to continue to develop Facilities and to locate those Facilities within the City's Public Rights-of-Way pursuant to the terms of the Agreement;

WHEREAS, the Parties have determined that certain modifications to the Agreement are to their mutual benefit; and

NOW THEREFORE, the Parties now hereby agree to modify and amend the Agreement as follows:

1. <u>Definitions</u>. Capitalized terms set-forth herein that are not otherwise defined in this First Amendment shall have the meanings assigned in the Agreement.

2. <u>Article II, Section C</u>. Article II, Section C is hereby amended by deleting the third sentence of the second paragraph beginning with "If Alpha refuses or neglects to so protect, alter, remove or relocate Facilities…" and replacing it with the following sentence:

> If Alpha refuses or neglects to so protect, alter, remove or relocate Facilities or equipment within the agreed negotiated time the City may remove, alter, or relocate Facilities or equipment without liability and the City may bill to Alpha, and Alpha shall pay to the City, the costs incurred in connection with such removal, alteration, or relocation, *all provided that* (i) reasonable efforts shall be used to minimize any damage to Alpha's Facilities or equipment and *provided that* (ii) the City may contract with experts or consultants with the necessary expertise to advise or assist the City in the removal, alteration, or relocation of the Facilities or equipment in a manner compliant with this paragraph and that the costs of such experts or consultants may be billed to Alpha, and shall be paid by Alpha, consistent with this sentence.

The remainder of Article II, Section C shall remain unchanged.

3. <u>Article II, Section D</u>. Article II, Section D is hereby amended by deleting the last sentence of Article II, Section D beginning with "Alpha may seek an extension of the time…" and replacing it with the following sentence:

> Alpha may seek an extension of time to perform the work where it cannot be performed within thirty (30) days even with the exercise of due diligence, and such request for an extension will not be unreasonably refused. In the event that Alpha has not performed the work required by this paragraph by the deadline set by the City in its notice or by a later negotiated deadline under the prior sentence, then the City may perform such work itself and the City may bill to Alpha, and Alpha shall pay to the City, the costs incurred in connection with such work *provided that* (i) reasonable efforts shall be used to minimize any damage to Alpha's Facilities or equipment and *provided that* (ii) the City may contract with experts or consultants with the necessary expertise to advise or assist the City in the work and the costs of such experts or consultants may be billed to Alpha, and shall be paid by Alpha, consistent with this sentence.

The remainder of Article II, Section D shall remain unchanged.

4. <u>Article III, Section A</u>. Article III, Section A shall be amended by adding the following sentence at the end of the Section:

> Following the construction and installation of Alpha's Facilities or equipment as covered by a permit, Alpha shall provide the City with access to as-built drawings of the same, *subject* to reasonable security and copying restrictions as may be implemented from time to time.

The remainder of Article III, Section A shall remain unchanged.

5. Article III, Section E. Article III, Section E shall be amended by deleting the sentence that begins "Alpha shall notify the City Traffic Engineering Department, City Engineer…" and replacing that sentence with the following:

> Alpha shall get approval from the City Traffic Engineering Department and City Engineer, and then provide notice to the local residents, prior to beginning work.

The remainder of Article III, Section A shall remain unchanged.

6. Article III, Section F. Article III, Section F shall be deleted in its entirety and replaced with the following:

> After any work to install, maintain, repair, relocate, or remove the Facilities, Alpha shall, at its own cost, repair and return the PROW to the same or similar condition as it existed before such installation, maintenance, repair, relocation, or removal of Alpha's Facilities. Upon the completion of the restoration work required by this Section, the City shall inspect such restoration work within ten (10) days of the written notice by Alpha that such work is completed and shall either certify in writing that the restoration work has been completed to its reasonable satisfaction *or* provide, in writing, reasonable requirements for correcting or completing the restoration work such that Alpha's obligation, under this Section, to repair and return the PROW to the same or similar condition as it existed before Alpha's work has been met.
>
> Should additional work be required by the City, Alpha shall complete the written requirements within a mutually agreed upon reasonable amount of time following the delivery of the same and the process set forth in this Section for the City to inspect and certify completion shall repeat. In the event that Alpha fails, within the mutually agreed upon reasonable time, to complete restoration work reasonably specified by the City as required by this Section, or if the parties are unable to reach an agreement regarding the reasonable time, the City shall issue a written notice to Alpha reasonably specifying the restoration work to be completed and providing a deadline for completion that is not less than thirty (30) days after the written notice required by this sentence (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Alpha through good faith negotiation). If Alpha shall have failed to complete the restoration work by the deadline then the City may repair and return the PROW to the same or similar condition as it existed before Alpha's work on the segment and the City may bill to Alpha, and Alpha shall pay to the City, the costs incurred in connection with such repair and restoration work, *all provided that* (i) reasonable efforts shall be used to minimize any damage to Alpha's Facilities or equipment during the repair or restoration work and *provided that* (ii) the City may contract with experts or consultants with the necessary expertise to advise or assist the City in the repair or restoration work and that the costs of such experts or consultants may be billed to Alpha, and shall be paid by Alpha, consistent with this sentence.

7. Article III, Section G. The City and Alpha agree that the general liability insurance required by Subsection (1) of Article III, Section G, shall provide 'occurrence-based' coverage. The remainder of Article III, Section G shall remain unchanged.

8. Article III, Section H. Article III, Section H shall be deleted in its entirety and replaced with the following:

> The installation, maintenance, removal, or replacement of the Facilities will occur in segments. Upon the commencement of work permitted by this Agreement on each segment, Alpha will secure a permit pursuant to Article III, Section A. Following the work covered by each permit the City and Alpha shall meet their obligations in Article III, Section F with respect to the restoration of the PROW and the certification by the City that the restoration work is complete.
>
> During any time that Alpha has active permits under this Agreement (that is, permits for which the City has not yet certified that the PROW restoration work required by Alpha pursuant to Article III, Section F is complete), Alpha shall retain on deposit with the City of Charleston a surety bond or irrevocable letter of credit naming the City of Charleston as an oblige in the amount of Fifty Thousand Dollars ($50,000.00), or such greater amount as may be required from time to time to meet the standard permitting requirements of the City. Alpha's obligation to maintain any surety bond required under this paragraph shall terminate when Alpha has connected all locations listed in Exhibit A to this First Amendment and Alpha has no active permits with the City.
>
> The City of Charleston may draw against any surety bond required by this Section for any loss or damage to the PROW utilized by Alpha due to damage caused to PROW and not remedied pursuant to the procedures set forth in Article III, Section F.

During the term of this Agreement, Alpha may undertake maintenance and repairs of its Facilities in the absence of a bond or letter of credit, so long as doing so complies with applicable permits and permitting rules, *provided that* in the event Alpha undertakes repairs on an emergency basis at a time when permitting offices are closed, Alpha will notify the City Engineer of said emergency repair on the next business day following initiation of the repair.

9. Article IV, Section A, Sub-Section (1).

9.1 The words "and ownership" are deleted from the first sentence of Article IV, Section A, Sub-Section (1).

9.2 The last sentence of Article IV, Section A, Sub-Section (1) is deleted and replaced with the following:

Alpha will provide the City with reasonable and convenient access, as set forth in paragraph 2 below, to the City's four (4) strands of fiber at each of the locations specified in Exhibit A to this First Amendment.

10. Article IV, Section A, Sub-Section (2). The reference to "Exhibit A" in Article IV, Section A, Sub-Section (2) is deleted and replaced with a reference to Exhibit A to this First Amendment.

11. Article IV, Section B.

11.1 The words "and ownership" are deleted from the first sentence of Article IV, Section B.

11.2 The last sentence of Article IV, Section B is deleted and replaced with the following:

Notwithstanding anything to the contrary herein, (1) the fiber installed by Alpha for the City's use under this Agreement, and any associated equipment, access points, and associated facilities or infrastructure (and the City's use thereof) shall be subject to an indefeasible right to use agreement by and between the City and Alpha; and (2) the rights of the City to use such fiber shall be governed by the indefeasible right to use agreement.

12. Exhibits A & B. Exhibit A and Exhibit B to the Agreement are deleted and replaced by Exhibit A to this First Amendment.

13. No Further Amendments. The foregoing amendments shall be the only amendments to the Agreement and the Agreement, as amended by this First Amendment, shall remain in place according to its terms.

[*Signature Page to First Amendment to Memorandum of Understanding Follows*]

[*Signature Page to First Amendment to Memorandum of Understanding*]

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

ALPHA TECHNOLOGIES INC.

____
By: Douglas E. Tate
Its: President

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

The foregoing instrument was acknowledged before me this ____ day of _______, 2020, by Douglas E. Tate, in his capacity as President of Alpha Technologies Inc., a West Virginia corporation, for and on behalf of the corporation.

My commission expires: ____

____

____

Notary Public

[SEAL]

CITY OF CHARLESTON

____
By: Amy Shuler Goodwin
Its: Mayor

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

The foregoing instrument was acknowledged before me this ___ day of ______, 2020, by Amy Shuler Goodwin, in her capacity as Mayor of the City of Charleston, West Virginia, for and on behalf of the City.

My commission expires: ____

____

____

Notary Public

[SEAL]

Exhibit A

First Amendment to Memorandum of Understanding

CONNECTION LOCATIONS

Location Name	Common Name
301 Virginia Street East	Main connection point
Truslow Street to West Virginia State Capitol	Charleston (Install Fiber in Conduit 1)
City Hall to City Service Center	City Engineering (Replace Fiber in Conduit 2)
City Service Center	City Services Center
Haddad Park	Haddad Park
Parking Bldg. 6	Summers Street Parking Garage
MLK Center	MLK
KC Rec Center	KC Center
601 Morris Street	The Ballpark
CFD 1	300 Morris Street
Parking Bldg. 3	Bus Station/Police Roll Call
Public Works	1100 Pennsylvania Ave.
Roosevelt Center	Ruffner Avenue and Jackson Street
City Hall	City Hall – 501 Virginia Street East
Charleston Coliseum and Convention Center	CCCC
CPD Bike Unit	Transit Mall
Magic Island	Magic Island
Municipal Auditorium	Municipal Auditorium
Parking Bldg. 2	Cinema 7
Parking Bldg. 4	Civic Center PG
Parking Bldg. 5	City Hall PG
Davis Park	Davis Park
CFD Training	CFD Training – 115 Lee Street West

e. Resolution No. 295-20 - Authorizing the Mayor or City Manager to execute a conduit lease with Alpha Technologies, Inc., according to the terms contained in the attached exhibit.

Be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to execute a conduit lease with Alpha Technologies, Inc., according to the terms contained in the attached exhibit.

Storage added that Alpha Technologies has agreed to lease from the City two underground conduit to be used for running and operating fiber optic cabling for internet and telecommunications services. Conduit 1 is from 301 Virginia Street via Kanawha Boulevard to California Avenue. Conduit 2 runs from City Hall to the City Service Center. Under the proposed lease, Alpha will pay the City $86,966 over a 2-year period. The City will also receive 4 strands of dark single mode fiber in each of the conduits. The City will receive 400 Mbps of free internet during the initial lease term and certain free consulting services. The term is for 20 years and can be extended up to 3, 5-year extensions. The leasing of the conduit facilitates the development of fiber optic infrastructure in the City of Charleston, and provides valuable services and other consideration for the City's benefit.

Councilmember Reishman stated that the lease was favorable to the City.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 295-20 approved.

CONDUIT LEASE

This CONDUIT LEASE (this "Lease"), by and between the City of Charleston West Virginia ("City") and Alpha Technologies Inc. ("Alpha") (Alpha and the City may be referred to herein individually as a "party" or collectively as the "Parties"), is effective as of ____ day of February, 2020 ("Effective Date").

Whereas, the City owns those certain conduits as are more particularly described in Exhibit A, attached hereto (in this Lease "Conduit 1", "Conduit 2", and collectively, the "Conduits"), which are suitable for the installation of fiber optic cabling are related infrastructure;

Whereas, the City believes that it is its best interest to facilitate the development of fiber optic infrastructure in the City of Charleston;

Whereas, the City wishes to have the use of fiber optic cabling within the Conduits for supporting its various official duties, programs, and other statutory purposes;

Whereas, the City wishes to have certain multi-mode fiber replaced with single-mode fiber in Conduit 2; and

Whereas Alpha wishes to have the use of the Conduits for its commercial purposes;

Now therefore, in consideration of One Dollar ($1.00) and other valuable consideration, and of the mutual covenants and agreements herein set forth, the receipt and sufficiency of which the City hereby acknowledges, upon the terms and conditions set forth in this Lease, the City does hereby LEASE, LET, AND DEMISE to Alpha (i) the exclusive right to use the Conduits to install, lay, construct, inspect, maintain, repair, operate, alter, replace, upgrade, and remove, in whole or in part, one or more communications systems consisting of such cables, fibers, lines, wires, interconnections, terminals, devices, boxes, fiber optic, inner-duct, data transmission lines, and equipment and electrical service for the same, and other appurtenances, as may be necessary or convenient therefor (the "Alpha Infrastructure") over, across and through the Conduits (including over across and through the public rights of way in which the Conduits are located), situate in the City of Charleston, Kanawha County, West Virginia, in the locations specified in Exhibit A, (ii) the non-exclusive right of ingress, egress and regress within, upon, under across and over the City's Public Rights of Way for the purpose of Alpha's exercising its rights herein; (iii) the non-exclusive right to open and close boxes, covers, manholes, grates, gates, fences and doors for the purpose of Alpha's exercising its rights herein;(iv) the right, upon written approval from the City, to relocate, change the size of, and abandon in place any part of the Alpha Infrastructure; and (v) any other rights reasonably necessary for the purpose of Alpha's exercising its rights described in this Lease.

1. Representations of City. The City covenants, represents, and warrants as follows:

   i. As the Effective Date of this Lease, and for the duration of the Term, the City is the sole owner of the Conduits, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever, and that Alpha shall, at all times during the Term of this Lease, have quiet possession of all of the Conduits together with the rights and benefits conferred on Alpha by this Lease or necessary or convenient for the full enjoyment or use of the rights herein granted;

   ii. The City has all necessary rights to grant Alpha the premises hereby granted;

   iii. The Conduits do not interfere in any manner with the existence or operation of any private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television cables, public works, telecommunication providers, or utility providers; and

   iv. The City has complied with all applicable law related to its entry into and authorization of this Lease.

2. Consideration.

   2.1 Consideration. The following shall constitute consideration for this Lease:

   i. Alpha will pay a one-time fee to the City in the amount of Eighty-Six Thousand Nine Hundred Sixty-Six Dollars and 00/100 ($86,966.00) payable over a period not to exceed twenty four months in such payment amounts as may be determined in Alpha's discretion except that the first payment shall be at least Fifteen Thousand and 00/100 Dollars ($15,000.00) and shall be paid within thirty (30) days of the Effective Date of this Lease;

   ii. Alpha will, contemporaneously with the installation the Alpha Infrastructure (A) install, at no charge to the

City, four (4) strands of “dark” single mode fiber in each of the Conduits during the Initial Term (the “City Fiber”); and (B) in Conduit 2, Alpha will remove, at no charge to the City, the existing multi-mode fiber located in Conduit 2 before installing the City Fiber described in this Section 2.1(ii), all of which is to be completed in coordination with the City so as to minimize disruptions to the City;

iii. Within forty-five (45) days of the date of this Lease, and continuing during the Initial Term, Alpha will provide at least four hundred (400) Mbps of internet free of charge, to the City at a point located within the public right of way within 10 feet of the City’s property line for the property commonly known as 501 Virginia Street East, Charleston, West Virginia;

iv. During the Initial Term Alpha will agree to sell standard racks (that encompass no more than 42 rack units) at its ‘best-available-pricing’ made available to certain other governmental units, as the same may change from time to time, *provided that* these services shall be governed by separate terms and agreements that the City must enter into with Alpha from time to time governing the use of the racks;

v. Alpha will provide, at no charge to the City, two (2) strands of single mode fiber from a point located within the public right of way within 10 feet of the City’s property line for the property commonly known as 501 Virginia Street East, Charleston, West Virginia to Alpha’s data center space in South Charleston, West Virginia (such fiber to be part of the “City Fiber” described in this Lease); and

vi. Alpha will provide the City with consulting services, at no charge for labor costs, related to the City’s initial conceptual design and implementation of a fiber network utilizing the City’s Fiber *provided that* (A) these services shall be governed by separate terms and agreements that the City must enter into with Alpha from time to time; (B) that additional work beyond consulting on the initial design and implementation phase shall not be included in the scope of work for consulting services described herein; and that (C) no installation, maintenance, connection, or construction work related to the City’s Fiber shall be included as a part of these consulting services.

2.2 Certain Consideration. In the event that the delivery of the consideration set forth in Sub-Sections (iii), (iv), and (vi) of Section 2.1 herein becomes, during the Initial Term, infeasible or commercially unreasonable to deliver, the Parties shall negotiate in good faith to determine consideration of reasonably equivalent value to serve in substitution thereof. In the event the Parties are unable to reach an agreement within a reasonable amount of time, it shall be considered a material breach of this Lease.

2.3 Associated Agreements, Restrictions, and Terms.

2.3.1 City Fiber Terms. Notwithstanding anything to the contrary in this Lease, including but not limited to this Section 2, the City Fiber and any other fiber installed or provided for the City’s use, and any associated equipment, access points, and associated facilities or infrastructure (and the City’s use thereof) shall be subject to an indefeasible right to use agreement by and between the City and Alpha; and (2) the rights of the City to use such fiber shall terminate upon the termination of the Lease.

2.3.2 Restrictions. City Fiber shall be utilized by City only for governmental or public purposes. City shall not use, nor shall it permit the use of or access to, the City Fiber for direct or indirect, for-profit, competition with Alpha or Alpha’s use of its fiber optic network. The City shall not lease, assign, or otherwise convey any or all of the City Fiber to any non-governmental third party. The City may permit the use of the City Fiber, subject to the restrictions in this Section 2.3.2 and the terms and conditions of the indefeasible right to use agreement referenced in Section 2.3.1, by the Charleston Sanitary Board, the Charleston Urban Renewal Authority, the Charleston Building Commission, the Charleston Land Reuse Agency and other municipal governmental entities, boards, or departments of the City of Charleston.

3. Construction. The installation, construction, inspection, maintenance, repair, alteration, replacement, upgrading, relocation, changing the size of, or removal of the Alpha Infrastructure shall be known herein as the “Work.” Prior to commencing the Work, Alpha shall obtain a permit from appropriate governmental authorities with the City of Charleston and shall comply with the terms thereof.

3.1 Where required by law, Alpha shall apply for a permit for in connection with the Work and shall comply with all terms and conditions of any such permit. Alpha shall pay all standard permitting and related processing, field marking, engineering and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. Alpha shall maintain good standing with the City Collector’s Office throughout the Term. Should any construction bond be required, Alpha shall comply with the bonding requirements during the Work period.

3.2 In completing the Work, Alpha shall not injure or in any manner cut or trim the trees or branches of trees located within the City's rights-of-way without the written permission of the City. All such trimmings shall be performed in a safe and orderly manner and in accordance with applicable law.

3.3 The Work shall be accomplished without cost or expense to the City and in such a manner so as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or other access thereon within the City's rights-of-way. During the performance of the Work Alpha shall be solely responsible for putting in place adequate safety measures and warnings for both pedestrians and vehicular traffic, including, but not limited to, barricades, flashing lights, flaggers, and all other measures required by law or necessary under the circumstances. Alpha shall obtain approval from the City Traffic Engineering Department and City Engineer and parking disruptions, and then provide notice to the local residents prior to beginning Work.

3.4 Alpha shall justly compensate owners of property, including the City, for any damages caused by Alpha's Work.

3.5 After any Work, Alpha shall, at its own cost, repair and return any public rights of way to the same or similar condition as it existed before such Work. Upon the completion of the restoration work required by this Sub-Section, the City shall inspect such restoration work within ten (10) days of the notice by Alpha that such work is completed and shall either certify in writing that the restoration work has been completed to its reasonable satisfaction *or* provide, in writing, reasonable requirements for correcting or completing the restoration work such that Alpha's obligation, under this Sub-Section, to repair and return the public rights of way to the same or similar condition as it existed before Alpha's work has been met.

Should additional work be required by the City, Alpha shall complete the written requirements within a reasonable amount of time following the delivery of the same and the process set forth in this Sub-Section for the City to inspect and certify completion shall repeat. In the event that Alpha fails, within a reasonable time, to complete restoration work reasonably specified by the City as required by this Sub-Section, the City shall issue a written notice to Alpha reasonably specifying the restoration work to be completed and providing a deadline for completion that is not less than thirty (30) days after the written notice required by this sentence (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Alpha through good faith negotiation). If Alpha shall have failed to complete the restoration work by the deadline then the City may repair and return the public rights of way to the same or similar condition as it existed before Alpha's Work and the City may bill to Alpha, and Alpha shall pay to the City, the costs incurred in connection with such repair and restoration work, *all provided that* (i) reasonable efforts shall be used to minimize any damage to Alpha's Infrastructure during the repair or restoration work and *provided that* (ii) the City may contract with experts or consultants with the necessary expertise to advise or assist the City in the repair or restoration work and that the costs of such experts or consultants may be billed to Alpha, and shall be paid by Alpha, consistent with this Sub-Section.

3.6 Alpha shall maintain and timely provide payment for, at its sole cost and expense, commercial occurrence-based general liability insurance with coverage limits of at least $1,000,000.00 per occurrence for liability resulting from injury or death, and from damage to property, occurring during the Work.

4 Access Restrictions. During the Term, Alpha shall have the sole and exclusive right to open or enter, or grant permission to enter, the Conduits and the Alpha Infrastructure access points (the latter sometimes known as "handholes") which will be installed pursuant to this Lease. For the avoidance of doubt, no third-party contractor or other person, not engaged by Alpha, shall be granted such permission without Alpha's written consent to access the Conduits or the Alpha Infrastructure. If, at the request of the City, Alpha grants any third-party contractor the right to open or enter the Conduits or a handhole Alpha reserves the right to participate in such permitted access and to create reasonable restrictions on the permitted access. The City agrees to refer all third-party inquiries regarding access to the Conduits or handholes to Alpha.

5 Telecommunications Act. Alpha shall be solely responsible for complying with the Telecommunications Act of 1996 and any other relevant state or federal law.

6 Term. The initial term ("Initial Term") of this Lease shall be for twenty (20) years from the Effective Date. By mutual written agreement, the Parties may extend the term of this Lease by up to three (3) five (5) year extensions *provided that* during any extensions the total consideration paid by Alpha to the City shall be equal to the fair market value for the use of the Conduit at the time of the extensions. The Initial Term, plus any mutually-agreed extensions, shall constitute the term ("Term") of this Lease.

7 Governing Law. This Lease shall be governed by the laws of West Virginia.

8 Indemnification. To the fullest extent permitted by law, Alpha agrees to indemnify, defend and hold harmless the City of Charleston its officers, employees, agents, and officials from and against any and all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of or related to the installation,

operation, maintenance, repair, relocation or removal of the Alpha Infrastructure; the negligent or wrongful acts or omissions of Alpha, its officers, employees, and agents; or, any breach by Alpha of its obligations described in this Lease; provided, Alpha shall not be responsible for any liability arising from the sole negligence or willful misconduct of the City of Charleston, its officers, employees, and agents nor shall it be liable for any liability arising from any breach of the covenants, representations, or warranties of the City in Section 1 of this Lease.

9 Assignment; Successors. Alpha may not assign, transfer, sublease or otherwise convey its interest under this Lease without the prior written consent of the City, which consent shall not be unreasonably withheld, *provided that* Alpha may assign, transfer, lease, pledge, or mortgage its interest under this Lease, in whole or in part, without the consent of the City, to one or more of Alpha's affiliates or any party providing financing to Alpha. This Lease shall be binding upon and inure to the benefit of the Parties, their respective successors, assigns, executors, administrators, tenants, licensees and legal representatives.

10 Force Majeure. If, during the Term, Alpha is delayed in the performance of any act required of Alpha hereunder by reason of strikes, lockouts, inability to procure labor or materials, riots, insurrections, wars, catastrophic events or other reasons beyond the reasonable control of Alpha, then performance of such act shall be extended for a period equivalent to the period of such delay.

11 Notices. Notices pursuant to this Lease shall be in writing and addressed as follows:

To the City of Charleston, care of the City Manager, P.O. Box 2749, Charleston, WV 25301, with a copy to the City Attorney at the same address.

To Alpha Technologies Inc., 4003 Outlook Drive, Hurricane, WV 25526, Attention Douglas Tate President/CEO.

Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

12 Severability. In the event any of the provisions of this Lease are determined to be illegal or unenforceable, the Parties shall in good faith make commercially reasonable efforts to amend such provisions by mutual written consent by the minimum extent necessary to resolve the issues giving rise to the determination that such provisions are illegal or unenforceable. All other provisions of this Lease shall remain in full force and effect.

13 Dispute Resolution; Remedies. If any material breach, default, or other dispute arises out of this Lease, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve such breach, default, or other dispute through negotiation. If the Parties cannot resolve the matter without litigation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve disputes hereunder and that the Parties shall have all rights and remedies available to them under the laws of the State of West Virginia.

14 Recording; Notice. The Parties agree that this Lease shall not be placed of record with the Clerk of the County Commission of Kanawha County, *however*, Alpha shall have the authority, without the consent of City, to record a Memorandum of Lease, or such other documentary evidence of the existence of its rights, in the office of the Clerk of the Kanawha County Commission or such other depository of public records as may be necessary to protect its interest in the Lease. During the Term, the City shall direct inquiries regarding the Conduits to Alpha and shall inform Alpha as soon as practical following any notice received by the City of claims against the City's interest in the Conduits.

15 Entire Agreement. This Lease, together with its Exhibits, constitute the entire understanding of the Parties with respect to the subject matter of this Lease

[*Conduit Lease Signature Page Follows*]
[*Conduit Lease Signature Page*]

IN WITNESS WHEREOF, the Parties have duly executed this Conduit Lease.

CITY OF CHARLESTON

____

By: Amy Shuler Goodwin
Its: Mayor

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this ___ day of February, 2020, by Amy Shuler Goodwin, in her capacity as Mayor of the City of Charleston, West Virginia, for and on behalf of the City.

My commission expires: ____

____

____

Notary Public

[SEAL]

ALPHA TECHNOLOGIES INC.

____

By: Douglas E. Tate
Its: President

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

The foregoing instrument was acknowledged before me this ___ day of February, 2020, by Douglas E. Tate, in his capacity as President of Alpha Technologies Inc., a West Virginia corporation, for and on behalf of the corporation.

My commission expires: ____

____

____

Notary Public

[SEAL]

EXHIBIT A

THE CONDUIT

Conduit 1 is as described below:

Conduit 1 is a two inch (2") diameter HDPE (high-density polyethylene) pipe running from 301 Virginia Street East to the corner of Washington Street and California Avenue, via Kanawha Boulevard, and up California Avenue. The Conduit is owned by the City of Charleston, and is situated in a cluster of three conduits (two of which are owned by WVNET, a division of the West Virginia Higher Education Policy Commission).

Conduit 2 is as described below:

Conduit 2 is a conduit between City Hall, 501 Virginia Street East, and the City Service Center, 114 Dickinson Street. The Conduit is owned by the City of Charleston.

f. Resolution No. 296-20 - Authorizing approval of Amendment No. 7 in the FY 2019-2020 General Fund Budget as indicated on the attached list of accounts.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That Amendment No. 7 in the FY 2019-2020 General Fund Budget as indicated on the attached list of accounts is approved.

Storage added that the budget amendment appropriates $45,000 to be received in grant funds from the West Virginia Department of Environmental Protection for a Recycling Study. The amendment shows an allocation for a part-time employee to facilitate the study and manage the grant's requirements and an allocation to a contracted services account to pay for a consultant to perform the study.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 296-20 approved.

General Fund FY 2019-2020 Budget Amendment No. 7 - February 18, 2020

Account No.	Department	Account Description	Amount
001 366 00 0000	Revenue	State Grants	(45,000)
001 412 00 000 2 230	City Manager	Contracted Services	20,000
001 412 00 000 1 103	City Manager	Wages & Salaries - Part Time	23,223
001 412 00 000 1 104	City Manager	FICA	1,777

To recognize the WVDEP Recycling Assistance Grant received by the city to employ a temporary/part time Recycling Coordinator and conduct a recycling planning study

g. Resolution No. 297-20 - Authorizing the Mayor or City Manager to file application for and, if awarded, accept three forgivable loans from the West Virginia Housing Development Fund (the "Lender") in the original principal amount of up to $10,000 for the Organization Technical Assistance Program, up to $20,000 for the Predevelopment Program, and up to $100,000 for the Permanent Gap Financing Program (the "Loans") to be used to continue a comprehensive blight mapping project, detailed floodplain redevelopment analysis, and expand funding for the owner-occupied housing rehabilitation programs across the entire City of Charleston; and

WHEREAS, in connection with the Loans, the City Of Charleston, if awarded, intends to execute and deliver a promissory note (the "Note") pursuant to which the Lender will extend the Loans to the City of Charleston, and certain other agreements, documents, instruments and certificates in connection with the foregoing, including a credit line deed of trust (the "Deed of Trust") granting the Lender a lien on and security interest (all of the foregoing, including the Note and Deed of Trust, are collectively referred to as the "Loan Documents").

NOW, THEREFORE, BE IT RESOLVED, that the City of Charleston is hereby authorized to enter into and perform all obligations of the City of Charleston pursuant to the application for loan funding and execution of the Loan Documents.

FURTHER RESOLVED, that the Mayor or City Manager be, and hereby is, authorized and directed to make application under the funding programs, negotiate the terms of, and execute, on behalf of the Corporation, the Loan Documents, any amendments, supplements, modifications, extensions and renewals to the Loan Documents and any and all other documents contemplated by the terms of the Loan Documents which the Lender may request or require in connection with the consummation of the Loan.

FURTHER RESOLVED, that any and all actions taken by the Mayor or City Manager and any other properly authorized officers of the Corporation in connection with the application under the funding programs, negotiation, preparation and execution of the Loan Documents prior to the date hereof are hereby ratified, affirmed and approved in all respects.

FURTHER RESOLVED, that the signature of the Mayor or City Manager to any of the application materials or Loan Documents shall be conclusive evidence of the authority of the Mayor or City Manager to execute and deliver such application or Loan Document on behalf of the City of Charleston.

Storage added that the Administration seeks authorization to apply for up to $130,000 in forgivable loans from the West Virginia Housing Development Fund. $10,000 is sought for the Organization Technical Assistance Program. $20,000 for the Predevelopment Program. $100,000 for Permanent Gap Finance Programs. The Funds will be used to continue a comprehensive blight mapping project, detailed floodplain redevelopment analysis, and expand funding for the owner-occupied housing rehabilitation programs across the entire City. The funds are characterized as “forgivable loans” simply because the Housing Development Fund is not statutorily authorized to give out grants.

Councilmember Burton moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 297-20 approved.

h. Bill No. 7866 - A Bill supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002, by Ordinance No. 6977 passed by the Council on May 19, 2003, by Ordinance No. 7132 passed by the Council on March 7, 2005, by Ordinance No. 7490 passed by the Council on September 6, 2011, by Ordinance No. 7560 passed by the Council on February 19, 2013; and by Ordinance No. 7680 passed by the Council on February 16, 2016, authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston; authorizing the issuance of not more than $16,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as designated in a supplemental resolution, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.

Be It Ordained by the Council of The City of Charleston, West Virginia:

ARTICLE I
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law, and as a supplement to Ordinance No. 4423 passed by the Council of The City of Charleston (the "Council") on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349, passed by the Council on June 2, 1997, and by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002, by Ordinance No. 6977 passed by the Council on May 19, 2003, by Ordinance No. 7132 passed by the Council on March 7, 2005, by Ordinance No. 7490 passed by the Council on September 6, 2011, by Ordinance No. 7560 passed by the Council on February 19, 2013, and by Ordinance No. 7680 passed by the Council on February 16, 2016 (collectively, the "Prior Ordinances").

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

A. The City of Charleston, West Virginia (the "City" or the "Issuer"), now owns a sewerage system (the existing system, the Project, as hereinafter defined and any additions, extensions, and improvements thereto is hereinafter, the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Sanitary Board of the City (the "Sanitary Board").

C. The Sanitary Board has presented a petition to the City for the design, acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the sewerage system revenue bonds (the "Series 2020 A Bonds") to pay the cost of the Project.

D. The estimated maximum cost of design, acquisition and construction of the Project is not to exceed $16,000,000 (including all financing related costs), which will be obtained from the proceeds of the Series 2020 A Bonds herein authorized.

E. The acquisition and construction of the System were financed or refinanced with proceeds of certain obligations of the City, which obligations are designated and have lien positions as follows:

	Designation	Lien Position
1.	$1,912,194 Sewer Revenue Bonds, Series 1989 A, dated March 21, 1989 (the "Series 1989 A Bonds").	First Lien
2.	$829,856 Sewer Revenue Bonds, Series 1989 C, dated November 21, 1989 (the "Series 1989 C Bonds").	First Lien
3.	$686,229 Sewerage System Revenue Bonds, 1999 Series A, dated June 22, 1999 (the "Series 1999 A Bonds").	First Lien
4.	$823,741 Sewerage System Revenue Bonds, 2001 Series B, dated May 22, 2001 (the "Series 2001 B Bonds").	First Lien
5.	$9,835,120 Sewerage System Revenue Bonds, Series 2004 A, dated March 23, 2004 (the "Series 2004 A Bonds").	First Lien
6.	$36,617,310 Sewerage System Revenue Bonds, Series 2005 A, dated May 5, 2005 (the "Series 2005 A Bonds").	First Lien
7.	$9,000,000 Sewerage System Revenue Bonds, Series 2008 A, dated June 26, 2008 (the "Series 2008 A Bonds").	First Lien
8.	$25,877,009 Sewerage System Revenue Bonds, Series 2011 A, dated December 13, 2011 (the "Series 2011 A Bonds").	First Lien
9.	$11,613,300 Sewerage System Revenue Bonds, Series 2013 A, dated March 27, 2013 (the "Series 2013 A Bonds").	First Lien
10.	$13,145,000 Sewerage System Revenue Bonds, Series 2016 A, dated September 22, 2016 (the "Series 2016 A Bonds").	First Lien
11.	$283,458 Supplemental Sewer Revenue Bonds, Series 1989 B, dated March 21, 1989	Second Lien

(the "Series 1989 B Bonds").

12.	$123,015 Supplemental Sewer Revenue Bonds, Series 1989 D, dated November 21, 1989 (the "Series 1989 D Bonds").	Second Lien
13.	$132,072 Sewerage System Revenue Bonds, 1999 Series B, dated June 22, 1999 (the "Series 1999 B Bonds").	Second Lien
14.	$30,492 Sewerage System Revenue Bonds, 2001 Series C, dated May 22, 2001 (the "Series 2001 C Bonds").	Second Lien
15.	$1,822,690 Sewerage System Revenue Bonds, Series 2005 B-1, dated May 5, 2005 (the "Series 2005 B-1 Bonds").	Second Lien

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 B Bonds, the Series 2004 A Bonds, the Series 2005 A Bonds, the Series 2008 A Bonds, the Series 2011 A Bonds, the Series 2013 A Bonds and the Series 2016 A Bonds are collectively referred to as the "First Lien Bonds." The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds, the Series 2001 C Bonds, and the Series 2005 B-1 Bonds are collectively referred to as the "Second Lien Bonds," which are subordinate and junior to the First Lien Bonds and the Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the "Prior Bonds."

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to design, acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Bonds, in the aggregate principal amount not to exceed $16,000,000 (including financing costs). The period of usefulness of the System after completion of the Project is not less than 40 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds and the Series 2020 A Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Series 2020 A Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Series 2020 A Bonds, when authenticated by the Registrar and issued as in this Ordinance and the Supplemental Resolution 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 2020 A Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Series 2020 A 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 party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Series 2020 A Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Series 2020 A Bonds in the aggregate principal amount of not more than $16,000,000, to permanently finance the costs of design, acquisition and construction of the Project, fund capitalized interest, if any, fund the reserve account and pay costs of issuance. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of any interim financing notes; interest on the Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; engineering and legal expenses; expenses for estimates of cost and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Original Purchaser, commitment fees, premiums for municipal bond insurance policy, debt service reserve account policy, or debt service reserve surety bond; letter of credit fees; underwriter's discount; rating agency fees; initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City or Sanitary Board for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the City or Sanitary Board for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that the Series 2020 A Bonds be sold to the Original Purchaser pursuant to the terms and provisions set forth in the Supplemental Resolution.

O. Prior to the issuance of the Series 2020 A Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the First Lien Bonds have been met; and (ii) if required, the written consent of the registered owners, of the Prior Bonds to the issuance of the Bonds on a parity with the First Lien Bonds and senior and prior to the Second Lien Bonds. The Series 2020 A Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the First Lien Bonds, but the lien of the Bonds shall be senior and superior to the lien of the registered owners of the Second Lien Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

P. The City has complied with all requirements of West Virginia law relating to the authorization of the design, acquisition, construction and operation of Project and the System and issuance of the Series 2020 A Bonds, or will have so complied prior to the issuance of any of the Series 2020 A Bonds.

Q. The City will not permit, at any time, any of the proceeds of the Series 2020 A Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the inclusion of interest on the Series 2020 A Bonds in the gross income of the owners thereof for federal income tax purposes.

R. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 2020 A Bonds authorized to be issued hereunder by those who shall own the same from time to time, the Ordinance shall be deemed to be and shall constitute a contract between the City and such Registered Owners, 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 Registered Owners of any and all of such Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Except as provided below, terms used in this Supplemental Ordinance have the meanings set forth in the Prior Ordinances, as supplemented by this Supplemental Ordinance, unless the context expressly requires otherwise.

"Act" means Chapter 16, Article 13 and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2020 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 City or any other officer of the City specifically designated by ordinance or resolution of the Council of the City.

"Bond Counsel" means any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the City or the Sanitary Board, and shall initially mean Jackson Kelly PLLC, Charleston, West Virginia.

"Bond Purchase Agreement" or "Loan Agreement" means the Bond Purchase Agreement or Loan Agreement heretofore entered, or to be entered, into by and among the City, the Authority and the DEP, providing for the purchase of the Series 2020 A Bonds from the City by the Authority, the form of which shall be approved, and the execution and delivery by the City authorized and directed or ratified, by the Supplemental Resolution.

"Bond Register" means the books of the City maintained by the Registrar for the registration and transfer of the Series 2020 A Bonds.

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

"Bondholder" or "Holder of the Bonds" or "Owner of the Bonds" or "Registered Owner" or any similar term means any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

"Bonds" means the Series 2020 A Bonds, the Prior Bonds and any future bonds issued by the City for the System.

"Bonds Construction Trust Fund" means the Bonds Construction Trust Fund created by Section 4.01 D hereof.

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

"Closing Date" means the date upon which there is an exchange of the Series 2020 A Bonds for all or a portion of the proceeds of the Series 2020 A Bonds from the Authority.

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

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

"Consulting Engineers" means Burgess & Niple, Parkersburg, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

"Costs of the Project" means those costs described in Section 1.02(M) hereof to be a part of the cost of the design, acquisition, construction and financing of the Project.

"Council" or "City Council" means the Council of the City.

"CWSRF 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.

"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 or banks to be designated as such in the Supplemental Resolution, and its successors and assigns.

"EMMA" means the Electronic Municipal Market Access website, a service provided by the MSRB.

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

"First Lien Bonds" means the bonds defined as such in Section 1.02(E).

"Fiscal Year" means each twelve month period beginning on July l and ending on the succeeding June 30.

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

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

"Independent Accountants" or "Independent Certified Public Accountants" means any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

"Mayor" means the Mayor of the City.

"MSRB" means the Municipal Securities Rulemaking Board.

"Net Proceeds" means the face amount of the Series 2020 A Bonds plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts.

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

"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.

"Ordinance" means the Prior Ordinances, as previously defined, as supplemented by this Supplemental Ordinance and as further amended or supplemented. Unless the context clearly requires a different meaning, reference to "this Ordinance" in the Prior Ordinances means the Ordinance.

"Outstanding" when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

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

"Paying Agent" means the West Virginia Municipal Bond Commission or other entity designated as such for the Bonds in the Supplemental Resolution.

"Prior Bonds" means, collectively, the bonds as defined in Section 1.02(E) hereof.

"Prior Bonds Reserve Accounts" means, collectively, the respective reserve accounts created for the Prior Bonds, as more fully described and defined in the Prior Ordinances.

"Prior Ordinances" means, collectively, the Ordinances authorizing the Prior Bonds as set forth in Section 1.01 hereof.

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

"Project" means the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

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

"Qualified Investments" means and includes 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.

"Registrar" means the entity named as such in the Supplemental Resolution.

"Regulations" means the temporary and permanent regulations promulgated under the Code.

"Reserve Account" means, collectively, one or more reserve accounts for the Bonds created by Section 4.03 hereof.

"Reserve Accounts" means, collectively, the respective Reserve Accounts created for the Prior Bonds and the Series 2020 A Bonds.

"Reserve Requirements" means the amount required to be on deposit in the Reserve Account of the Series 2020 A Bonds and the Prior Bonds, if any.

"Second Lien Bonds" means the bonds defined as such in Section 1.02(E) hereof.

"Series 2020 A Bonds" means the not more than $16,000,000 in aggregate principal amount of Sewerage System Revenue Bonds of the City, authorized by this Ordinance to be issued in one or more series as designated in the Supplemental Resolution. If issued in more than one series, the letter designations of the Series 2020 A Bonds shall be as set forth in the Supplemental Resolution.

"Series 2020 A Bonds Reserve Account" means the Series 2020 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2020 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2020 A Bonds in the then current year or any succeeding year.

"Series 2020 A Bonds Sinking Fund" means the Series 2020 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Fund" means, collectively, one or more Sinking Funds for the Bonds created by Section 4.03 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds created for the Prior Bonds and the Series 2020 A Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid under the Bond Purchase Agreement for the Series 2020 A Bonds.

"State" means the State of West Virginia.

"Supplemental Ordinance" or "this Ordinance" means this ordinance as hereafter amended or supplemented.

"Supplemental Resolution" means any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article "the", refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Series 2020 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2020 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 Series 2020 A Bonds or any other obligations of the City, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means the complete existing sewerage system now owned by the City and managed by the Sanitary Board, consisting of a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of the enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

ARTICLE II
AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized and ordered the design, acquisition and construction of the Project at an estimated cost of not to exceed $16,000,000 (including financing costs), in accordance with plans and specifications prepared by the Consulting Engineers, approved by the City, and on file in the office of the Sanitary Board.

Prior to the issuance of the Series 2020 A Bonds, the City will have received bids for the design, acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan approved by the Sanitary Board.

ARTICLE III
AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds. For the purposes of capitalizing interest on the Series 2020 A Bonds, funding the Reserve Account for the Series 2020 A Bonds, paying Costs of the Project not otherwise provided for, paying costs of issuance of the Series 2020 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the Series 2020 A Bonds of the City. The Series 2020 A Bonds shall be issued in one or more series as set forth in the Supplemental Resolution, designated as "Sewerage System Revenue Bonds", in an aggregate principal amount of not more than $16,000,000. The Series 2020 A Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Supplemental Resolution. The repayment of principal and interest on the Series 2020 A Bonds shall be as set forth in the Supplemental Resolution. The Series 2020 A Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds.

If the Series 2020 A Bonds are sold to the Authority, they shall be payable as to principal at the office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2020 A Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Each series of Series 2020 A Bonds shall be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution. The Series 2020 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bonds in aggregate principal amount equal to the amount of the Series 2020 A Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Bonds.

Section 3.02. Execution of Bonds. The Series 2020 A Bonds shall be executed in the name of the City by the Mayor and attested by the City Clerk, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Series 2020 A Bonds shall cease to be such officer of the City before the Series 2020 A Bonds so signed and sealed have been sold and delivered, such Series 2020 A 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 2020 A 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 2020 A Bonds, shall hold the proper office in the City, although at the date of such Series 2020 A Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Series 2020 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in the Supplemental Resolution, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Series 2020 A Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2020 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 Registered Owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide owner for value.

So long as any of the Series 2020 A Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Series 2020 A Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Series 2020 A Bonds or transferring Series 2020 A Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2020 A Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Series 2020 A Bond in exchange and substitution for such mutilated Series 2020 A Bond, upon surrender and cancellation of such mutilated Series 2020 A Bond, or in lieu of and substitution for the Series 2020 A Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Series 2020 A Bond. All Series 2020 A Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Series 2020 A Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Series 2020 A 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 2020 A Bonds be at any time found by anyone, and such duplicate Series 2020 A 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 2020 A Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Series 2020 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. No Registered Owner of the Series 2020 A Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service on the Series 2020 A Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2020 A Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Series 2020 A Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Series 2020 A Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Remainder of page intentionally left blank]

(FORM OF SERIES 2020 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS
SERIES 2020 A (WEST VIRGINIA CWSRF PROGRAM)

No. AR-l $______

KNOW ALL MEN BY THESE PRESENTS: The __ day of _______, 2020, that THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to 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 City 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, 20__, to and including ______ 1, 20__, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of __% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing ______ 1, 20__, as set forth on said EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear interest at a rate of ___% per annum. Principal and interest 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 by and among the City, the Authority and the DEP, dated ________, 2020.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The existing sewerage system of the City, the Project and any further extensions, additions, betterments and 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"), and a Bond Ordinance duly enacted by the City on ________, 2020, as supplemented by a Supplemental Resolution duly adopted by the City on ________, 2020 (the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE CITY'S: $1,912,194 SEWER REVENUE BONDS, SERIES 1989 A, DATED MARCH 21, 1989 (THE "SERIES 1989 A BONDS"); $829,856 SEWER REVENUE BONDS, SERIES 1989 C, DATED NOVEMBER 21, 1989 (THE "SERIES 1989 C BONDS"); $686,229 SEWERAGE SYSTEM REVENUE BONDS, 1999 SERIES A, DATED JUNE 22, 1999 (THE "SERIES 1999 A BONDS"); $823,741 SEWERAGE SYSTEM REVENUE BONDS, 2001 SERIES B, DATED MAY 22, 2001 (THE "SERIES 2001 B BONDS"); $9,835,120 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A, DATED MARCH 23, 2004 (THE "SERIES 2004 A BONDS"); $36,617,310 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2005 A, DATED MAY 5, 2005 (THE "SERIES 2005 A BONDS"); $9,000,000 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2008 A, DATED JUNE 26, 2008 (THE "SERIES 2008 A BONDS"); $25,877,009 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A, DATED DECEMBER 13, 2011 (THE "SERIES 2011 A BONDS"); $11,613,300 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2013 A, DATED MARCH 27, 2013 (THE "SERIES 2013 A BONDS"); $13,145,000 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2016 A, DATED SEPTEMBER 22, 2016 (THE "SERIES 2016 A BONDS"); AND SENIOR TO THE CITY'S $283,458 SUPPLEMENTAL SEWER REVENUE BONDS, SERIES 1989 B, DATED MARCH 21, 1989 (THE "SERIES 1989 B BONDS"); $123,015 SUPPLEMENTAL SEWER REVENUE BONDS, SERIES 1989 D, DATED NOVEMBER 21, 1989 (THE "SERIES 1989 D BONDS"); $132,072 SEWERAGE SYSTEM REVENUE BONDS, 1999 SERIES B, DATED JUNE 22, 1999 (THE "SERIES 1999 B BONDS"); $30,492 SEWERAGE SYSTEM REVENUE BONDS, 2001 SERIES C, DATED MAY 22,

2001 (THE “SERIES 2001 C BONDS”); AND $1,822,690 SEWERAGE SYSTEM REVENUE BONDS, SERIES 2005 B-1, DATED MAY 5, 2005 (THE “SERIES 2005 B-1 BONDS”).

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 B Bonds, the Series 2004 A Bonds, the Series 2005 A Bonds, the Series 2008 A Bonds, the Series 2011 A Bonds, the Series 2013 A Bonds and the Series 2016 A Bonds are collectively referred to as the “First Lien Bonds.” The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds, the Series 2001 C Bonds, and the Series 2005 B-1 Bonds are collectively referred to as the “Second Lien Bonds,” which are subordinate and junior to the First Lien Bonds and the Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the “Prior Bonds.”

This Bond is payable only from and secured by a pledge of the Net Revenues to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the First Lien Bonds, and from monies in the reserve account created under the Bond Legislation for the Bonds (the “Series 2020 A Bonds Reserve Account”) and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2020 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, 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 prior to or on a parity with the Bonds, including the 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 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 [United Bank], Charleston, West Virginia, as registrar (the “Registrar”), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the 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 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 Net Revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of this Bond.

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

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, THE CITY OF CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal, if any, to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

____
Mayor

ATTEST:

____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2020 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: ___________, 2020.

[__________],
as Registrar

____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
1.1.1.1. $		1.1.1.19. $	
1.1.1.2. $		1.1.1.20. $	
1.1.1.3. $		1.1.1.21. $	
1.1.1.4. $		1.1.1.22. $	
1.1.1.5. $		1.1.1.23. $	
1.1.1.6. $		1.1.1.24. $	
1.1.1.7. $		1.1.1.25. $	
1.1.1.8. $		1.1.1.26. $	
1.1.1.9. $		1.1.1.27. $	
1.1.1.10. $		1.1.1.28. $	
1.1.1.11. $		1.1.1.29. $	
1.1.1.12. $		1.1.1.30. $	
1.1.1.13. $		1.1.1.31. $	
1.1.1.14. $		1.1.1.32. $	
1.1.1.15. $		1.1.1.33. $	
1.1.1.16. $		1.1.1.34. $	
1.1.1.17. $		1.1.1.35. $	
1.1.1.18. $		1.1.1.36. $	

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 City with full power of substitution in the premises.

Dated: _______________, ______.

____

In the presence of:

____

Section 3.09. Sale of Bonds; Approval and Ratification of Execution of Bond Purchase Agreement. The Series 2020 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 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 City, 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, is hereby approved and incorporated into this Bond Legislation.

Section 3.10. Bonds are Issued as Parity Bonds. The Series 2020 A Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Series 2020 A Bonds, the following must occur:

A. The City must receive the written consent of the Authority for the issuance of parity bonds.

B. The coverage and parity requirements of the Prior Ordinances must be satisfied.

C. The Series 2020 A Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Bonds.

Section 3.11. Persons Treated as Owners. The City, the Registrar, the Paying Agent and any agent of the City, the Registrar or the Paying Agent may treat the person in whose name any Bond is registered as the Registered Owner of such Series 2020 A Bond for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes, whether or not such Series 2020 A Bond is overdue.

Section 3.12. Delivery of Bonds. The City shall execute and deliver the Series 2020 A Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2020 A Bonds to the original purchaser upon receipt of the documents set forth below:

(A) (1) If other than the Authority, a list of the names in which the Series 2020 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Series 2020 A Bonds to the original purchaser;

(C) Copies of this Ordinance and the Supplemental Resolution certified by the City Clerk; and

(D) The unqualified approving opinion of Bond Counsel regarding the Series 2020 A Bonds.

ARTICLE IV
APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued) and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the City and from each other:

(1) Revenue Fund;

(2) Renewal and Replacement Fund; and

(3) Series 2020 A Bonds Construction Trust Fund.

Section 4.02. 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 City and from each other:

(1) Prior Bonds Sinking Funds (established by Prior Ordinances);

(2) Prior Bonds Reserve Accounts (established by Prior Ordinances);

(3) Series 2020 A Bonds Sinking Fund; and

(4) Series 2020 A Bonds Reserve Account.

Section 4.03. Application of Bond Proceeds. Upon the issuance and delivery of the Series 2020 A Bonds, the City shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued, if any, on the Series 2020 A Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2020 A Bonds Sinking Fund and applied to payment of interest on the Series 2020 A Bonds at the first interest payment date.

2. An amount of the proceeds of the Series 2020 A Bonds equal to the amount, if any, set forth in the Supplemental Resolution shall be remitted to the Bond Commission for deposit in the Series 2020 A Bonds Reserve Account; provided, that to the extent the Series 2020 A Bonds Reserve Requirement is satisfied in whole or in part from a municipal bond debt serve reserve insurance policy, letter of credit, surety bond or other credit facility, proceeds of the Series 2020 A Bonds shall be deposited in the Series 2020 A Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 2020 A Bonds Reserve Requirement.

3. The balance of Series 2020 A Bonds proceeds, if any, shall be deposited in the Series 2020 A Bonds Construction Fund and disbursed as provided in Section 4.04 hereof.

Section 4.04. Disbursements From the Bond Construction Trust Fund. Except as provided in Section 4.03 hereof, disbursements from the Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Sanitary Board of the following:

A certificate, signed by the general manager of the Sanitary Board 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 disbursements 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, moneys in the Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

Section 4.05. Funds and Accounts; Flow of Funds. Following the monthly payment of Operating Expenses, the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances. The monthly payments to the Commission for the Series 2020 A Bonds shall be as follows:

(1) Simultaneously with the interest payments made pursuant to the Ordinance and the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2020 A Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first interest payment date of the Bonds, an amount equal to 1/3rd of the amount of interest which will become due on the 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 2020 A Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(2) Simultaneously with the principal payments made pursuant to the Ordinance and the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2020 A Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first principal payment date of the Bonds, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2020 A Bonds Sinking Fund and the next principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next annual or quarterly principal payment date, the required amount of principal coming due on such date.

(3) Simultaneously with the reserve account payments made pursuant to the Ordinance and the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2020 A Bonds Reserve Account, if not fully funded upon issuance of the Bonds, on the first day of each month, commencing on the date provided in the Supplemental Resolution, an amount equal to 1/120th of the Series 2020 A Bonds Reserve Requirement, until the amount in the Series 2020 A Bonds Reserve Account equals the Series 2020 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2020 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 2020 A Bonds Reserve Requirement.

(4) The City shall next make the interest payments pursuant to the Ordinance and the Prior Ordinances with respect to the Second Lien Bonds.

(5) The City shall next make the principal payments pursuant to the Ordinance and the Prior Ordinances with respect to the Second Lien Bonds.

(6) The City shall next make the reserve account payments made pursuant to the Ordinance and the Prior Ordinances with respect to the Second Lien Bonds.

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

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bonds Construction Trust Fund prior to completion of the Project and thereafter, to the respective Sinking Funds.

Any withdrawals from the respective Reserve Accounts which result in a reduction in the balance therein to below the applicable reserve requirement shall be subsequently restored from the first Net Revenues available after all required payments to the respective Sinking Funds for payment of debt service on the Bonds have been made in full.

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the First Lien Bonds and the Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payments.

Except as provided above and in the Supplemental Resolution, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

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

<u>Section 4.06</u>. <u>Investments</u>. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or

national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.06.

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 investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own 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 following specific provisions shall apply with respect to any investments made under this section (unless otherwise required by the Bond Insurer and as set forth in the Supplemental Resolution):

(A) Qualified Investments acquired for the Series 2020 A Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The City, through the Board, shall, or shall cause the Bond Commission to, annually transfer from the Series 2020 A Bonds Reserve Account, during construction to the Construction Fund and thereafter to the Sinking Fund any earnings on the monies deposited therein and any other funds in excess of the Series 2020 A Bonds Reserve Requirement; provided, however, that there shall at all times remain on deposit in the Series 2020 A Bonds Reserve Account an amount at least equal to the Reserve Requirement for the Series 2020 A Bonds as set forth in the Supplemental Resolution.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Series 2020 A Bonds Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Series 2020 A Bonds Reserve Account shall, at any time, be less than the applicable Series 2020 A Bonds Reserve Requirement, the Bond Insurer, if any, shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Gross Revenues after required deposits to the Sinking Fund and otherwise in accordance with Section 4.03(3).

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 2020 A Bonds, as appropriate, and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all monies deposited in the Series 2020 A Bonds Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended.

ARTICLE V
DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2020 A Bonds; or

(2) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Series 2020 A Bonds set forth in this Ordinance, any supplemental resolution or in the Series 2020 A Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Registered Owner of a Bond; or

(3) 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; or

(4) If an Event of Default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 5.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2020 A Bond or any Bond Insurer if the Series 2020 A Bonds are insured may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Ordinance with respect to the Series 2020 A Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2020 A Bonds shall be on a parity with those of the Registered Owners of the First Lien Bonds and senior and prior to those of the Registered Owners of the Second Lien Bonds.

Section 5.03. Appointment of Receiver. Any Registered Owner of a Series 2020 A Bond or any Bond Insurer if the Series 2020 A Bonds are insured may, by proper legal action, compel the performance of the duties of the City under the Ordinance and the Act, including, the completion of the Project and 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 the Bonds, any Registered Owner of a Series 2020 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 City, with the 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 Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate and maintain, manage and control 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 exercise.

Whenever all that is due upon the Series 2020 A Bonds and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City 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 City and for the joint protection and benefit of the City and Registered Owners of the Series 2020 A 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 City 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 Ordinance, and the title to and ownership of the 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, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE VI
ADDITIONAL COVENANTS OF THE CITY

All the covenants, agreements and provisions of the Prior Ordinances shall remain in full force and effect as long as the Prior Bonds and the Series 2020 A Bonds are outstanding and shall apply to the Series 2020 A Bonds as if fully set out herein. The following covenants are supplemental and in addition to the covenants set forth in the Prior Ordinances

Section 6.01. Bonds not to be Indebtedness of the City. The Series 2020 A Bonds shall not be nor constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Registered Owner of the Series

2020 A Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Series 2020 A Bonds or the interest thereon.

Section 6.02. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payments required by the Series 2020 A Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the lien of such Net Revenues in favor of the Holders of the First Lien Bonds and senior to the lien of the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2020 A Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 6.03. Initial Schedule of Rates and Charges. The City 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 and shall provide an opinion of counsel to the City of such effect. Such rates and charges shall be sufficient to comply with the requirements of the Bond Purchase Agreement and the City shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the City duly enacted on November 16, 2015, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2020 A Bonds are outstanding, the City 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, fees and charges initially established for the System in connection with the Series 2020 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement, the City hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

The City shall 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 20 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 City 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 City, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the City, the City will, to the extent allowed by law, use diligent efforts to enter into a termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 6.04. Sale of the System. So long as the Series 2020 A Bonds and the Prior Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2020 A Bonds, immediately be remitted to the Commission for deposit in the Renewal and Replacement Fund, and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Bondholder, the City shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2020 A Bonds. Any balance remaining after the payment of the Series 2020 A Bonds and interest, if any, thereon shall be remitted to the City by the Commission unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

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

Section 6.05. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.05 and Section 6.06 hereof, the City 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 2020 A Bonds. All obligations issued by the City after the issuance of the Series 2020 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, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2020 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the City shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2020 A Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2020 A Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

The City shall give the DEP and the Authority 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, or any other obligations related to the Project or the System.

Section 6.06. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2020 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2020 A Bonds.

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

No Parity Bonds shall be issued at any time, unless 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 expected 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 Ordinance then Outstanding; and

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

The "estimated average increased annual Net Revenues expected 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 adopted by the City, the time for appeal of which shall have expired 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 herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the City, the time for appeal of which shall have expired 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. All Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond over any other. The City shall comply fully with all the increased payments into the various funds 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 liens of the Series 2020 A Bonds on such revenues. The City shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2020 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 City then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 6.07. Books; Records and Audit. The City shall keep complete and accurate records of the cost of the Project. The City shall permit the DEP and the Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The City shall submit to the DEP and the Authority such documents and information as they may reasonably require in connection with 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 City shall permit the DEP and the Authority, 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 the Project, or, at any reasonable time following commencement of the Project.

The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any 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 City 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 City. 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 City as the Governing Body shall direct.

The City shall file with the DEP, the Authority, or any other original purchaser of the Series 2020 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2020 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 City shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with 2 CFR 200 Subpart F, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2020 A Bonds, and shall submit said report to the DEP and the Authority, or any other original purchaser of the Series 2020 A Bonds. Such audit report submitted to the DEP and the Authority shall include a statement that the City 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 City's Operating Expenses and debt service and reserve requirements.

The City shall permit the DEP and the Authority, or their agents and representatives, to enter and inspect the System at all reasonable times. Prior to, during and after completion of the Project, the City shall also provide the DEP and the Authority, 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 DEP and the Authority with respect to the System pursuant to the Act.

The City shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Bond Purchase Agreement for the Series 2020 A Bonds or as promulgated from time to time.

<u>Section 6.08</u>. <u>Coverage Requirement</u>. Prior to the issuance of the Series 2020 A Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2020 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2020 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2020 A Bonds Reserve Account and the reserve accounts for obligations on a parity with or junior to the Series 2020 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2020 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2020 A Bonds, including the Prior Bonds. In any event, the City shall not reduce the rates or charges for services described in Section 6.03.

<u>Section 6.09</u>. <u>Operating Budget and Monthly Financial Report</u>. The City 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 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 City 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 professional engineer that such increased expenditures are necessary for the continued operation of the System. The City shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the DEP and the Authority and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP and 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 the Contract is executed for the Project and for two years following the completion of the Project, the City shall each month complete a "Monthly Financial Report," a form of which is attached to the respective Bond Purchase Agreements, and forward a copy of such report to the DEP and the Authority by the 10th day of each month.

Section 6.10. Engineering Services and Operating Personnel. The City will obtain a certificate of the Consulting Engineers in the form attached to the Bond Purchase Agreement, stating, among other things, that the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The City shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Bond Purchase Agreement.

Section 6.11. No Competing Franchise. To the extent legally allowable, the City 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 6.12. Enforcement of Collections. The City 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 20 days after the same shall become due and payable, 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 City further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of any 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 or sewer facilities are not owned by the City, the City shall enter into a termination agreement with the water and sewer providers, 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 6.13. No Free Services. Except as required by law, the City 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 City, or any department, agency, instrumentality, officer or employee of the City 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 City 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 6.14. Insurance. The City hereby covenants and agrees that so long as the Bonds remain Outstanding, the City 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 City will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the City from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the City from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR.

(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 City.

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

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the City 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.

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

Section 6.15. Mandatory Connections. The mandatory use of the sewerage facilities portion 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 City and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the PSC, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

Section 6.16. Completion and Operation of Project; Permits and Orders. The City will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards. The City shall take all steps to properly operate and maintain the System and make the necessary replacements due to normal wear and tear so long as the Series 2020 A Bonds are outstanding.

The City has obtained all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals required by State law and the Council necessary for acquisition and construction of the Project, the operation of the System and all approvals for issuance of the Series 2020 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the City shall provide an opinion of counsel to such effect.

The City shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 6.17. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2020 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2020 A Bonds and shall be on a parity with the First Lien Bonds and senior to the lien of the Second Lien Bonds.

Section 6.18. Compliance With Bond Purchase Agreement and Law. The City hereby covenants and agrees to perform, satisfy and comply with all terms, conditions and requirements of the Bond Purchase Agreement and all applicable laws, rules and regulations issued by the Authority, or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 6.19. Tax Covenants. The City hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The City shall use the Series 2020 A Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be operated solely as a public purpose and as local governmental activity of the City.

B. PRIVATE ACTIVITY BOND COVENANT. The City shall not permit at any time or times any of the proceeds of the Series 2020 A Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Series 2020 A Bonds.

C. PRIVATE BUSINESS USE LIMITATION. The City shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2020 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 such Series 2020 A Bonds during the term thereof is, under the terms of such 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 2020 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 2020 A Bonds during the terms thereof is, under the terms of such Series 2020 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 2020 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2020 A Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related. All of the foregoing shall be determined as provided for in the Code.

D. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2020 A Bonds or $5,000,000 is used, directly or indirectly, to make or finance a loan (other than loan constituting Nonpurpose Investments) to persons other than state or local government units.

E. 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 2020 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

F. INFORMATION RETURN. The City shall file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2020 A Bonds, and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

G. FURTHER ACTIONS. The City shall take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Series 2020 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 those deemed necessary by the Authority) which would adversely affect such exclusion.

Section 6.20. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Series 2016 A Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined in the Code) of the Series 2016 A Bonds will 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). The City reasonably expects to expend the proceeds of the Series 2016 A Bonds within the time period that would provide an exception from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Series 2016 A Bonds.

Section 6.21. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Series 2016 A Bonds in such manner and to such extent as may be necessary, so that such Series 2016 A 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 Bonds) so that the interest on the Series 2016 A 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 6.22. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate (the "Tax 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 any series of Series 2016 A Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Series 2016 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 Ordinance.

The City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the City or the Board shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be 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, 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. The City at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 6.11. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.11 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

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

Section 6.23. Securities Laws Compliance. If required by the Supplemental Resolution the City will provide the Original Purchaser, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Original Purchaser may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240). The City will also deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as amended from time to time.

Section 6.24. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Series 2020 A Bonds, the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Registered Owners shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2020 A Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Series 2020 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2020 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or 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 Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Series 2020 A Bonds on and prior to the maturity date thereof, or if the City irrevocably determines to redeem any of said Series 2020 A Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the 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 2020 A Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Series 2020 A Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the City as received by the Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities means and include only Government Obligations or such additional securities as shall be set forth in the Supplemental Resolution.

Section 6.25. Contracts. The City shall, simultaneously with the delivery of the Series 2020 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

Section 6.26. Continuing Disclosure Agreement. If required by the Supplemental Resolution, the City shall deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time, and the City hereby instructs the Mayor and Sanitary Board to take all actions necessary for the City to comply with the continuing disclosure agreement and to make the filings with EMMA.

Section 6.27. Contracts; Change Orders, Public Releases.

A. The City shall, simultaneously with the delivery of the Series 2020 A Bonds or immediately thereafter, enter into contracts with the Consulting Engineer for the immediate acquisition and construction of the Project.

B. The City shall list the funding 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 VII
REGISTRAR

Section 7.01. Appointment of Registrar. The Registrar for the Series 2020 A Bonds shall be appointed pursuant to the Supplemental Resolution. 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 7.02. Responsibilities of Registrar. The recitals of fact in the Series 2020 A 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 2020 A Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described above.

Section 7.03. Evidence on Which Registrar May Act. Except as otherwise provided herein, 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 7.04. 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 2020 A Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 7.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Series 2020 A 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 the Registered Owners or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Bonds Outstanding.

Section 7.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the City. A copy of such notice shall also be mailed to each Registered Owner. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or the Registered Owners, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.07. Removal. The Registrar may be removed at any time by the City, the Bond Insurer or the Registered Owners of a majority in principal amount of the Series 2020 A Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City, by the Bond Insurer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the City, the Bond Insurer or the Registered Owners, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.08. 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 Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners 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 Registered Owners. A copy of such notice shall also be mailed to each Registered Owner of the Bonds. Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. 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 Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 7.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 7.10. 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 7.08 hereof.

Section 7.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Series 2020 A Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Series 2020 A Bonds in the name of the predecessor Registrar or in its own name.

ARTICLE VIII
MISCELLANEOUS

Section 8.01. Modification or Amendment. Prior to the issuance of the Series 2020 A Bonds, this Ordinance may be amended or supplemented in any way by a Supplemental Resolution. All provisions required by the Original Purchaser or the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Series 2020 A Bonds, no material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Registered Owners shall be made without the consent in writing of the Registered Owners of the Series 2020 A Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Series 2020 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the Net Revenues of the System without the consent of the Registered Owner thereof. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Bonds from gross income of the Registered Owners thereof.

Section 8.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2020 A Bonds.

Section 8.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, other than the Prior Ordinances, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 8.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of Council and the Sanitary Board were at all times when any actions in connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 8.05. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit B attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Charleston Gazette-Mail, a qualified newspaper published and of general circulation in The City of Charleston, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Bonds, and that any person interested may appear before the Council upon a certain date, not less than 10 days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the City for review by interested persons during office hours of the City. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 8.06. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

[Remainder of page intentionally left blank]

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as City Clerk of The City of Charleston, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of The City of Charleston, such records being in the custody of the undersigned and maintained at The City of Charleston, City Hall, Charleston, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this ___ day of __________, 2020.

____
City Clerk

[SEAL]

EXHIBIT A

DESCRIPTION OF PROJECT

The Charleston Sanitary Board's Woodward Branch Project consists of two separate Phases and consists of work including the planning, design, acquisition and construction of certain extensions, additions, betterments and improvements to its existing sewerage system, including but not limited to, the replacement and or rehabilitation of existing sewers in the areas of: Phase 1: 26th Street (between 7th Avenue and Washington Street West); Washington Street West (East and West from intersection with 26th Street and Woodward Drive); Woodward Drive (from intersection with Washington Street West to Headley Drive); Woodhaven Drive; Woodpath Lane; and Wilmore Lane; and Phase 2: Larchmont Drive; Spring Drive; Thompson Circle; Ledge Hill Drive; an unnamed alley between Savary Drive and Zabel Drive; and streets intersecting Woodward Drive including Blackwell Drive; Savary Drive; Zabel Drive; and Diana Court; provided, that the work will further include all necessary appurtenances; further provided, that to the extent that funds remain available, extensions, additions, betterments and improvements to the remaining portion of the existing sewer system.

EXHIBIT B

THE CITY OF CHARLESTON, WEST VIRGINIA

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on __________, 2020, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the permanent financing of such costs thereof through the issuance of not more than $16,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, not to exceed $16,000,000, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and be redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of a sinking fund and a reserve account for the Bonds; and directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to such Net Revenues; and

5. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; and established the events of default and the remedies of the registered owners.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of The City of Charleston at a _______ meeting on __________, 2020, at _____ p.m., in the Council Chambers, City Hall, Charleston, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on ___________, 2020, is on file with the City Clerk for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/______________________________________
City Clerk of The City of Charleston, West Virginia

A representative from Jackson Kelly PLLC explained that the bond ordinance authorizes a bond issue of up to 16 million. The bonds will be issued in the same manner as the current bonds issued for the Sanitary Board. The bonds are secured by the net revenues of the sanitary system. The bonds will be purchased through the West Virginia Water Development Authority through the Clean Water State Revolving Fund, with an interest rate not to exceed 3%. The City will agree to maintain the system properly and run a fair and efficient system.

Councilmember Reishman confirmed that there will not be a rate increase to customers.

Councilmember Burton moved to approve the Bill. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Bill No. 7866 approved.

Councilmember Burton motioned to adjourn the meeting.

Meeting adjourned.