

## CHAPTER 9: MUNICIPAL FINANCE

### Article 1: ASSESSMENT PROCEDURE

**Section 9101. Charter and general law provisions.** The assessment procedure shall be as provided in Chapter X of the City Charter and State law.

## CHAPTER 9: MUNICIPAL FINANCE

### Article 2: SPECIAL ASSESSMENTS

#### Section 9201. Council Authority.

9201.1 The Council shall have power to determine that the whole or any part of the cost of any public improvement shall be benefited, as provided in Chapter XII of the City Charter and this chapter.

9201.2 The Council, in order to ascertain whether a particular number of property owners to be assessed desire a particular improvement to be made, may request that a petition therefor be presented, or may receive such a petition voluntarily presented. In either event, such petitions shall be advisory only and shall not be jurisdictional.

9201.3 The cost of any improvement which may be defrayed by special assessment shall include the cost of surveys, plans, acquiring rights-of-way, assessment roll preparation, notices, costs incident to the making of an improvement, the special assessment therefor and the financing thereof.

**Section 9202. Preliminary Report.** Before ordering any public improvement, when part or all the expense is to be defrayed by special assessment, the Council shall direct the City Superintendent to prepare, or have prepared, a report which shall include the cost of the improvement, a description of the proposed assessment district or districts, and such other pertinent information as will permit the Council to decide the cost, extent, and necessity of the improvement proposed, and what portion of the cost should be paid by special assessments upon the property especially benefited and what part, if any, should be paid by the City. The report shall be filed with the City Clerk and copies transmitted to the Council.

#### Section 9203. Hearing on Necessity for Project

9203.1 After the City Superintendent has presented the report required in Section 9202 and the Council has reviewed it, if the Council desires to proceed with the improvement and special assessment, it shall pass a resolution tentatively determining the necessity of the improvement. The resolution shall set forth the nature of the improvement, describe what portion of the cost of the improvement shall be paid by special assessments upon the property specially benefited and what part shall be paid by the City, describe the method by which assessment for each parcel will be determined, and provide for the rate of interest to be charged on the installments or the method by which the interest rate will be set.

9203.2 The Council shall set a date for a public hearing on the necessity for the proposed improvement and shall direct the City Clerk to publish the notice of the hearing once in a newspaper of general circulation in the City not less than ten (10) days prior to the date set for the hearing and to give notice of the hearing to each owner of an interest in the property to be assessed, as shown by the last general assessment roll of the City. Notice shall be given by first class mail addressed to owners at the address shown on the tax records at least 10 days before the date of the hearing. The notice shall state that comments may be made in person by the owner or his or her agent or in writing delivered to the City Clerk prior to the hearing. The notice shall also state that appearance and protest at the hearing is required in order to appeal the amount of the assessment to the State Tax Tribunal. The hearing required by this section may be held at any regular or special meeting of the Council.

9203.3 At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the Council may decide to proceed with the improvement or to modify the scope of the public improvement. The governing body shall maintain a record of parties who appear to protest at the hearing. If a hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person. If the scope of the improvement is increased or additions are made to the district described in the resolution and notice, another hearing shall be held as provided in Subsection 9203.2. If the Council shall decide to proceed with the improvement, it shall pass a resolution approving the plans and specifications for the improvement; determining the estimated cost thereof; determining what proportion of such cost shall be paid by special assessment upon the property especially benefited and what part, if any, shall be a general obligation of the City; determining the number of installments in which assessments may be paid and the rate of interest to be charged on installments or the method by which the interest rate will be set; designating the district or land and property upon which special assessment shall be levied; and directing the assessment roll in accordance with the Council's determination.

9203.4 The Council, in its discretion, may delay the preparation of the special assessment roll until after the completion of the improvement, in which case the actual cost thereof shall be reported to the Council, and the special assessment roll shall then be made for the actual cost rather than for the estimated cost as in other cases.

9203.5 If the owners of more than one-half (1/2) the total area of the property to be assessed shall object in writing to the special assessment, the improvement shall not be made unless the Council shall determine by resolution adopted by a four-fifths (4/5) majority that the proposed improvement is immediately necessary for the public health, welfare, and safety.

**Section 9204. Deviation from Plan and Specifications.** No deviation from the plans or specifications as approved shall be permitted without authority of the Council by resolution. A copy of the resolution authorizing changes shall be attached to the original plans and specifications on file with the City Clerk.

**Section 9205. Preparation of Assessment Roll.**

9205.1 After the Council has authorized the public improvement by the resolution described in Subsection 9203.3, the City Assessor shall prepare a special assessment roll describing all the lots and parcels of land to be assessed and the name of the persons chargeable with the assessment thereon and levying against each lot or parcel the amount to be assessed, in the manner directed by the Council. If the ownership of any parcel is unknown to the City Assessor, he or she shall insert the word "unknown" in lieu of the name of the owner. If any person shall be improperly designated as the owner of any lot or parcel, or if any parcel shall be assessed in the name of any person other than the owner, such assessment shall not be vitiated, but shall in all respects be as valid against any parcel as though assessed in the name of the property owner.

9205.2 If the assessment is required to be made according to frontage, the Assessor shall assess to each lot or parcel of land the relative portion of the whole amount to be levied as the length or frontage of such premises abutting upon the improvement bears to the whole frontage of all lots to be assessed, unless because of the shape or size of any lot an assessment for a different number of feet would be

more equitable. If the assessment is directed to be made according to benefits, then the Assessor shall assess upon each lot or parcel the relative proportion of the whole sum to be levied as shall be proportionate to the estimated benefit resulting to the lot or parcel from the improvement.

9205.3 When the Assessor has completed the assessment roll, he or she shall attach thereto or endorse thereon a certificate that the roll has been prepared pursuant to a resolution of the Council giving the date of adoption of the resolution, and that in making the assessment, the Assessor has as nearly as possible, according to his or her best judgment, conformed in all respect to the directions contained in the resolution and to the Charter and provisions of this ordinance. The assessor shall file the special assessment roll with the City Clerk for presentation to the Council.

**Section 9206. Public Hearing on Special Assessment Roll.**

9206.1 Upon receipt of the special assessment roll, the Council shall set a date for a hearing on adoption of the special assessment roll and direct the City Clerk to give notice of the hearing in the same manner as notice for the public hearing on the necessity of the improvement, as provided in Section 9203. The hearing required by this section may be held at any regular or special meeting of the Council. The City Assessor shall be present at every meeting of the Council at which a special assessment is to be reviewed.

9206.2 The Council shall meet and review the special assessment roll at the time and place appointed and shall consider all comments submitted. The Council may correct the roll as to any special assessment or description of any lot or parcel of land or as to any other errors appearing therein. Changes made in the roll shall be noted in the Council's minutes. After the hearing, the Council may confirm that special assessment roll with such corrections as may have been made, if any, or may refer it back to the City Assessor for revision. The same procedure shall be followed in revising the roll as in making the original roll.

9206.3 If after hearing all objections and making a record of such changes as the Council deems justified, the Council determines that it is satisfied with the roll and that the assessments are in proportion to the benefits received, it shall pass a resolution reciting these determinations and confirming the roll. The City Clerk shall endorse the date of confirmation on the special assessment roll.

9206.4 When any special assessment roll shall be confirmed by the Council, it shall be final and conclusive, subject only to adjustment to conform to the actual cost of the improvement as provided in Section 9210.

**Section 9207. Notice of Special Assessment; Appeal.** After the Council has confirmed the roll, the City Treasurer shall notify by mail each property owner on the roll that the roll has been filed, stating the amount assessed and the terms of payment. The notice shall include a statement that the owner or any person having an interest in the real property may file a written appeal of the special assessment with the State Tax Tribunal within thirty (30) days after the confirmation of the special assessment roll, if the special assessment was protested at the hearing held for the purpose of confirming that roll. Failure on the part of the City Treasurer to give notice shall invalidate only the assessments on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if

the owner or the party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment.

**Section 9208. Attachment of Liens; Collection.** All special assessments contained in any special assessment roll, including any part thereof for which deferred payment is permitted, shall constitute a lien upon the respective lots or parcels of land assessed from the date of confirmation of the roll. The lien shall be in the same character and affect as the lien created for City taxes and shall include accrued interest and penalties. All special assessments shall also be a charge against the respective owners of the lots or parcels of land until paid. In case of delinquency they may be collected in the same manner as regular taxes or by suit against the person to whom assessed.

**Section 9209. Special Assessment; When Due**

9209.1 All special assessments, except such installments as the Council shall make payable at a future date as provided in Subsection 2, shall be due and payable upon confirmation of the special assessment roll.

9209.2 The Council may provide for the payment of special assessments in annual installments. Annual installments shall not exceed twenty in number, the first installment being due upon confirmation of the roll or on such later date as the Council may determine, and additional installments being due annually thereafter. Interest shall be charged on all deferred installments at a rate to be set by the Council, commencing on the due date of the first installment. The full amount of all or any deferred installments, with interest accrued thereon to the date of payment, may be paid in advance of the due date.

9209.3 The whole or any part of the special assessment may be paid during a period of thirty (30) days from the date of confirmation of the special assessment without interest or penalties. Not later than fifteen (15) days after the end of the thirty (30) day period, the Treasurer shall transmit the roll to the Assessor with all payments upon assessments noted thereon. The Assessor shall then compute, in each year, the annual installments as have been fixed by the Council.

9209.4 The first installment shall be spread upon the next City tax roll in a column headed special assessments, together with the interest upon all unpaid installments from the date of confirmation of the roll, to and including the thirty-first of July of the year in which the tax roll is made; provided that any fractional amount shall be considered as a full month period. Thereafter, one installment shall be spread upon each annual tax roll, together with one year's interest upon all unpaid installments; provided when any annual installment shall have been prepaid, then there shall be spread upon the tax roll for such year only the interest upon all unpaid installments.

9209.5 After each installment has been placed on the tax rolls, the same shall be collected by the City Treasurer with the same rights and remedies, and penalties and interest, as provided for the collection of City taxes.

9209.6 After the expiration of the thirty (30) day period provided for in Subsection 9209.3 above, any installment which has not been spread upon the tax rolls may be discharged by paying the face amount thereof plus one full year's interest thereon. The Treasurer shall report to the Assessor all advanced

payments on installments so that the Assessor shall have the information before spreading installments on the next City tax roll.

**Section 9210. Deficiency Assessments and Refunds**

9210.1 Upon completion of the improvement and payment of the cost thereof, the Treasurer shall certify to the Council the total cost of the improvement.

9210.2 If the assessments in any special assessment roll, including the amount assessed to the City as a general obligation, prove insufficient for any reason to pay the cost of the improvement for which they were made, then the Council shall make additional assessments against the City and the several lots and parcels of land in the special assessment district, in the same ratio as the original assessments, to supply the deficiency.

9210.3 If the assessments levied prove to be more than 5% larger than necessary to defray the cost of the improvement, then the Council shall, by resolution, order the excess over 5% to be applied to the unpaid installments of the special assessments against each lot or parcel of land, in the inverse order in which they are payable. Any amount of such excess as to any lot or parcel or land which cannot be applied in this manner shall be refunded to the owner as shown by the records of the City Assessor.

**Section 9211. Reassessment.** Whenever any special assessment shall be held invalid by reason of irregularity or informality in the proceedings by any court of competent jurisdiction, the Council shall, whether the improvement has been made or not, or whether any part of the assessment has been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for in the original assessment; and whenever the assessment, or any part thereof, levied upon any premises has been so set aside, if the same has been paid and not funded, the payments so made shall be applied upon the reassessment and reassessment shall to that extent be deemed satisfied.

**Section 9212. Authorization of Special Assessment Bonds.** The Council may authorize by resolution the issuance of bonds in anticipation of the collection of special assessments and general obligation bonds evidencing the City's share of the cost of any local public improvement.

**Section 9213. Lands Divided After Assessment.** Should any lot or parcel be divided after a special assessment thereon has been confirmed and divided into installments, and before the collection of all installments, the Council may require the City Assessor to apportion the uncollected amounts upon the several parts of lots and lands so divided. The report of such apportionment, when confirmed, shall be conclusive upon all the parties and all the assessments thereafter shall be made upon such lots or lands according to the Assessor's division.

## CHAPTER 9: MUNICIPAL FINANCE

### ARTICLE 3: 1993 SEWAGE DISPOSAL SYSTEM REVENUE BONDS

**Section 9301. Definitions.** Whenever used in this ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

- (a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.
  - (b) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds, and any payments to the Issuer in lieu of taxes, to which may be made the following adjustments:
    - (i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect;
    - (ii) Revenues may be augmented by amounts which may be derived from rates and charges to be paid by new customers of the System.
- The adjustment of revenues and expenses by the factors set forth in (I) and (ii) above shall be reported upon by professional engineers or certified public accountants or other experts not in the regular employment of the Issuer.
- (c) "Bonds" means the Series 1993 Bonds, together with any additional bonds of equal standing hereafter issued.
  - (d) "Depository Bank" means the State Savings Bank, of Frankfort, Michigan, being a bank qualified to act as a depository of the proceeds of the sale of the Bonds under the provisions of Act 94, or such other qualified state or national banking corporation or association as shall be designated by the City Treasurer.
  - (e) "Issuer" means City of Frankfort, County of Benzie, State of Michigan.
  - (f) "MMBA" means the Michigan Municipal Bond Authority.
  - (g) "Project" means the acquisition, construction, installation, furnishing and equipping of improvements to the System, consisting generally of combined sewer separation and storm sewer construction and appurtenances and attachments thereto, all as required by and pursuant to Final Abatement Order No. 2130 of the Water Resources Commission and the Combined Sewer Overflow Report prepared in connection therewith and approved by the Department of Natural Resources.

(h) "Revenues" and "Net Revenues" means the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues", the earnings derived from the investment of moneys in the various funds and accounts established by or referenced in this Article.

(i) "Series 1993 Bonds" means the 1993 Sewage Disposal System Revenue Bonds (General obligation Limited Tax) , in the principal amount of \$180,000 authorized by this Article.

(j) "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal of and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(k) "System" means the sewage disposal system of the Issuer including all enlargements, extensions, repairs and improvements thereto hereafter acquired.

**Section 9302. Necessity.** It is hereby determined to be a necessary public purpose of the Issuer to purchase and acquire the Project.

**Section 9303. Costs; Useful Life.** The cost of the Project is estimated to be One Hundred Eighty Thousand Dollars (\$180,000), including the payment of incidental expenses as specified in Section 4 of this ordinance, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Project is estimated to be not less than twenty (20) years.

**Section 9304. Payment of Cost: Bonds Authorized.** To pay part of the cost of acquiring the Project, including payment of legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 1993 Bonds, the Issuer shall borrow the sum of not to exceed One Hundred Eighty Thousand Dollars (\$180,000) and issue the Series 1993 Bonds therefor pursuant to the provisions of Act 94.

**Section 9305. Bond Details; Issuance in Series; Registration and Execution.** The Bonds hereby authorized shall be designated 1993 SEWAGE DISPOSAL SYSTEM REVENUE BONDS (GENERAL OBLIGATION LIMITED TAX), shall be payable out of the Net Revenues as set forth more fully in Section 9307 hereof, shall consist of fully-registered bonds of the denomination of \$5,000 each, or integral multiples thereof not exceeding in any one year the amount maturing in that year, dated as of the date of delivery, numbered in order of registration and shall mature serially on May 1 in the years and amounts as follows:

<u>Year</u>	<u>Amount</u>
1994	\$ 5,000
1995	5,000
1996	5,000
1997	5,000
1998	5,000
1999	5,000
2000	5,000
2001	5,000
2002	5,000
2003	10,000
2004	10,000
2005	10,000
2006	10,000
2007	10,000
2008	10,000
2009	15,000
2010	15,000
2011	15,000
2012	15,000
2013	15,000

The Series 1993 Bonds shall bear interest at a rate or rates to be determined on the sale thereof, but in any event, except as provided below, not exceeding 7% per annum payable on May 1 and November 1 of each year, commencing November 1, 1993. The payment dates of the principal and interest on the Series 1993 Bonds may be changed without further action of the City Council to dates specified on the Purchase Contract hereinafter mentioned as finally accepted and executed as provided in this Section 9305.

So long as the Series 1993 Bonds are owned by MMBA, the Series 1993 Bonds shall bear additional interest as follows: In the event of a default in the payment of principal of or interest on the Series 1993 Bonds when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is one percent above the MMBA's cost of providing funds (as determined by the MMBA) to make payment on the bonds of the MMBA issued to provide funds to purchase the Series 1993 Bonds but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the MMBA has been fully reimbursed for all costs incurred by the MMBA (as determined by the MMBA) as a consequence of the Issuer's default. Such additional interest shall be payable on the interest payment date following demand of the MMBA. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the MMBA) the investment of amounts in the reserve account established by the MMBA for the bonds of the MMBA issued to provide funds to purchase the Series 1993 Bonds, fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the MMBA issued to fund such account, the Issuer shall and hereby agrees to pay on demand only the Issuer's pro rata share (as determined by the MMBA) of such deficiency as additional interest on this Bond.

So long as MMBA is the owner thereof, the Series 1993 Bonds are payable as to principal, premium, if any, and interest at the principal corporate trust office of the bank or trust company designated in writing by MMBA or at such other place as shall be designated in writing to the Issuer by MMBA ("MMBA's Depository"), and the Issuer agrees that it will deposit with MMBA's Depository payments of principal, premium, if any, and interest on the series 1993 Bonds in immediately available funds at least five (5) business days prior to the date on which any such payment is due, whether by maturity, redemption or otherwise. If the Series 1993 Bonds are transferred by MMBA, interest shall be paid by check or draft mailed by the transfer agent selected by the City Treasurer to the person or entity who or which is, as of the 15th day of the month preceding the interest payment date, the registered owner at the registered address as shown on the registration books maintained by the transfer agent. The date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the issuer to conform to market practice in the future. The Series 1993 Bonds shall be sold to the MMBA pursuant to a Purchase Contract substantially in the form of Exhibit A attached hereto at not less than 95% of their par value and at a net interest cost not to exceed 7% per annum. If MMBA transfers the Series 1993 Bonds, the principal of the Series 1993 Bonds shall be payable upon presentation and surrender of the Series 1993 Bonds at the bank or trust company designated by the City Treasurer as registrar and transfer agent for this issue.

The forms of (a) Purchase Contract and (b) Revenue Sharing Pledge Agreement, both between the issuer and MMBA, attached hereto as Exhibits A and B, respectively, and on file with the City Clerk, are hereby approved.

The Series 1993 Bonds are subject to redemption prior to maturity as provided in the form of the Series 1993 Bond set forth in Section 9311 of this Article. The date of first redemption may be adjusted by the Mayor and City Clerk to a date that is not more than two years earlier or two years later than the date provided in Section 9311 without further action by the City Council and as evidenced by execution of the Series 1993 Bonds by the Mayor and City Clerk. Notice of redemption shall be given in the manner specified in the form of the Series 1993 Bonds contained in Section 9311 of this Article.

The Mayor, the City Clerk/Treasurer, the City Superintendent, or any of them, are hereby authorized to execute and deliver the Purchase Contract and the Revenue Sharing Pledge Agreement in the forms approved, with such changes and insertions in such documents as may be necessary or desirable, permitted by law and not materially adverse to the Issuer. The Mayor, the City Clerk/Treasurer and the City Superintendent, or any of them, is hereby authorized to accept or reject the interest rates and purchase price offered by MMBA, subject to the limitations contained herein.

The Series 1993 Bonds delivered initially to MMBA shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual signature of the City Clerk/Treasurer and shall have the corporate seal of the Issuer impressed or printed thereon. If MMBA transfers the Series 1993 Bonds, the Issuer shall cause replacement bonds to be printed, authenticated and delivered to the transferee thereof in accordance with instructions from the City Clerk, and such Bonds shall be executed with the facsimile or manual signatures of the Mayor and the City Clerk/Treasurer and the seal of the Issuer shall be impressed or imprinted thereon. Executed blank bonds for registration and issuance to transferees shall simultaneously, and from time to time thereafter as necessary, be delivered to the transfer agent for safekeeping.

**Section 9306. Registration and Transfer.** Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the transfer agent shall authenticate and deliver a new Bond or Bonds for like aggregate principal amount. The transfer agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 1993 Bonds contained in Section 9311 of this Article and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange of any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. The Issuer shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Series 1993 Bonds, which shall at all times be open to inspection by the Issuer; and, upon presentation for such purpose, the transfer agent shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Series 1993 Bonds as hereinbefore provided.

If and so long as the Series 1993 Bonds are held by the MMBA, (a) the City Treasurer shall perform the notification, bond registration and transfer functions of the transfer agent, and (b) provisions relating to transfer of the Bonds may be deleted from the form of Bonds; otherwise, the City Treasurer shall perform, or designate a transfer agent to perform the aforescribed functions.

If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the transfer agent of the mutilated Bond. If any Bond issued under this Article shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the Issuer, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the transfer agent may pay the same without surrender thereof.

**Section 9307. Payment of Bonds; Limited Tax General Obligation Pledge.** Principal of and interest on the Series 1993 Bonds shall be payable from the Net Revenues. There is hereby recognized the statutory lien upon the whole of the Net Revenues created by this Article with respect to the Series 1993 Bonds, and the statutory lien is to continue until payment in full of principal of and interest on

the Series 1993 Bonds, or until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of principal of and interest on all Series 1993 Bonds then outstanding, to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to the Series 1993 Bonds, the holders of the Series 1993 Bonds shall have no further rights under this ordinance except for payment from the deposited funds, and the Series 1993 Bonds shall no longer be considered to be outstanding under this Article.

As additional security for the Series 1993 Bonds, the Issuer, pursuant to authorization of Section 7 of Act 94, hereby irrevocably pledges its limited tax full faith and credit for the prompt and timely payment of its obligations pledged for payment of the Series 1993 Bonds as expressed in this ordinance. Pursuant to such pledge, if Net Revenues are not available, the Issuer shall be required to pay such amounts from any of its general funds as a first budget obligation and shall each year levy an ad valorem tax on all the taxable property in the Issuer in an amount which, taking into consideration estimated delinquencies in tax collections, will be sufficient to pay the Series 1993 Bonds before the time of the following year's tax collections, such annual levy shall be in an amount sufficient to pay the Series 1993 Bonds subject to applicable constitutional, statutory and charter limitations. The pledge shall continue until payment in full for the principal of and interest on all the Series 1993 Bonds, or until sufficient cash or Sufficient Government Obligations or shall have been deposited in trust for payment in full for all Series 1993 Bonds with respect to which this ordinance is to be defeased to their maturity, or, if called for redemption, to the date fixed for redemption. If the Series 1993 Bonds are owned by the MMBA at the time of such deposit, the sufficiency of such deposit shall be verified by a nationally recognized firm of certified public accountants. Upon such deposit, the pledge and security herein created shall be terminated with respect to the Series 1993 Bonds, the holders of the Series 1993 Bonds shall have no further rights under this ordinance except for payment from the deposited funds, and the Series 1993 Bonds shall no longer be considered to be outstanding under this ordinance.

**Section 9308. Management.** The operation, repair and management of the System and the acquiring of the Project shall continue to be under the supervision and control of the city council.

**Section 9309. Rates and Charges; No Free Service.** The rates and charges for service furnished by the system and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Article. The Issuer hereby covenants and agrees to fix and maintain at all times while any of the Bonds shall be outstanding such rates for service furnished by the system as shall be sufficient to provide for the operation, maintenance and administration of the System, to pay the principal of and interest on all bonds payable from the Net Revenues of the System and to keep the System in good repair and condition. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm, or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

**Section 9310. Bond Proceeds.** Upon delivery of the Series 1993 Bonds there shall be first immediately deposited from the proceeds of the Series 1993 Bonds in the Series 1993 Bond Redemption Fund (as hereinafter defined) an amount equal to the accrued interest, if any, received on delivery of the Series 1993 Bonds. The balance of the proceeds of the sale of the Series 1993 Bonds shall be deposited in the Depository Bank in the Construction Fund (as hereinafter defined and provided) . Moneys in the construction Fund shall be applied solely as provided in Section 12(A) of this ordinance.

**Section 9311. Bond Form.** The Series 1993 Bonds shall be in substantially the following form:

**Section 9312. Custodian of Funds; Funds.** The Issuer's Treasurer shall be custodian of all funds belonging to or associated with the System. Such funds shall be deposited in the Depository Bank. The Issuer's Treasurer is hereby directed to create and maintain the following funds and accounts into which the proceeds of the Bonds and the Revenues shall be deposited in the manner and at the times provided in this Article, which accounts shall be established and maintained so long as any of the Bonds remain unpaid, except as otherwise provided in this Article.

(A) CONSTRUCTION FUND. The proceeds of the Series 1993 Bonds after accrued interest, if any, has been deposited as described below, shall be deposited in the 1993 SEWER IMPROVEMENTS CONSTRUCTION FUND (the "Construction Fund") in the Depository Bank. Said moneys shall be used solely for the purposes for which the Series 1993 Bonds are issued.

Any unexpended balance of the proceeds of the sale of the Series 1993 Bonds remaining after completion of the Project herein authorized may be used for further improvements, enlargements and extensions of the System in the discretion of the Issuer, provided that at the time of such expenditure such use be approved by the Michigan Department of Treasury (if such approval is then required by law). Any remaining balance after such expenditure shall be paid into the Series 1993 Bond Redemption Fund (as hereinafter provided) and shall be used for the prepayment of the Series 1993 Bonds.

After completion of the Project and disposition of remaining proceeds, if any, of the Series 1993 Bonds pursuant to the provisions of this Section, the construction Fund shall be closed.

(B) RECEIVING FUND. The Revenues of the System shall be set aside, as collected, and deposited in the Depository Bank, in the SEWAGE DISPOSAL SYSTEM RECEIVING FUND (hereinafter referred to as the "Receiving Fund") and moneys so deposited are pledged for the purposes of the following funds and so shall be transferred, expended and used only in the manner and order as follows:

(1) Operation and Maintenance Fund. There shall first be withdrawn from the Receiving Fund quarterly and set aside in and transferred to an operation and maintenance Fund hereby established (the "Operation and Maintenance Fund"), an amount sufficient to provide for the payment of the next quarter's current expenses of administration and operation of the System and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

(2) Bond and Interest Redemption Fund. There is hereby established a separate account known as the SERIES 1993 REVENUE BOND - BOND AND INTEREST REDEMPTION FUND (the "Series 1993 Bond Redemption Fund"). After the transfers required in (1) above. Revenues shall be withdrawn quarterly (except as otherwise provided in this paragraph) from the Receiving Fund, before any other expenditures or transfers therefrom, and set aside in and transferred to the Series 1993 Bond Redemption Fund for payment of principal of and interest on the Series 1993 Bonds. Commencing October 1, 1993, there shall be set aside out of the Receiving Fund an amount sufficient to pay interest on the Series 1993 Bonds on November 1, 1993, if interest is payable on that date. Commencing January 1, 1994~ the amount set aside each quarter out of the Receiving Fund for interest shall not be less than one-half (1/2) of the interest on the Series 1993 Bonds next coming due and payable. Commencing October 1, 1993, there shall be set aside out of the Receiving Fund quarterly an amount sufficient to pay one third (1/3) of the principal of the Series 1993 Bonds due on May 1, 1994 if a principal payment is due on that date. Commencing July 1, 1994 if principal of the Series 1993 Bonds is payable and on May 1 and commencing January 1, 1994 if principal of the Series 1993 Bonds is

payable on November 1, the amount set aside each quarter out of the Receiving Fund for principal shall be not less than one fourth (1/4) of the principal of the Series 1993 Bonds next becoming due and payable. If there be any deficiency in the amount previously required to be set aside, then the amount of such deficiency shall be added to the current requirements.

If for any reason there is a failure to make such quarterly deposits in the amounts required, then the entire amount of the deficiency shall be set aside and deposited in the Series 1993 Bond Redemption Fund out of the Revenues first received thereafter which are not required by this ordinance to be deposited in the Operation and Maintenance Fund or in the Series 1993 Bond Redemption Fund, which amount shall be in addition to the regular quarterly deposit required during such succeeding month or months. Deposits shall be made into the Series 1993 Bond Redemption Fund once the aforesaid sums have been deposited therein.

No further payments need be made into the Series 1993 Bond Redemption Fund after enough of the Series 1993 Bonds have been retired so that the amount then held in said fund is equal to the entire amount of principal and interest which will be payable at the time of maturity of the Series 1993 Bonds then outstanding.

The moneys in the Series 1993 Bond Redemption Fund shall be invested in accordance with Section 14 of this ordinance.

(3) Replacement and Improvement Fund: After the transfers required in (1) and (3) above, there shall next be transferred and deposited Revenues into the Replacement and the Improvement Fund if such fund is created by the City Council. The moneys on deposit therein from time to time shall be used for the purposes of making repairs and improvements to the System or to replace all or any portion of the System. If, at any time, it shall be necessary to use moneys in said funds for such purpose, the moneys so used shall be replaced from the revenues in the Receiving Fund which are not required by this Ordinance to be used for the operation and Maintenance Fund or the Series 1993 Bond Redemption Fund.

**Section 9313. Reverse Flow of Funds; Surplus Moneys.** In the event the moneys in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Fund, the Series 1993 Bond Redemption and Improvement Fund, any moneys and/or securities in the funds of the System established by this Ordinance shall be transferred, first, to the Operation and Maintenance Fund, second, to the Series 1993 Bond Redemption Fund, third, to the Replacement and Improvement Fund.

**Section 9314. Investments.** Moneys in the funds established in Section 9312 of this Article and moneys derived from the proceeds of sale of the Series 1993 Bonds may be invested by the Issuer in the obligations authorized from time to time by Section 24 of Act 94. Investment of moneys in the Series 1993 Bond Redemption Fund being accumulated for payment of the next maturing principal or interest payment on the Bonds shall be limited to U.S. government obligations bearing maturity dates prior to the date of the next maturing principal or interest payment on the Series 1993 Bonds. Interest income earned on investment of funds in the funds and accounts created in this Section 14 shall be deposited in or credited to the Fund or account in which the funds are on deposit.

**Section 9315. Additional Bonds.** The Issuer may issue additional Bonds of equal standing with the Series 1993 Bonds for any of the following purposes:

- a) To complete construction of the Project according to the plans set forth in section 9302 hereof, in the amount necessary therefor; or
- b) For the purpose of making repairs, replacements, improvements, enlargements or extensions of the System;  
or
- c) For the purpose of refunding any outstanding Bonds.

Additional Bonds of equal standing may be issued if:

- (h) The Adjusted Net Revenues of the System for the Fiscal Year preceding the year in which such additional Bonds are to be issued were 110 percent of the average annual debt service requirements on all Bonds then outstanding and those proposed to be issued net of any Bonds to be refunded by the new issue; or
  - (ii) The holders of at least 75 percent of the then outstanding Bonds consent to such issue in writing.

Permission of the Michigan Department of Treasury to issue such additional Bonds shall be conclusive as to the existence of conditions permitting the issuance thereof. In the event permission of the Michigan Department of Treasury is not then required to issue such additional Bonds, then the adoption by the legislative body of the Issuer of an ordinance authorizing the issuance of such additional Bonds shall be conclusive as to the existence of conditions permitting the issuance thereof.

The funds identified or established by this Article shall be applied to all additional Bonds. All Revenues from any such completion, repair, replacement, improvement, enlargement or extension financed from the proceeds of the additional Bonds shall be paid, as received, into the Receiving Fund.

Except as otherwise specifically provided in this Section, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the Revenues of the System shall be incurred or issued by the Issuer unless the same shall be junior and subordinate in all respects to the Bonds.

**Section 9316. Article Shall Constitute Contract.** The provisions of the Article shall constitute a contract between the Issuer and the bondholders. After the issuance of the Bonds the ordinance shall not be repealed or amended in any respect which will adversely affect the rights and interests of the bondholders, nor shall the Issuer adopt any law, ordinance or resolution in any way adversely affecting the rights of the holders of the Bonds so long as the Bonds or interest thereon remains unpaid.

**Section 9317. Bondholders' Rights; Receiver.** The holder or holders of the Bonds representing in the aggregate not less than twenty per cent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action mandamus or other proceedings, enforce and compel performance of all duties of the officers of the issuer, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the system and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the system or any part thereof.

If there is a default in the payment of the principal of or interest upon the Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the Issuer more particularly set forth herein and in Act 94.

The holder or holders of the Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the security therefor.

**Section 9318. Pledge of Revenue Sharing Funds to MMBA.** The taxes collected by the state of Michigan and returned to the Issuer are hereby pledged for payment of the Series 1993 Bonds, so long as the Series 1993 Bonds are owned by MMBA, and the Mayor, the City Clerk/ Treasurer, the City Superintendent, or any of them, of the Issuer is further authorized to enter into a Revenue Sharing Pledge Agreement with MMBA for payment of such taxes to MMBA or to a trustee as provided in Section 23 of Act 227.

**Section 9319. Authorization for Application to Insurer for Insured Program.** The City Superintendent of the Issuer is hereby authorized to submit all information and materials required for participation in any insured program of the MMBA.

**Section 9320. Covenant Regarding Tax Exempt Status of the Bonds.** The Issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Bonds from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended, including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds.

**Section 9321. Savings Clause.** All ordinances, resolutions or orders, or part thereof, in conflict with the provisions of this Article are, to the extent of such conflict, repealed.

**Section 9322. Severability; Paragraph Headings; and Conflict.** If any section, paragraph, clause or provision of this Article shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Article. The paragraph headings in this Article are furnished for convenience of reference only and shall not be considered to be part of this Article.

**Section 9323. Publication and Recordation.** This ordinance shall be published in full in the Benzie County Record Patriot, of Frankfort, Michigan, a newspaper of general circulation in the Issuer qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the ordinance Book of the Issuer and such recording authenticated by the signatures of the Mayor and the City Clerk.

**Section 9324. Effective Date.** This ordinance being necessary for the public place, health and safety is hereby declared to be an emergency ordinance and shall be effective immediately upon its publication.

## CHAPTER 9: MUNICIPAL FINANCE

### ARTICLE 4: 1998 WATER SUPPLY REVENUE BONDS.

**Section 9401. Definition.** Whenever used in this Article, except when otherwise indicated by the context, the following terms shall have the following meanings:

- (a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.
  - (b) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds, and any payments to the Issuer in lieu of taxes, to which may be made the following adjustments:
    - (i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect;
    - (ii) Revenues may be augmented by amounts which may be derived from rates and charges to be paid by new customers of the System.
- The adjustment of revenues and expenses by the factors set forth in (i) and (ii) above shall be reported upon by professional engineers or certified public accountants or other experts not in the regular employment of the Issuer.
- (c) "Authority" means the Michigan Municipal Bond Authority.
  - (d) "Authorized Officers" means the Mayor, the City Clerk/Treasurer and the City Superintendent of the Issuer.
  - (e) "Bonds" means the Series 1998 Bonds, together with any additional bonds of equal standing hereafter issued.
  - (f) "Consulting Engineers" means Gosling Czubak Engineering Science, Inc., registered engineers of Traverse City, Michigan.
  - (g) "Issuer" means the City of Frankfort, County of Benzie, State of Michigan.
  - (h) "MDEQ" means the Michigan Department of Environmental Quality.
  - (i) "Project" means the acquisition and construction of additions, replacements and extensions to the System as described in the Issuer's Project Plan prepared by the Consulting Engineers and approved by MDEQ.
  - (j) "Revenues" and "Net Revenues" means the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues", the earnings derived from the investment of moneys in the various funds and accounts established by this Ordinance.

(k) "Series 1998 Bonds" means the Water Supply System Revenue Bonds, Series 1998 (Limited Tax General Obligation), in the not to exceed principal amount of \$885,000 authorized by this Article.

(l) "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal which without reinvestment of the interest, come due at such and interest payments upon times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(m) "System" means Water Supply System of the issuer, including the Project, and all additions, extensions and improvements hereafter acquired.

**Section 9402. Necessity; Approval of Plans and Specifications.** It is hereby determined to be a necessary public purpose of the Issuer to acquire and construct the Project in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications are hereby approved. The Project qualifies for the State of Michigan Drinking Water Revolving Fund financing program being administered by the MDEQ and the Authority, whereby bonds of the issuer are sold to the Authority and bear interest at a fixed rate of two and one-half percent (2.5%) per annum.

**Section 9403. Costs; Useful Life.** The cost of the Project is estimated to be One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000), plus the payment of incidental expenses as specified in Section 9404 of this Article, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Project is estimated to be not less than forty (40) years.

**Section 9404. Payment of Cost; Bonds Authorized.** To pay part of the cost of acquiring the Project, including payment of capitalized interest through October 1, 1999, funding a bond reserve if required, legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 1998 Bonds, the Issuer shall borrow the sum of not to exceed Eight Hundred Eighty-Five Thousand Dollars (\$885,000) and issue the Series 1998 Bonds therefor pursuant to the provisions of Act 94. The remaining cost of the Project shall be defrayed from proceeds of general obligation bonds of the Issue and from Issuer funds on hand and legally available for such use.

**Section 9405. Issuance of Series 1998 Bonds; Details.** The Series 1998 Bonds of the Issuer, to be designated **WATER SUPPLY SYSTEM REVENUE BONDS, SERIES 1998 (LIMITED TAX GENERAL OBLIGATION)**, are authorized to be issued in the aggregate principal sum of not to exceed Eight Hundred Eighty-Five Thousand Dollars (\$885,000) as finally determined by order of the MDEQ for the purpose of paying part of the cost of the Project, including the costs incidental to the issuance, sale and delivery of the Series 1998 Bonds. The Series 1998 Bonds shall be payable out of the Net Revenues, as set forth more fully in Section 9409 hereof. The Series 1998 Bonds shall be in the form of a single fully-registered, non-convertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery of the Series 1998 Bond, payable in principal installments serially as set forth on Schedule A to the bond form in Section 9414 of this Article or as finally determined by the order of the MDEQ at the time of sale of the Series 1998 Bonds and approved by the

Authority and an Authorized Officer. Final determination of the Principal Amount and the payment dates and amounts of principal installments of the Series 1998 Bonds shall be evidenced by execution of a Purchase Contract (the "Purchase Contract") between the Issuer and the Authority providing for sale of the Series 1998 Bonds, and any of the Authorized Officers are authorized and directed to execute and deliver the Purchase Contract when it is in final form and to make the determinations set forth above.

The Series 1998 Bonds or principal installments thereof will be subject to prepayment prior to maturity in the manner and at the times as provided in the form of Series 1998 Bond contained in this Ordinance or as may be approved by any of the Authorized Officers at the time of sale of the Series 1998 Bonds or by the Authority at the time of prepayment. The Series 1998 Bonds shall bear interest at a rate of two and one-half percent (2.5%) per annum on the par value thereof or such other rate as evidenced by execution of the Purchase Contract, but in any event not to exceed the rate permitted by law, and the Authorized Officers shall deliver the Series 1998 Bond in accordance with the delivery instructions of the Authority.

The Series 1998 Bond principal amount is expected to be drawn down by the Issuer periodically, and interest on principal amount shall accrue from the date such principal amount is drawn down by the Issuer.

The Series 1998 Bond shall not be convertible or exchangeable into more than one fully-registered bond, Principal of and interest on the Series 1998 Bond shall be payable as provided in the Series 1998 Bond form in this Article.

The City Clerk/Treasurer shall record on the registration books payment by the Issuer of each installment of principal or interest or both when made and the cancelled checks or other records evidencing such payments shall be returned to and retained by the City Clerk/Treasurer.

Upon payment by the Issuer of all outstanding principal of and interest on the Series 1998 Bond, the Authority shall deliver the Series 1998 Bond to the Issuer for cancellation.

**Section 9406. Execution of the Bonds.** The Series 1998 Bonds shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the City Clerk and shall have the corporate seal of the Issuer or a facsimile thereof impressed or imprinted thereon. Except for Bonds bearing manual signatures of the Mayor and the City Clerk sold to the Authority, the Bonds shall be delivered to the transfer agent for authentication and thereafter be delivered by the transfer agent to the purchaser thereof in accordance with instructions from the City Clerk/Treasurer or any deputy upon payment of the purchase price for the Bonds in accordance with the bid therefor when accepted. Series 1998 Bonds bearing manual signatures of the Mayor and City Clerk sold to the Authority shall require no further authentication. Executed blank bonds for registration and issuance to transferees shall simultaneously, and from time to time thereafter as necessary, be delivered to the transfer agent for safekeeping.

**Section 9407. Registration and Transfer.** Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the transfer agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The transfer agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i)

to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 1998 Bonds contained in Section 9414 of this Article and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. The Issuer shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Issuer; and, upon presentation for such purpose, the transfer agent shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Bonds as hereinbefore provided. If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the transfer agent of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended, ("Act 354") being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the Issuer, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the transfer agent may pay the same without surrender thereof.

**Section 9408. Payment of Bonds; Security; Priority of Lien.** Principal of and interest on the Series 1998 Bonds shall be payable from the Net Revenues. There is hereby recognized the statutory lien upon the whole of the Net Revenues created by this Ordinance, which shall be a first lien to continue until payment in full of the principal of and interest on all Series 1998 Bonds payable from the Net Revenues, or until sufficient cash or Sufficient Government obligations have been deposited in trust for payment in full of all Series 1998 Bonds then outstanding, principal and interest on such Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to the Bonds, the holders of the Series 1998 Bonds shall have no further rights under this Ordinance, except for payment from the deposited funds, and the Series 1998 Bonds shall no longer be considered to be outstanding under this Ordinance.

In addition, as additional security for the Series 1998 Bonds, pursuant to Section 7 of Act 94, the Issuer hereby pledges its limited tax full faith and credit for the payment of the principal of and interest on the Series 1998 Bonds. Should the Net Revenues of the System at any time be insufficient to pay the principal of and interest on the Series 1998 Bonds as the same become due, then the Issuer shall advance from any funds available therefor, or, if necessary, levy taxes upon all taxable property in the Issuer, subject to constitutional, statutory and charter limitations, such sums as may be necessary to pay said principal and interest. The Issuer shall be reimbursed for any such advance from the Net Revenues of the System subsequently received which are not otherwise pledged or encumbered by this Article.

**Section 9409. Management.** The operation, repair and management of the System and the acquiring of the Project shall continue to be under the supervision and control of the City Council.

**Section 9410. Rates and Charges.** The rates and charges for service furnished by the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm, or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

**Section 9411. Custodian of Funds; Funds.** The Issuer's Treasurer shall be custodian of all funds belonging to or associated with the System. Such funds shall be deposited in a bank or banks designated by the legislative body of the Issuer (the "Depository Bank"). The Issuer's Treasurer is hereby directed to create and maintain the following funds and accounts into which the proceeds of the Bonds and the Revenues shall be deposited in the manner and at the times provided in this Ordinance, which accounts shall be established and maintained so long as any of the Bonds remain unpaid, except as otherwise provided in this Ordinance.

(A) CONSTRUCTION FUND. The proceeds of the Series 1998 Bonds after accrued and capitalized interest, if any, has been deposited as described below, shall be deposited in the 1998 WATER SUPPLY SYSTEM IMPROVEMENTS CONSTRUCTION FUND (the "Construction Fund") in the Depository Bank. Said moneys shall be used solely for the purposes for which the Series 1998 Bonds are issued.

From the proceeds of the Series 1998 Bonds there shall be deposited in or credited to the Series 1998 Bond Redemption Fund an amount equal to the interest payable on the Series 1998 Bonds through October 1, 1999. The Treasurer is authorized to use such funds to pay interest to October 1, 1999.

Any unexpended balance of the proceeds of the sale of the Series 1998 Bonds remaining after completion of the Project herein authorized may be used for further improvements, enlargements and extensions of the System in the discretion of the Issuer, provided that at the time of such expenditure such use be approved by the Michigan Department of Treasury (if such approval is then required by law). Any remaining balance after such expenditure shall be paid into the Series 1998 Bond Redemption Fund (as hereinafter provided) and shall be used for the prepayment of the Series 1998 Bonds.

After completion of the Project and disposition of remaining proceeds, if any, of the Series 1998 Bonds pursuant to the provisions of this Section, the Construction Fund shall be closed.

(B) RECEIVING FUND. The Revenues of the System shall be set aside, as collected, and deposited in the Depository Bank, in the WATER SUPPLY SYSTEM RECEIVING FUND (hereinafter referred to as the "Receiving Fund") and moneys so deposited are pledged for the purposes of the following funds and so shall be transferred, expended and used only in the manner and order as follows:

(1) Operation and Maintenance Fund. There shall first be withdrawn from the Receiving Fund quarterly and set aside in and transferred to an Operation and Maintenance Fund hereby established (the "Operation and Maintenance Fund"), an amount sufficient to provide for the payment of the next quarter's current expenses of administration and operation of the System and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

(2) Bond and Interest Redemption Fund. There is hereby established a separate account known as the SERIES 1998 REVENUE BOND - BOND AND INTEREST REDEMPTION FUND (the "Series 1998 Bond Redemption Fund"). After the transfers required in (1) above, Revenues shall be withdrawn quarterly (except as otherwise provided in this paragraph) from the Receiving Fund, before

any other expenditures or transfers therefrom, and set aside in and transferred to the Series 1998 Bond Redemption Fund for payment of principal of and interest on the Series 1998 Bonds. Commencing October 1, 1999, there shall be set aside each quarter out of the Receiving Fund not less than one-half (1/2) of the interest on the Series 1998 Bonds next coming due and payable. Commencing October 1, 1999, there shall be set aside each quarter from the Receiving Fund an amount not less than one-fourth (1/4) of the principal of the Series 1998 Bonds next becoming due and payable. If there be any deficiency in the amount previously required to be set aside, then the amount of such deficiency shall be added to the current requirements.

Interest on the Series 1998 Bonds through October 1, 1999 shall be paid from proceeds 1% as provided above.

If for any reason there is a failure to make such quarterly deposits in the amounts required, then the entire amount of the deficiency shall be set aside and deposited in the Series 1998 Bond Redemption Fund out of the Revenues first received thereafter which are not required by this Ordinance to be deposited in the Operation and Maintenance Fund or in the Series 1998 Bond Redemption Fund, which amount shall be in addition to the regular quarterly deposit required during such succeeding month or months. Deposits shall be made into the Series 1998 Bond Redemption Fund once the aforesaid sums have been deposited therein.

No further payments need be made into the Series 1998 Bond Redemption Fund after enough of the Series 1998 Bonds have been retired so that the amount then held in said fund is equal to the entire amount of principal and interest which will be payable at the time of maturity of the Series 1998 Bonds then outstanding.

The moneys in the Series 1998 Bond Redemption Fund shall be invested in accordance with Section 9413 of this Article.

(3) **Replacement and Improvement Fund:** After the transfers required in (1) and (2) above, there shall next be transferred and deposited Revenues into the Replacement and the Improvement Fund if such fund is created by the City Council. The moneys on deposit therein from time to time shall be used for the purposes of making repairs and improvements to the System or to replace all or any portion of the System. If, at any time, it shall be necessary to use moneys in said funds for such purpose, the moneys so used shall be replaced from the revenues in the Receiving Fund which are not required by this Ordinance to be used for the Operation and Maintenance Fund or the Series 1998 Bond Redemption Fund.

**Section 9412. Reverse Flow of Funds; Surplus Moneys.** In the event the moneys in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Fund, the Series 1998 Bond Redemption and Improvement Fund, any moneys and/or securities in the funds of the System established by this Ordinance shall be transferred, first, to the Operation and Maintenance Fund, second, to the Series 1998 Bond Redemption Fund, third, to the Replacement and Improvement Fund.

**Section 9413. Investments.** Moneys in the funds established in Section 9412 of this Article and moneys derived from the proceeds of sale of the Series 1998 Bonds may be invested by the Issuer in the obligations authorized from time to time by Section 24 of Act 94. Investment of moneys in the Series 1998 Bond Redemption Fund being accumulated for payment of the next maturing principal or interest

payment on the Bonds shall be limited to U.S. government obligations bearing maturity dates prior to the date of the next maturing principal or interest payment on the Series 1998 Bonds. Interest income earned on investment of funds in the funds and accounts created in this Section 9413 shall be deposited in or credited to the Fund or account in which the funds are on deposit.

**Section 9414. Bond Form.** The Series 1998 Bonds shall be in substantially the following forms, with such changes or completion as necessary or appropriate to give effect to the intent of this Article:

**Section 9415. Bondholders' Rights, Receiver.** The holder or holders of the Bonds representing in the aggregate not less than twenty percent (20%) of the entire principal amount there of then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the issuer, including the fixing of sufficient rates, the

collection of Revenues, the proper segregation of the Revenues of the System and the proper application

thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest upon the Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the Issuer more particularly set forth herein and in Act 94.

The holder or holders of the Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the security therefor.

**Section 9416. Application to MDEQ and Authority.** The Authorized Officers are hereby authorized to make application to the Authority and to the MDEQ for placement of the Series 1998 Bonds with the Authority. The Authorized Officers are further authorized to execute and deliver such contracts, documents and certificates as are necessary or advisable to qualify the Series 1998 Bonds for the Drinking Water Revolving Fund. In the event of a sale of the Series 1998 Bonds to the Authority, an Authorized Officer is hereby authorized to make such changes to the form of Series 1998 Bond contained in Section 9414 of this Article as may be necessary to conform to the requirements of 1985 PA 227 ("Act 227"), including, but not limited to changes in the principal maturity and interest payment dates and references to additional security required by Act 227. In the event the Series 1998 Bonds are sold to the Authority, the taxes collected by the State of Michigan and returned to the Issuer may be pledged for payment of the Series 1998 Bonds, and an Authorized Officer is further authorized to negotiate, execute and deliver an agreement with the Authority for payment of such taxes to the Authority or to a trustee as provided in Section 23 of Act 227.

**Section 9417. Covenant Regarding Tax Exempt Status of the Bonds.** The issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Bonds from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds.

**Section 9418. Additional Bonds.** The Issuer may issue additional Bonds of equal standing with the Series 1998 Bonds for any of the following purposes:

- a) To complete construction of the Project according to the plans set forth in Section 9402 hereof, in the amount necessary therefor; or
  
- b) For the purpose of making repairs, replacements, improvements, enlargements or extensions of the System; or

- c) For the purpose of refunding any outstanding Bonds.

Additional Bonds of equal standing may be issued if:

- (i) The Adjusted Net Revenues of the System for the Fiscal Year preceding the year in which such additional Bonds are to be issued were 110 percent of the average annual debt service requirements on all Bonds then outstanding and those proposed to be issued net of any Bonds to be refunded by the new issue; or
- (ii) The holders of at least 75 percent of the then outstanding Bonds consent to such issue in writing.

Permission of the Michigan Department of Treasury to issue such additional Bonds shall be conclusive as to the existence of conditions permitting the issuance thereof. In the event permission of the Michigan Department of Treasury is not then required to issue such additional Bonds, then the adoption by the legislative body of the Issuer of an ordinance authorizing the issuance of such additional Bonds shall be conclusive as to the existence of conditions permitting the issuance thereof.

The funds identified or established by this Ordinance shall be applied to all additional Bonds. All Revenues from any such completion, repair, replacement, improvement, enlargement or extension financed from the proceeds of the additional Bonds shall be paid, as received, into the Receiving Fund.

Except as otherwise specifically provided in this Section, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the Revenues of the System shall be incurred or issued by the Issuer unless the same shall be junior and subordinate in all respects to the Bonds.

**Section 9419. Article Shall Constitute Contract.** The provisions of the Article shall constitute a contract between the Issuer and the bondholders. After the issuance of the Bonds the Article shall not be repealed or amended in any respect which will adversely affect the rights and interests of the bondholders, nor shall the Issuer adopt any law, ordinance or resolution in any way adversely affecting the rights of the holders of the Bonds so long as the Bonds or interest thereon remains unpaid.

**Section 9420. Approval of Bond Details.** The Mayor and the City Clerk/Treasurer and the City Superintendent each is hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, provided that the principal amount of Bonds issued shall not exceed the principal amount authorized in this Ordinance, the interest rate per annum on the Bonds shall not exceed two and one-half percent (2.50%) and the Bonds shall mature in not more than twenty-two (22) years.

**Section 9421. Repeal, Savings Clause.** All ordinances, resolutions or orders, or part thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, repealed.

**Section 9422. Severability, Paragraph Headings; and Conflict.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

**Section 9423. Publication and Recordation.** This Ordinance shall be published in full in the Benzie County Record-Patriot, a newspaper of general circulation in the Issuer qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the Issuer and such recording authenticated by the signatures of the Mayor and the City Clerk.

**Section 9424. Effective Date.** This Ordinance shall be effective upon its adoption.

**ADOPTED AND SIGNED THIS 24<sup>TH</sup> DAY OF AUGUST, 1998.**