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## ASSIGNMENT AND ASSUMPTION AGREEMENT

Jefferson, Walker, Shelby, )  
Blount, St. Clair, and )  
Cullman Counties )  
State of Alabama )

ASSIGNMENT and ASSUMPTION AGREEMENT between the CITY OF BIRMINGHAM, ALABAMA, a municipal corporation under the laws of the State of Alabama (herein called the "City") and THE WATER WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM, a public corporation organized and existing under the laws of the State of Alabama (herein called the "Board"),

### RECITALS

WHEREAS, the City now owns and operates certain real and personal properties, including (i) certain water reservoirs and filtration plants, a water transmission and distribution system and various related properties (hereinafter more particularly described and together called the "Water System") and (ii) certain sewage treatment plants and wastewater collection systems (hereinafter more particularly described and together called the "Sewer System") (the "Water System" and "Sewer System" more particularly described below and collectively called the "Systems"), the Systems being located within Jefferson County and certain adjacent counties, all of which said Systems were previously owned by the Board;

WHEREAS, on September 2, 1998, the Systems were transferred and conveyed to the City and the City assumed the indebtedness due on the outstanding revenue bonds of the Board;

02/27/2001-06781  
11:51 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
010 MMB 47.00

Inst # 2001-06781

**WHEREAS**, in connection with the City's acquisition of the Systems, the City and the Board entered into an Assignment, Assumption, Release and Indemnity Agreement dated September 2, 1998, (the "Original Assignment"), pursuant to which the City assumed various obligations of the Board;

**WHEREAS**, the outstanding bonds of the Board were issued under and were secured by an Indenture of Trust, dated as of December 1, 1985, between the Board and AmSouth Bank N.A., as original trustee (the current trustee being The Chase Manhattan Bank), as supplemented and amended (hereinafter called the "1985 Indenture"). In order to operate the Systems and to use the revenues therefrom without having to comply with the conditions and limitations imposed by the 1985 Indenture, it was necessary for the City to defease the 1985 Indenture and to provide for the retirement of the Board's outstanding bonds through a pledge of the revenues of the Systems other than the pledge made in the 1985 Indenture;

**WHEREAS**, pursuant to Ordinance No. 98-195, the City issued its Water and Sewer Revenue Warrants, Series 1998-A, and its Taxable Water and Sewer Revenue Refunding Warrants, Series 1998-B, (hereinafter referred to as the "Series 1998 Warrants") under a Trust Indenture between the City of Birmingham and The Chase Manhattan Bank, dated December 1, 1998 (hereinafter more particularly described and called the "1998 Indenture"), for the purpose, among other purposes, of obtaining the funds necessary to defease the 1985 Indenture; and

**WHEREAS**, Pursuant to Ordinance No. 98-195, the City (1) issued its \$31,000,000 principal amount General Obligation Capital Improvement Warrants, Series 1998-B (the "1998-B General Obligation Warrants"), (2) pledged the Surplus System Revenues (as defined in Ordinance No. 98-195) to secure the payment of the 1998-B General Obligation Warrants and (3) reserved the right to issue other warrants secured, on a parity with the 1998-B General

Obligation Warrants, by such pledge of the Surplus System Revenues (the 1998-B General Obligation Warrants and all warrants so issued on a parity therewith herein together called the "Junior Lien Warrants"); and

**WHEREAS**, the Board and the City entered into a Management Agreement dated December 30, 1998 pursuant to which the Board manages the Systems on behalf of the City;

**WHEREAS**, in order to provide for efficient control, operation, and management of the Systems, it is necessary and desirable, and in the best interest of the City and its residents, and in the best interest of the Board and its customers, for the City to retransfer and reconvey the Systems to the Board;

**WHEREAS**, the City has agreed, for and in consideration of the assumption by the Board of the obligations hereinafter described, to sell, convey, transfer, assign and set over to the Board all real and personal property, contract rights and other assets of the City pertaining or relating to the Systems, and to cancel the Management Agreement entered into between the Board and the City dated December 30, 1998. It is necessary for the City and the Board to enter into this Assignment and Assumption Agreement (hereinafter referred to as the "Agreement") in order to effectuate an assignment of all such property, contract rights and assets to the Board and an assumption of the obligations and other liabilities of the City thereto by the Board.

**NOW, THEREFORE**, in consideration of the aforesaid recitals and the respective agreements on the part of the City and the Board herein contained, said parties agree as follows:

**Section 1.** The Board expressly acknowledges, represents, and warrants, as a basis for the agreements and covenants hereunder, as follows:

(a) The Board was incorporated as a public corporation pursuant to authorization by the City. The City appoints members to the Board of Directors of the Board. Under the Board's enabling statute, the Board has the power to own and operate the Systems and its property and income are not subject to taxation.

(b) The transfer and conveyance of the Systems to the Board will be consistent with the intent of the Board's enabling statute.

(c) The Board is familiar with the condition, financial and otherwise, of the Systems.

(d) With the exception of matters described in the following subparagraph (e), the City, its officers, agents, representatives, and other employees of the City, its or their legal counsel, and its or their independent accountants and engineers have made no representations or warranties as to the financial or other condition of the Systems.

(e) The Board has been (1) furnished such financial and other information, and such records, reports and other documents, respecting the Systems, and (2) afforded such opportunities to make inquiries of, and to receive answers from, the officers, agents, representatives, and other employees of the City, its or their legal counsel, and its or their independent accountants and engineers, respecting the operation and management of the Systems, all to such extent as the Board considers necessary in order for it to make an informed decision to acquire the Systems from the City and to assume the Systems Contracts and the other properties, assets and liabilities referred to in Sections 2 and 3 hereof.

**Section 2.** The City does hereby assign, to the extent that they are lawfully and contractually assignable, all its contract rights, moneys, accounts receivable, choses in action, franchises, licenses, permits, easements, documents, instruments, insurance policies and other general intangibles pertaining or relating to or necessary for the operation of the Systems (herein

together called the "Systems Contracts"), and all of its rights, privileges and interests therein, to the Board and, upon this Agreement becoming effective, any reference to the City in the Systems Contracts shall, with necessary changes in detail, be deemed to refer to the Board, and the Board, after such effective date, may claim, exercise and enforce all rights, privileges and interests in the Systems Contracts as if it had been originally named therein instead of the City. The City and the Board hereby recognize, acknowledge and agree that, notwithstanding anything herein to the contrary, the Systems Contracts include, without limitation, the following agreements, contracts and obligations of the City, to which the City is now a party or by which it is bound:

(a) any and all warrants, bonds and other obligations evidencing indebtedness of, or the borrowing of money by, the City for purposes of financing or refinancing the cost of various capital improvements to the Systems, together with (1) any and all trust indentures, deeds of trust, mortgages and other similar contracts, agreements or instruments under which any such warrants, bonds or other such obligations were issued or by which any such warrants, bonds or other such obligations are secured, and (2) any and all trust agreements, escrow agreements and other similar contracts, agreements and instruments heretofore entered into by the City and providing, whether in whole or in part, for the payment of principal of or interest on any such warrants, bonds or other such obligations (whether at the stated maturities thereof or by redemption thereof prior to their stated maturities, as the case may be);

(b) without limiting the generality of the provisions of the preceding clause (a) hereof, the following: (1) that certain Indenture of Trust dated as of December 1, 1998, between the City and Chase Manhattan Bank, as trustee (herein called the "Indenture"), and (2) the following series of outstanding warrants of the City (herein together called the "Outstanding Warrants"):

(i) Water and Sewer Revenue Warrants, Series 1998 - A, dated December 1, 1998; (ii) Taxable

Water and Sewer Revenue Refunding Warrants, Series 1998-B, dated December 1, 1998; and  
(iii) the Junior Lien Warrants; and

(c) any and all contracts or agreements under or pursuant to which the City has agreed to provide water or sewer services to any other person, firm or corporation.

(d) The intent of this instrument is to assign all of the contracts or agreements of the City pertaining or relating to the Systems, (but not other contracts or agreements of the City which are unrelated to the Systems) specifically including all contracts or agreements which were previously assigned to the City from the Board under that certain Assignment, Assumption, Release and Indemnity Agreement dated September 2, 1998, that have not been terminated, extinguished or otherwise cancelled, and all contracts or agreements entered into by the City since September 2, 1998 in connection with the operation of the System, whether specifically or correctly described herein or not to the extent the same are contractually and legally assignable and transferable.

**Section 3.** The Board does hereby expressly assume (a) all obligations on the part of the City contained in the Systems Contracts, including, without limitation, (1) all of the City's obligations with respect to the operation and maintenance of the Systems and all indebtedness of the City with respect thereto, and (2) the obligation to render due and punctual performance and observance of all agreements and contractual obligations that are required to be kept and performed by the City pertaining or relating to the Systems, (b) without limiting the generality of the foregoing provisions of this section, all accounts payable, all accrued but unpaid obligations of the City for the payment of State or Federal employment or other taxes, and all other liabilities of the City pertaining or relating to the Systems (whether heretofore accrued or hereafter accruing); provided, however, that the obligations so assumed by the Board shall be payable

solely out of the revenues derived from the operation of the Systems and (c) all liabilities of the City pertaining or relating to the Systems.

**Section 4.** The City and the Board hereby acknowledge and agree that the Management Agreement entered into between the City and the Board dated December 30, 1998 is hereby cancelled and terminated as of the date of this Agreement.

**Section 5.** The City and the Board hereby acknowledge and agree that the Original Assignment entered into between the City and the Board is hereby suspended and terminated as of the date of this Agreement except that the City's indemnity obligations under the Original Assignment shall continue in full force and effect.

**Section 6.** This Agreement shall inure to the benefit of, and shall be binding upon, the Board, the City and their respective successors and assigns.

**Section 7.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

**Section 8.** This Agreement shall become effective upon the date of delivery hereof shown below.


IN WITNESS WHEREOF, the Board and the City have caused this Assignment and Assumption Agreement to be executed and have caused the same to be sealed and attested, all by their duly authorized officers on February 23, <sup>2001</sup>~~2000~~.

**THE WATER WORKS AND SEWER  
BOARD OF THE CITY OF BIRMINGHAM**


  
By: Anthony L. Barnes

Its: Chairman-President

ATTEST:

By:   
Its: Secretary-Treasurer or Assistant Secretary Treasurer

**CITY OF BIRMINGHAM, ALABAMA**

  
By: William A. Bell

Its: Council President

ATTEST:

By: \_\_\_\_\_  
Its: City Clerk

Jefferson County                    )  
State of Alabama                    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Anthony L. Barnes as Chairman-President of THE WATER WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM, a public corporation under the laws of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as Chairman-President of THE WATER WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM, and with full authority, executed the same voluntarily for and as the act of said public corporation.

GIVEN under my hand and official seal of Office, this 11<sup>th</sup> day of August, 2000.

[NOTARIAL SEAL]

Grace E. Armon  
Notary

My Commission Expires: 5-31-02

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: May 31, 2002.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

Jefferson County )  
State of Alabama )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that William A. Bell, as President of the City Council of the CITY OF BIRMINGHAM, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as President of the City Council of the CITY OF BIRMINGHAM, and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and official seal of Office, this 23 day of  
February, 2000.

[NOTARIAL SEAL]

Kimberly J. Vaughn  
Notary

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: July 6, 2003  
~~BONDED THRU NOTARY PUBLIC UNDERWRITERS~~

My Commission Expires: \_\_\_\_\_

Inst # 2001-06781  
02/27/2001-06781  
11:51 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
010 NMB 47.00

State of Alabama - Jefferson County

I certify this instrument filed on:

2001 FEB 23 P.M. 14:49

Recorded and \$

Mtg. Tax

and \$

27.00

Deed Tax and Fee Amt

Total \$

27.00

MICHAEL F. BOLIN, Judge of Probate



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