The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

Office of the City Clerk

AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
October 30, 2012
7:00 p.m.

NOTE: Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

PRESENTATIONS:

- **Partners In Education Certificates- Woodburn Elementary: September and October**
- **University Place Presentation**
- **Non-Profit Presentation- Greater Morgantown MPO**
- **Airport Master Plan Process and Update**
- **Public Portion**

ITEMS FOR DISCUSSION:

1. **Discussion: 2013 Municipal Election**
2. **Ordinance: MUB Sewer Rates**
3. **Reimbursement Resolution: MUB Wastewater Treatment Plant Upgrade Project**
4. **MUB Bond Ordinance Refinancing**
5. **Supplemental Parameters Resolution Pursuant to the Parking System Bonds, Series 2012**
6. **Ordinance: Authorizing Refunding of the North Side Fire Station Project**
7. **West Virginia University Alumni Center Community Development Revenue Bond Refinancing Request**
8. **Capital Lease Financing Considerations**
9. **First Quarter Budget and Finance Update**
10. **Ordinance: Zoning Reclassification- Three Parcels in Ward 7 from R-1 to PRO**
11. **Ordinance: Annulment of Ensign Avenue, Ward 4**
12. **Discussion: Town and Gown Advisory Board**

If you need an accommodation contact us at 284-7439

City of Morgantown

Finance Department

389 Spruce Street
Morgantown, WV 26505
Phone (304) 284-7407/Fax 7418
jsabatelli@cityofmorgantown.org

MEMO

DATE: 10/22/2012

TO: Terrence Moore, ICMA-CM, City Manager

FROM: Joseph R. Sabatelli, CPA, Finance Director JRS

CC: Linda Little, City Clerk

RE: Election Cost Analysis

City Council has requested a larger cost analysis of the Vote-By-Mail election and upon review of the memo provided by the City Clerk, the total costs estimated for Vote-By-Mail appear to be grossly understated. Attached are the cost analysis estimates of both the Vote-By-Mail and regular polling place election options, adjusted and updated for current amounts, cost quotes and hour changes, including a list of assumptions used to complete the review. I met with City Clerk Linda Little this morning to discuss these assumptions, estimates and costs and as per her estimates, there will likely be 16,000 ballots that will be prepared and possibly mailed. The total hours necessary to complete the election for both City workers and poll workers are based on previous experiences and were adjusted to take into account upgrades to the processes as estimated by the City Clerk. The details are included in the attachments, however the total estimated cost of a Vote-By-Mail election held this coming April will be approximately $31,248.26 while a standard polling place election will be approximately $16,711.23, for a difference of $14,537.03. These are projected to be actual costs directly related to the election to and including all salaried staff wages other than the City Clerk and Police Officers.

City of Morgantown
Election Cost Analysis

Vote-by-Mail			Rate	Cost	
Number of Ballots				16,000	
Postage			0.424	6,784.00	
Ball., Env., Supp			0.30	4,800.00	
Advertisement				600.00	
P.O. Box			22.00	11.00	
Miscellaneous				100.00	
Stuffing/Thousand			0.28	4,480.00	
Total non-staff					16,775.00
		Hours	Rate	Cost	
Training		139.75	10.00	1,397.50	
Sorting/Receiving		77.00	10.00	770.00	
Drop Locations		269.25	10.00	2,692.50	
Ballott Commissioners				200.00	
Election Day Drop		126.50	10.00	1,265.00	
Election Night Count		107.50	10.00	1,075.00	
Post Election Work		200.00	10.00	2,000.00	
Total pollworkers					9,400.00
	Reg Hrs	OT Hrs			
Engineering #1	8	-	25.11	200.88	
Engineering #2	8	10.00	20.31	467.13	
Public Works	8	10.00	23.06	530.38	
IT	16	10.00	20.19	625.89	
HR	16	-	18.54	296.64	
CM #1	8	-	18.22	145.76	
CM #2	10	-	49.21	492.10	
Deputy City Clerk	32	16.00	14.61	821.81	
Finance #1	10	-	26.74	267.40	
Finance #2	10	-	38.82	388.20	
	126	46		4,236.19	
Retirement			11.81%	500.29	
FICA			7.65%	324.07	
Workers Comp			0.30%	12.71	
Total City Workers					5,073.26
Total Vote-By-Mail estimated Costs					31,248.26

Assumptions:

1. Poll worker hours are estimated remain fairly consistent with the previous election and therefore the hours utilized were based on the spreadsheet created by the City Clerks Office to pay those workers for the election.

2. City employee rates are based on current hourly rates for individuals expected to work the election and pre election activities. The hours are estimated based the prior election and are expected to remain consistent due to required election work. Salary employees are included above as they were required or needed to attend with the exception of the City Clerk, as this is part of those job requirements. The Deputy City Clerk's extra time above her normal schedule is included above.

3. Post election work will remain similar due to the continued expected returned envelopes.

4. Non-Staff expenses are based on quotes from providers.

5. Advertising above is only City related and does not include amounts paid for and completed by the Secretary of State's Office.

6. Based on the numbers above, an approximate $11,175 budget adjustment will be required prior to doing a vote-by-mail election, as city staff is budgeted and paid for from their respective departments.

7. The number of ballots are estimated based on general conversations with voter registration and may increase or decrease depending on individual registrations.

City of Morgantown
Election Cost Analysis

Regular Election			Cost	
Number of Ballots			16,000	
Ballots			5,500.00	
Advertisement			600.00	
Miscellaneous			100.00	
Total non-staff				6,200.00
	Number	Rate	Cost	
Training	66.00	35.00	2,310.00	
Polling Place	66.00	75.00	4,950.00	
Head Commissioners	16.00	35.00	560.00	
Escort	16.00	15.00	240.00	
Ballott Commissioners			200.00	
Travel	16.00	10.00	160.00	
Custodians	16.00	20.00	320.00	
Total pollworkers				8,740.00
	Reg Hrs	OT Hrs		
Public Works	-	5.00	23.06	172.95
IT	-	5.00	20.19	151.43
CM #2	5	-	49.21	246.05
Deputy City Clerk	32	5.00	14.61	580.75
Finance #1	5	-	26.74	133.70
Finance #2	5	-	38.82	194.10
	47	15		1,478.98
Retirement			11.81%	174.67
FICA			7.65%	113.14
Workers Comp			0.30%	4.44
Total City Workers				1,771.23
Total normal estimated costs				16,711.23

Assumptions:

1. Poll worker time is expected to go back to a flat amount for training and poll time on election day as was previous practice.

2. City employee rates are based on current hourly rates for individuals expected to work the election and pre election activities. The hours are estimated based prior elections and are expected to remain consistent due to required election work. Salary employees are included above as they were required or needed to attend with the exception of the City Clerk, as this is part of her job requirements. The Deputy City Clerk's extra time above her normal schedule is included above.

3. Non staff expenses are based on previous years with a conservative increase as the average cost for supplies from the previous 4 elections was $4,800.

4. No budget adjustment is required as staff salaries are included in their respective departments.

CITY OF MORGANTOWN

AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICES CODE BY SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.

THE COUNCIL OF THE CITY OF MORGANTOWN HEREBY ORDAINS: The following rules, rates and charges are hereby fixed, determined and established for municipal sewerage services provided to all general domestic, commercial, industrial and resale users and customers of the City of Morgantown's Municipal Sewage Treatment Plant and Collection System, commencing upon the effective date as hereinafter provided, and in accordance with the following Rates and Schedules:

925.03 SCHEDULE OF RATES

Schedule No. 1

(a) Applicable to entire territory served, except that served by Cheat Lake Wastewater Treatment Plant and the former Canyon Public Service District. Effective for bills rendered on or after January 1, 2012.

(1) Availability of service. Available for sanitary sewer service.

(2) Rate. Based upon the metered amount of water supplied.

Gallons Used

First	60,000 per month	$4.66 per 1,000 gallons
All Over	60,000 per month	$4.00 per 1,000 gallons

(3) Minimum Charge.

Per month	$ 4.66
Bi-monthly	$ 9.32

(4) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars ($100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred ($700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(5) Delayed payment penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(6) Reconnection charge. A fee of fifteen dollars ($15.00) during Utility Board regular working hours and twenty-five dollars ($25.00) after hours shall be charged whenever the service is disconnected for violation of rules, nonpayment of bills, or fraudulent use of water. No such charge shall be assessed if the customer has paid a water reconnection charge for the same reconnection.

(7) Leak adjustment $0.385 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customers of the meter. This rate shall beside applied to all such unusual consumption above the customer's historical average usage.

SCHEDULE NO. 2

(b) Applicable to territory served by Cheat Lake Wastewater Treatment Plant. Effective for bills rendered on or after January 1, 2012.

(1) Availability of service. Available for sanitary sewer service.

(2) Rate. Based upon the metered amount of water supplied.

Gallons Used		
First 2,000 per month or 4,000 bi-monthly	$8.75	per 1,000 gallons
Next 8,000 per month or 16,000 bi-monthly	$8.00	per 1,000 gallons
Next 20,000 per month or 40,000 bi-monthly	$7.50	per 1,000 gallons
Next 30,000 per month or 60,000 bimonthly	$7.00	per 1,000 gallons
Next 940,000 per month or 1,880,000 bi-monthly	$6.00	per 1,000 gallons
All Over 1,000,000 per month or 2,000,000 bi-monthly	$5.50	per 1,000 gallons

(3) Minimum Charge.

A. Per month	$ 17.50
B. Bimonthly	$ 35.00

(4) Tap fee. A fee of seven hundred dollars ($700.00) will be charged for new customers connecting to the sewerage system.

(5) Delayed Payment Penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(6) Reconnection Charge. A fee of fifteen dollars ($15.00) during Utility Board regular working hours and twenty-five dollars ($25.00) after hours shall be charges whenever the service is disconnected for violation of rules, nonpayment of bills, or fraudulent use of water. No such charge shall be assessed if the customer has paid a water reconnection charge for the same reconnection.

(7) Leak Adjustment. $0.385 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

SCHEDULE NO. 3

(c) Applicable to territory served. Effective for bills rendered on or after January 1, 2012.

(1) Availability of service. Available for sanitary sewer service to other systems.

(2) Rates. All wastewater from other systems will be treated at the approved rate of $1.50 per 1,000 gallons.

(3) Surcharge. $$0.83 per 1,000 gallons of wastewater treated from Scotts Run Public Service District until the contribution related to plant capital costs is refunded; the amount of the credit to Scotts Run Public Service District will be debited to Contributions in Aid of Construction.

SCHEDULE NO. 4

(d) Applicable to the former Canyon Public Service District service area. Effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia; and upon acquisition of the Canyon Public Service District.

(1) Availability of service. Available for sanitary sewer service

(2) Rates. (Customers with metered water supply)

Service Charge	$8.50 per month
Usage Charge	$~~8.29~~ 8.67 per 1,000 gallons

(3) Minimum Charge. No minimum bill will be rendered for less than the following based on meter size:

Meter Size	**Minimum Charge**
5/8"	~~$25.08~~ $25.46 per month
12"	~~$125.40~~ $125.78 per month
2"	~~$200.64~~ $201.02 per month

(4) Flat Rate Charge. Customers with non-metered water supply ~~$25.08~~ $25.84 per month.

(5) Tap fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant. A tap fee of one hundred dollars ($100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding. A tap fee of seven hundred ($700.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap system.

(6) Delayed payment penalty. The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

(7) Disconnection charge. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with the Cheat View Public Service District, a disconnection fee of $15.00 shall be charged or in the event the delinquent sewer bill is collected by Cheat View Public Service District, an administrative fee of $15.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Cheat View Public Service District, is reconnected, a reconnection fee of $15.00 shall be charged.

(8) Leak adjustment. ~~$0.385 per M gallons~~ $2.89 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

This Ordinance shall become effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia; and upon acquisition of the Canyon Public Service District.

First Reading: November 5, 2012

Second Reading
and Public Hearing: November 20, 2012

Filed: _____

Recorded: _____

_____
MAYOR

_____
CITY CLERK

MEMORANDUM

TO: City Council
Terrence Moore, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: October 19, 2012

SUBJECT: **Reimbursement Resolution**
COUNCIL COMMITTEE OF THE WHOLE MEETING INFORMATION
October 30, 2012

This will serve as a read ahead to help you prepare for the meeting. If you have any questions please feel free to contact me prior to the meeting on Tuesday evening.

Reimbursement Resolution – Wastewater Treatment Plant Upgrade Project

MUB will soon begin planning for a major upgrade to our Wastewater Treatment Plant (located in Star City). We expect construction of the project to begin in 2015, and to be completed in 2017. The project schedule is:

Project Element	Complete by
Develop plan and scope	first half 2013 - please see enclosed Long Term Control Plan
Design	early 2014
PSC Certificate filing	early 2014
PSC Certificate approval	late 2014
Advertise for Bids	late 2014
Issue Bonds / begin Construction	early 2015
Complete Construction	late 2017

Approval of the enclosed Reimbursement Resolution will allow MUB to be reimbursed from the bond proceeds for the early expenses that are necessary to advance the project to the point that bonds can be issued and construction can begin. Examples of such costs include, but are not limited to planning, design, surveys, permits, acquisition of lands and rights of way, regulatory filings, etc.

Adopting the Reimbursement Resolution does not obligate the City in anyway, but provides the opportunity to reimburse such upfront costs.

I will attend the Council meeting of Tuesday October 30, and I will be happy to address any questions that you may have for me. Mr. John Stump, Bond Counsel from Steptoe Johnson will accompany me.

Of course, please feel free to contact me by phone or email if you have any questions.

REIMBURSEMENT RESOLUTION

RESOLUTION STATING THE REASONABLE EXPECTATION OF THE CITY COUNCIL OF THE CITY OF MORGANTOWN TO REIMBURSE THE MORGANTOWN UTILITY BOARD FOR CAPITAL EXPENDITURES IN CONNECTION WITH THE DESIGN, ACQUISITION AND CONSTRUCTION OF COMBINED UTILITY SYSTEM FACILITIES AND IMPROVEMENTS MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT REVENUE BONDS OR OTHER OBLIGATIONS.

WHEREAS, The City of Morgantown (the "City"), acting through the Morgantown Utility Board ("MUB"), has determined to acquire and construct certain improvements to the sanitary sewerage portion of the existing combined utility system of MUB (the "System"), including, but not limited to, renovations and improvements to the existing wastewater treatment facilities, and the cost thereof is estimated not to exceed $30,000,000;

WHEREAS, the City will finance all or a portion of the costs of design, acquisition and construction of the Project through the issuance of tax-exempt revenue bonds or other obligations in one or more series, in an aggregate amount estimated not to exceed $30,000,000 (the "Bonds");

WHEREAS, the City expects MUB to make certain capital expenditures relating to the Project prior to issuance of the Bonds;

WHEREAS, such costs will be paid from MUB'S operating account (the "Operating Account") or MUB's payroll account (the "Payroll Account"); and

WHEREAS, the City Council reasonably expects that the City will reimburse MUB for a portion of the cost of the Project in an amount not to exceed $10,000,000, for costs incurred prior to issuance of the Bonds, from the proceeds of sale of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGANTOWN, AS FOLLOWS:

Section 1. The City Council of The City of Morgantown reasonably expects that the City will reimburse MUB for certain capital expenditures made not more than 60 days prior to the date of adoption of this resolution (and after the date of such adoption, but prior to the issuance of the Bonds) in connection with the Project, such capital expenditures to be undertaken

or incurred prior to the execution and delivery of the Bonds, from the proceeds of such Bonds, which Bonds are reasonably expected to be executed and delivered within 18 months from the later of (i) the expenditure for payment of said costs or (ii) the placing of the Project in service.

Section 2. This Resolution is intended to constitute a "declaration of official intent" pursuant to Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended (the "Reimbursement Regulations").

Section 3. The source of payment for such capital expenditures will be MUB's Operating Account and/or MUB's Payroll Account, and upon issuance of the Bonds, proceeds thereof not to exceed the amount of such capital expenditures will be applied by the City to MUB for the reimbursement of such Operating Account and Payroll Account, such allocation not exceed $10,000,000.

Section 4. The maximum principal amount of Bonds expected to be issued for the Project is $30,000,000.

Section 5. The City, through MUB, shall provide written evidence of all reimbursement allocations.

Section 6. This Resolution shall become effective on the date of its adoption.

Adopted: November 5, 2012.

THE CITY OF MORGANTOWN

By: _____
Its Mayor

By: _____
Its City Manager

CERTIFICATION

I, Linda Little, City Clerk of The City of Morgantown, do hereby certify that the foregoing is a true and accurate copy of a Reimbursement Resolution adopted by the City Council of The City of Morgantown at a regular meeting of City Council held November 5, 2012, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this November 5, 2012.

[SEAL]

By: _____
City Clerk

6118784

MEMORANDUM

TO: City Council
Terrence Moore, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: October 19, 2012

SUBJECT: **Bond Ordinance**
Refinance of Build America Bonds
COUNCIL COMMITTEE OF THE WHOLE MEETING INFORMATION
October 30, 2012

This will serve as a read ahead to help you prepare for the meeting. If you have any questions please feel free to contact me prior to the meeting on Tuesday evening.

Bond Ordinance – Refinance of Build America Bonds (BABs)

Our 2010 capital improvement program included about $38 million of Build America Bonds (BABs). These bonds are taxable, and therefore pay a higher nominal rate than conventional municipal bonds. We are eligible for a tax rebate (paid semi-annually), which lowers the effective interest rate to one that is comparable to municipal rates. Our average nominal (pre-rebate) and effective (post-rebate) rates are 6.14% and 3.99% (on 30 years). The rebate is currently worth almost $800,000 to us annually; this number will slowly shrink over time as some bonds mature and interest payments go down.

We have recently been advised that the above tax rebate may be at risk as the federal government seeks ways to control federal spending, and our economy approaches the imminent "fiscal cliff". Please refer to the attached notice from the National Association of Bond Lawyers, which was provided to us by our bond counsel, John Stump of Steptoe Johnson. That notice describes that, barring any pre-emptive or corrective action by Congress, our tax rebate for 2013 will be reduced by 7.6%, or approximately $61,000. Presumably, the balance of our rebate would be paid to us, but that is uncertain at this point. The amount of reduction, if any, for future tax year rebates is unknown.

Regardless of your politics, the above reduction erodes our faith that we can rely upon the federal government to pay the expected rebate for the next 30 years. The full rebate equates to 7.16% of our water revenues, and is intended to offset 35% of the related debt service. We cannot afford to lose the rebate.

It was first thought that this potential problem may actually be an opportunity in disguise. In the two years since these bonds were issued, interest rates have continued to fall. Today's lower interest rates could now make it possible for us to issue conventional municipal bonds, at the same or even lower

effective interest rate, and escape forever the risk of losing the tax rebate. Conventional municipal bonds would also simplify our financial records administration and cash flow.

However, our bonds are non-callable in their first ten years, meaning that under normal circumstances, we may not refinance them. So, the refinance question then becomes whether the reduction, or elimination, of the tax rebate qualifies as an exceptional circumstance that would void the call prohibition, thus allowing a refinance.

Our Bond Counsel has determined that the existing bond language does contain an extreme circumstances provision allowing us to call the bonds (refinance) in the event that the tax rebate is lost or reduced, but that this escape language also contains a "make whole" provision by which we are obligated to pay the bond holders the interest they would have earned. Bond Counsel tells us that such language was both required by the market, and was the standard at the time of our 2010 issue.

The "make whole" provision negates almost all of the financial benefit of refinancing. It allows us to refinance and to capture today's lower rates, but yet it still requires us to effectively pay the higher rates that we seek to avoid.

Looking strictly at the dollars, as long as the Federal government pays most of the rebate (recall that the expectation for 2013 is that we will receive about 93% of it), we are probably better off to NOT refinance. If the rebate goes down, our motivation for refinancing goes up.

The uncertainty, however, of our ability to rely upon the tax rebate in future years is an intangible that adds to the motivation for refinancing as soon as possible.

One other option that <u>may</u> be available is for us to purchase our own bonds back on the open market (a tender offer). We would have to pay some premium to entice a bond holder to sell, but that premium would be less than the "make whole" increment currently required by a conventional refinance. Under the tender offer, the "make whole" requirement would be rendered moot, because as the bond holder, we could waive it. A refinance would be effectively achieved because we would issue a new bond to generate the cash for the purchases. Research is underway to determine if this option is available to us.

We may not know the fate of the BABs tax rebate until early January 2013, but we are exploring our options intensely, and we are preparing a plan for this contingency. The attached Bond Ordinance will allow (but not require) us to refinance all or part of the existing BABs, so that we can minimize the effect of the loss of the federal tax rebate.

It is important that the proposed Bond Ordinance be approved in the remaining months of 2012, so that we will be prepared to respond promptly to any changes in January, or thereafter, that necessitate a refinancing. Please refer to a separate memo from Bond Counsel John Stump for more information regarding the proposed Bond Ordinance.

I will attend the Council meeting of Tuesday October 30, and I will be happy to address any questions that you may have for me. Mr. Stump will accompany me.

Of course, please feel free to contact me by phone or email if you have any questions.

National Association
of Bond Lawyers

PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

EFFECT OF SEQUESTER ON DIRECT-PAY BONDS

Beginning as early as 2013, the subsidy that issuers receive under certain tax credit bond programs, including "Build America Bonds" ("BABs"),[1] may be reduced in the event of budgetary sequestration, according to a recent report of the United States Office of Management and Budget ("OMB"). NABL members whose clients have issued, underwritten or purchased such "direct-pay" bonds should be aware the effect the so-called "sequester" may have on them. In addition to a reduction in the subsidy payments, depending on the documents under which the bonds were issued, certain extraordinary call provisions may be triggered.

Effect of Sequestration on BABs Subsidy Payments

The Budget Control Act of 2011 (the "BCA") requires that the Director of OMB calculate each year for the next 10 years, using a statutory formula, cuts to federal programs necessary to reduce spending to levels specified in the BCA. These cuts are referred to as the "sequester." The President is required each year to issue an order implementing the cuts for that year. The first such cuts are to be ordered January 2, 2013, for fiscal year 2013. These automatic, formula cuts may be avoided or mitigated if Congress, prior to January 2, 2013, enacts other cuts of an equal or larger amount or takes other action to postpone or change the provisions of the BCA. To date, Congress has not taken any such action. Congress could also, after January 2, 2013, rescind or alter the cuts provided for in the BCA.

In August 2012, Congress required OMB to provide estimates of the cuts to specific programs that would be ordered on January 2, 2013, if sequestration occurs. On September 14, 2012, OMB provided a report containing those estimates. Among the cuts identified by OMB were cuts to the subsidy payments to be made to issuers of "direct-pay" bonds, such as BABs. OMB estimated that payments to issuers of "direct-pay" bonds would be cut by 7.6 percent in 2013. It is too soon to predict by what percentage, if any, cuts would be made to BAB and other "direct-pay" subsidies in 2014 and thereafter.

Impact on Early Redemption Provisions

BABs issues, like most municipal bonds, typically include provisions that permit the redemption of the BABs prior to maturity. Since BABs are taxable bonds, they were frequently marketed in the corporate market where "make whole" call ("MWC") premiums[2] were routine and

[1]These include, among other bonds, qualified school construction bonds, qualified energy conservation bonds, qualified zone academy bonds, and clean renewal energy bonds. The balance of this alert will refer only to BABs, although the issues discussed may be equally applicable to such other types of tax credit bonds for which the issuer elected to receive a direct payment from the federal government.

[2]A MWC is typically the greater of the present value of future debt service payments remaining on the bond or the initial offering price (but not less than par) of the bond. Such present value is generally determined by discounting remaining debt service payments at the rates on U.S. Treasury securities with a term comparable to the bond being redeemed, plus a specified spread.

expected. More traditional municipal call features, such as par or nominal redemption premium calls after a "no-call" period, were less commonly used.

In addition, many BABs issues also contain extraordinary optional call provisions where, upon the occurrence of an "extraordinary event," typically including a change in the BABs legislation that reduces or eliminates the federal subsidy payments, the issuer is given the option to call the BABs, often at a price that is lower than a MWC. The extent to which sequestration triggers an issuer's right to exercise such an "extraordinary event" call provision in a particular transaction will depend upon the exact wording used in the bond documents defining the "extraordinary event." NABL members whose clients have issued, underwritten or purchased BABs may want to review the documents for such financings with their clients and discuss the potential ramifications of a sequester, should it come to pass, including the call provisions in such documents.

THE CITY OF MORGANTOWN, WEST VIRGINIA

AN ORDINANCE AUTHORIZING THE REFUNDING, IN WHOLE OR IN PART, OF THE SERIES 2010 A BONDS OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $45,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF TAXABLE OR TAX-EXEMPT COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, IN ONE OR MORE SERIES ISSUED ON ONE OR MORE DATES (COLLECTIVELY THE "REFUNDING BONDS"); AUTHORIZING, AS AN ALTERNATIVE OR IN ADDITION TO THE ISSUANCE OF THE REFUNDING BONDS, THE PURCHASE BY THE ISSUER OF ALL, OR A PORTION OF, THE SERIES 2010 A BONDS IN THE OPEN MARKET AND/OR THE MAKING BY THE ISSUER OF A TENDER OFFER TO THE BONDHOLDERS OF THE SERIES 2010 A BONDS TO PURCHASE THEIR SERIES 2010 A BONDS SUCH PURCHASE TO BE FININACED IN WHOLE OR IN PART WITH PROCEEDS OF THE REFUDNING BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, The City of Morgantown (the "Issuer" or the "City") presently owns and operates, through The City of Morgantown Utility Board (the "Board"), a public combined waterworks, sewerage and stormwater system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, betterments and improvements thereto through the issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Prior Bonds, as hereinafter defined.

WHEREAS, all of the Prior Bonds were issued pursuant to ordinances of the Issuer previously enacted (such ordinances, as so amended and supplemented, collectively herein called the "Prior Ordinances");

WHEREAS, under the provisions of Chapter 8, Article 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), the Issuer is authorized and empowered to acquire, construct and operate extensions, additions,

betterments and improvements for the System and to refinance outstanding debt of the System;

WHEREAS, the Issuer has determined and hereby determines that it would be in the best interest of the Issuer and the inhabitants of the Issuer (i) to either advance or currently refunding whole or in part at one or more times; (ii) to purchase all, or a portion of, the Series 2010 A Bonds on the open market; and/or (iii) to make one or more tender offers to existing bondholders of, the Issuer's outstanding Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), dated January 28, 2010, issued in the original aggregate principal amount of $37,950,000 (the "Series 2010 A Bonds");

WHEREAS, to the extent that the outstanding Series 2010 A Bonds are not purchased on the open market by the Issuer or are not subject to a successful tender offer to existing bondholders of the Series 2010 A Bonds, the Issuer may seek to refund the remaining outstanding Series 2010 A Bonds through the issuance of refunding bonds;

WHEREAS, the Issuer has determined that the aforementioned refunding, purchase and/or tender offer of the Series 2010 A Bonds may be financed, as provided under the Act, in whole or in part, from the proceeds of revenue bonds to be issued by the Issuer, to pay all or any portion of the costs thereof, and to enact this Ordinance and issue its Taxable and/or Tax-Exempt Combined Utility System Refunding Revenue Bonds, in one or more series issued on one or more dates (collectively, the "Refunding Bonds"), such Refunding Bonds to be secured by and payable from the Gross Revenues of the System, and containing such other terms and provisions as are hereinafter provided, all in the manner set forth herein; and

WHEREAS, the Issuer has determined and hereby determines that it is in the best interest of the residents of the City that its Refunding Bonds be sold to the Original Purchaser (as hereinafter defined) thereof pursuant to the terms and provisions of one or more a bond purchase agreements, (collectively, the "Bond Purchase Agreement") between the Issuer and the Original Purchaser, hereinafter defined;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MORGANTOWN HEREBY ORDAINS:

ARTICLE I
DEFINITIONS, STATUTORY AUTHORITY, FINDINGS

Section 1.01. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the Closing Date for the Refunding Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and

customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

"Authorized Officer" means the Mayor or City Manager of the Issuer or any other officer of the Issuer specifically designated by resolution of the Council of the Issuer.

"Board" shall mean The City of Morgantown Utility Board, created by an ordinance of the Issuer, or any successor thereto.

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

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

"Bondholder," "Holder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner," or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds, and with respect to the Refunding Bonds, shall initially mean the bond insurer or bond insurers, if any, named in the Supplemental Resolution.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Refunding Bonds.

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

"Bonds" means, collectively, the Refunding Bonds, the Prior Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations, West Virginia banking corporations or the New York Stock Exchange are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Refunding Bonds in substantially the form set forth in EXHIBIT A – REFUNDING BOND FORM hereto.

"City" or "Issuer" means The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia, in Monongalia County thereof, and, where appropriate, the Council, the Board and any successor thereto.

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

"Clerk" means the City Clerk of the Issuer.

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

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

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

"Consulting Engineers" means the Board or any independent qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Board as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation those costs set forth in Section 1.02C.

"Council" means the City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently constituted.

"Debt Service" with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

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

"DTC" means The Depository Trust Company, New York, New York, or its successor thereof.

"DTC-eligible" means, with respect to the Refunding Bonds, meeting the qualifications prescribed by DTC.

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

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

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

"Government Obligations" shall have the meaning set forth in the Supplemental Resolution.

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

"Independent Accountant" means the West Virginia State Tax Department or any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Fiscal Year.

"Mayor" means the Mayor of the Issuer.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of any series of the Refunding Bonds, insuring the timely payment of the principal of and interest on all or any of the Refunding Bonds, in accordance with the terms thereof.

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

"Net Revenues" means Gross Revenues less Operating Expenses.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds of the Refunding Bonds and is not acquired in order to carry out the governmental purpose of the Refunding Bonds.

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

"Ordinance" or "Bond Ordinance" regardless of whether preceded by the article "the" or "this," means this Ordinance, as it may hereafter from time to time be amended or supplemented, by ordinance or by resolution.

"Original Purchaser" means the investment banking firm or firms, bank or banks or such other entity or entities as shall purchase the Refunding Bonds directly from the Issuer, as determined by a resolution supplemental hereto.

"Outstanding" when used with reference to the Refunding Bonds or the Prior Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bonds at or prior to said date; (b) any Bond or Prior Bonds for the payment of which monies, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds or Prior Bonds for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond or Prior Bond, such Bond or Prior Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means, initially, the West Virginia Municipal Bond Commission and any other paying agent for the Refunding Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Prior Bonds" means, collectively, the Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds, Series 2012 A Bonds, Series 2012 B Bonds and Series 2012 C Bonds.

"Prior Ordinances" means, collectively, the ordinances of the Issuer authorizing the issuance of the Prior Bonds.

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

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

"Qualified Investments" means and includes the investments set forth in a Supplemental Resolution and designated as such.

"Record Date" means the date or dates which shall be so stated in the Refunding Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which any of the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the interest and the premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the Registrar for the Refunding Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

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

"Series 1992 Bonds" means the Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), of the Issuer, dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000.

"Series 1995 Bonds" means the Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), of the Issuer, dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477.

"Series 2000 A Bonds" means the Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000.

"Series 2000 B Bonds" means the Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), of the Issuer, dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000.

"Series 2001 A Bonds" means the Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), of the Issuer, dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470.

"Series 2006 A Bonds" means the Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer, dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191.

"Series 2007 A Bonds" means the Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), of the Issuer, dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000.

"Series 2010 A Bonds" means the Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $37,950,000.

"Series 2010 B Bonds" means the Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $81,600.

"Series 2010 C Bonds" means the Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $15,380,227.

"Series 2010 D Bonds" means the Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $9,317,286.

"Series 2010 E Bonds" means the Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $100,000.

"Series 2010 F Bonds" means the Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $7,250,000.

"Series 2012 A Bonds" means the Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program), of the Issuer, dated August 24, 2012, issued in the original aggregate amount of $570,000.

"Series 2012 B Bonds" means the Combined Utility System Revenue Bonds, Series 2012 B (West Virginia DWTRF Program), of the Issuer, dated August 24, 2012, issued in the original aggregate amount of $444,835.

"Series 2012 C Bonds" means the Combined Utility System Revenue Bonds, Series 2012 C (Bank Qualified), dated October 5, 2012, issued in the original aggregate amount of $2,330,000.

"Refunding Bonds" means the Taxable and/or Tax-Exempt Combined Utility System Refunding Revenue Bonds, of the Issuer, issued in one or more series, on one or more moderates, originally authorized to be issued pursuant to this Ordinance and one or more Supplemental Resolutions.

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

"Refunding Bonds Redemption Account" means the Redemption Account created in the Refunding Bonds Sinking Fund by Section 4.02 hereof.

"Refunding Bonds Reserve Account" means the Refunding Bonds Reserve Account created in the Refunding Bonds Sinking Fund by Section 4.02 hereof.

"Refunding Bonds Sinking Fund" means the Refunding Bonds Sinking Fund created by Section 4.02 hereof.

"Refunding Bonds Reserve Account Requirement" means an amount equal to the lesser of (i) 10% of the original principal amount of the Refunding Bonds, (ii) Maximum Annual Debt Service at the time of original issuance of the Refunding Bonds, or (iii) 125% of average annual Debt Service at the time of original issuance of the Refunding Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution or Resolutions to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates, redemption provisions, Bond Insurer provisions (if any) and other terms of each series of the Refunding Bonds and authorizing the sale of the Refunding Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means the complete existing combined municipal waterworks, sewerage and stormwater system of the Issuer, as presently existing in its entirety or any integral part thereof and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

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

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

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

Section 1.02. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The Issuer is a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State.

B. The Issuer presently owns and operates, through the Morgantown Utility Board (the "Board"), a public combined waterworks, sewerage, and stormwater system. The Issuer has determined and hereby determines that it would be in the best interest of the Issuer and the inhabitants of the Issuer (i) to either advance or currently refunding whole or in part at one or more times; (ii) to purchase all, or a portion of, the Series 2010 A Bonds on the open market; and/or (iii) to make one or more tender offers to existing bondholders of, the Issuer's outstanding Combined Utility System Revenue Bonds, Series 2010 A (Direct Payment Build America Bonds), dated January 28, 2010, issued in the original aggregate principal amount of $37,950,000 (the "Series 2010 A Bonds");

C. To the extent that the outstanding Series 2010 A Bonds are not purchased on the open market by the Issuer or are not subject to a successful tender offer to existing bondholders of the Series 2010 A Bonds, it is deemed necessary for the Issuer to issue its Taxable and/or Tax-Exempt Combined Utility System Refunding Revenue Bonds, in one or more series, issued on one or more dates, in the aggregate principal amount of not more than $45,000,000, to repay in full the remaining principal balance of and all accrued interest on the Series 2010 A Bonds; and proceeds of the Refunding Bonds which may be deposited in the Refunding Bonds Reserve Account; underwriter's discount, legal expenses; expenses for estimates of costs and revenues; administrative expense; commitment fees; premiums for municipal bond insurance, reserve account insurance or reserve account surety bonds; letter of credit fees; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Refunding Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it

for allowable costs prior to the issuance of the Refunding Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall also be permitted.

D. [Reserved.]

E. It is in the best interest of the Issuer that the Refunding Bonds be sold to the Original Purchaser pursuant to the terms and provisions of one or more bond purchase agreements to be entered into by and between the Issuer and the Original Purchaser, as shall be approved by supplemental resolution of the Issuer.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Refunding Bonds as to liens, pledge, source of and security for payment, being the Issuer's: (1) Combined Utility System Revenue Bonds, Series 1992 (West Virginia SRF Program), dated September 8, 1992, issued in the original aggregate principal amount of $11,900,000 (the "Series 1992 Bonds"); (2) Combined Utility System Revenue Bonds, Series 1995 (West Virginia SRF Program), dated April 27, 1995, issued in the original aggregate principal amount of $1,601,477 (the "Series 1995 Bonds"); (3) Combined Utility System Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated February 29, 2000, issued in the original aggregate principal amount of $7,842,000 (the "Series 2000 A Bonds"); (4) Combined Utility System Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated February 29, 2000, issued in the original aggregate principal amount of $2,488,000 (the "Series 2000 B Bonds"); (5) Combined Utility System Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated February 8, 2001, issued in the original aggregate principal amount of $3,812,470 (the "Series 2001 A Bonds"); (6) Combined Utility System Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated June 30, 2006, issued in the original aggregate principal amount of $6,410,191 (the "Series 2006 A Bonds"); (7) Combined Utility System Revenue Bonds, Series 2007 A (West Virginia SRF Program), dated August 14, 2007, issued in the original aggregate principal amount of $8,500,000 (the "Series 2007 A Bonds"); (8) Combined Utility System Revenue Bonds, Series 2010 B (West Virginia SRF Program/ARRA), dated January 28, 2010, issued in the original aggregate principal amount of $81,600 (the "Series 2010 B Bonds"); (9) Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program), dated January 28, 2010, issued in the original aggregate principal amount of $15,380,227 (the "Series 2010 C Bonds"); (10) Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program), dated January 28, 2010, issued in the original aggregate principal amount of $9,317,286 (the "Series 2010 D Bonds"); (11) Combined Utility System Revenue Bonds, Series 2010 E (West Virginia DWTRF Program/ARRA), dated January 28, 2010, issued in the original aggregate principal amount of $100,000 (the "Series 2010 E Bonds"); (12) Combined Utility System Revenue Bonds, Series 2010 F (Bank Qualified), of the Issuer, dated January 28, 2010, issued in the original aggregate principal amount of $7,250,000 (the "Series 2010 F Bonds"); (13) Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate amount of $570,000 (the "Series 2012 A Bonds"); (14) Combined Utility System Revenue Bonds, Series 2012 B (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate amount of $444,835 (the "Series 2012 B Bonds"); and (15) Combined Utility System Revenue Bonds, Series 2012 C (Bank Qualified), dated October 5, 2012, issued in the original aggregate amount of $2,330,000 (the "Series 2012 C Bonds"), (collectively, the "Prior Bonds").

Prior to the issuance of any series of the Refunding Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of the Holders of the Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2012 A Bonds and Series 2012 B Bonds to the issuance of the Refunding Bonds on a parity with the Series 1992 Bonds, Series 1995 Bonds, Series 2000 A Bonds, Series 2000 B Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 B Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2012 A Bonds, Series 2012 B Bonds and Series 2012 C Bonds. The Series 2010 F Bonds and Series 2012 C Bonds do not require consent. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Ordinances.

Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

G. If the Issuer issues one or more series of the Refunding Bonds, the Issuer intends to pledge for payment thereof, from the Gross Revenues of the System, on a parity with one another and on a parity with such pledge in favor of the Holders of the Prior Bonds.

H. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, to provide for the repair, maintenance and operation of the System, the payment of interest upon the Refunding Bonds, and the Prior Bonds, and to create sinking funds, as hereinafter provided, to pay the principal on the Refunding Bonds and the Prior Bonds as and when it becomes due and reasonable reserves therefor, to provide an adequate renewal and replacement fund, as hereinafter provided, and to make all other payments provided for in this Ordinance.

I. To the extent that the outstanding Series 2010 A Bonds are not purchased on the open market by the Issuer or are not subject to a successful tender offer to existing bondholders of the Series 2010 A Bonds, it is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Refunding Bonds, and secure the Refunding Bonds by a pledge and assignment of the Gross Revenues derived from the operation of the System, the monies in the Refunding Bonds Reserve Account, unexpended proceeds of the Refunding Bonds and as further set forth herein.

J. The Refunding Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A - REFUNDING BOND FORM attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

K. All things necessary to make the Refunding Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and

assign those funds pledged hereby to the payment of the principal of and interest on the Refunding Bonds, will be timely done and duly performed.

L. The enactment of this Ordinance, the execution and issuance of the Refunding Bonds and the amendment, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

M. The Issuer has complied with all requirements of West Virginia law relating to the operation of the System, the issuance of the Refunding Bonds and the refunding and/or purchase of the Series 2010 A Bonds, or will have so complied prior to issuance of any thereof.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Refunding Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II
AUTHORIZATION OF REFUNDING, PURCHASE IN OPEN MARKET, AND/OR TENDER OFFER

Section 2.01 Authorization of Refunding, Purchase in Open Market, and/or Tender Offer. All Series 2010 A Bonds Outstanding as of the date of issuance of the Refunding Bonds and all unpaid interest accrued thereon, if any, are hereby ordered to be refunded, purchased in the open market, and/or made subject to a tender offer to existing bondholders and paid in full and the pledge of Gross Revenues in favor of the Registered Owners of the Series 2010 A Bonds imposed by the Prior Ordinance authorizing the issuance of the Series 2010 A Bonds, the monies in the funds and accounts created by the Prior Ordinances pledged to payment of the Series 2010 A Bonds, and any other funds pledged by the Prior Ordinances to payment of the Series 2010 A Bonds are hereby ordered terminated, discharged and released upon such payment to the Registered Owners of the Series 2010 A Bonds. Contemporaneously with the payment in full of the Series 2010 A Bonds, the amounts on deposit in the sinking fund, and all other funds and accounts created and maintained on behalf of the Series 2010 A Bonds, shall be released from the lien created by the Prior Ordinance authorizing the issuance of the Series 2010 A Bonds. Monies held in the Series 2010 A Bonds Sinking Fund and Series 2010 A Bonds Reserve Fund shall be transferred as set forth in the Supplemental Parameters Resolution.

ARTICLE III
THE REFUNDING BONDS

Section 3.01 Form and Payment of Bonds. No Refunding Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Refunding

Bonds issued pursuant to this Ordinance may be issued only as fully registered Refunding Bonds without coupons, in the denomination of $5,000 or any integral multiple thereof for any year of maturity. All Refunding Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. All Refunding Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Refunding Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Refunding Bonds shall be in default, Bonds issued in exchange for Refunding Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Refunding Bonds surrendered.

The principal of and the premium, if any, on the Refunding Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Refunding Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of $1,000,000 or more of the Refunding Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Refunding Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Refunding Bond in the principal amount of said Refunding Bond then Outstanding.

Section 3.02. Execution of Bonds. The Refunding Bonds shall be executed in the name of the Issuer by the Mayor and City Manager, by their respective manual or facsimile signatures, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Refunding Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Refunding Bonds be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Refunding Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Refunding Bond, substantially in the form set forth in EXHIBIT A – REFUNDING BOND FORM attached hereto and incorporated herein by reference with respect to the Refunding Bonds, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Refunding Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Refunding

Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Refunding Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Refunding Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Refunding Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Refunding Bonds. The Refunding Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Refunding Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Refunding Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Refunding Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Refunding Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Refunding Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Refunding Bonds, the Registrar may impose a service charge. For every such transfer or exchange of Refunding Bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Refunding Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Refunding Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed,

stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Refunding Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued as part of the Refunding Bonds pursuant to this Ordinance, the following provisions shall apply:

1. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Refunding Bonds Redemption Account in accordance with Subsection 4.03(A)(1) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount (or, if the Refunding Bonds mature semiannually rather than annually, that month which is 6 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/6th of the amount) required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

2. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

3. The Issuer shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

4. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the monies in the Refunding Bonds Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

5. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Refunding Bonds Sinking Fund), as will exhaust as nearly as practicable such Refunding Bonds Redemption Account payment designated to be made in accordance with paragraph (A)(1) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory Redemption Date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of $5,000.

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Refunding Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, the Original Purchaser, and the registered owner of the Refunding Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

So long as DTC (as CEDE & CO.) is the registered Owner of the Refunding Bonds, the Registrar shall send all notices of redemption to DTC and shall verify that DTC has received notice. Copies of all redemption notices shall also be sent to registered securities depositories, nationally recognized municipal securities information repositories and to *Standard & Poor's Called Bond Record.*

All official notices of redemption shall be dated and shall state:

(1) The Redemption Date,

(2) The Redemption Price,

(3) If less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Registrar, and

(6) Such other information, if any, as shall be required for DTC-Eligible Bonds.

If funds sufficient to redeem all Refunding Bonds called for optional redemption have not been deposited with the Paying Agent at the time of mailing any notice of optional redemption, such notice shall also state that such optional redemption is subject to the deposit of such monies with the Paying Agent on or before the Redemption Date. If such monies are not so deposited, the Registrar shall notify all holders of Refunding Bonds called for redemption of such fact.

Official notice of redemption having been given as aforesaid, the Refunding Bonds, or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Refunding Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal of such Bond. All Refunding Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Refunding Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the
Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and (except as provided in Section 6.18) for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with

appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Refunding Bonds. For the purposes of paying in full the entire outstanding principal amount and all accrued interest on the Series 2010 A Bonds, funding the Refunding Bonds Reserve Account and paying costs in connection therewith, there shall be issued the Refunding Bonds of the Issuer, in an aggregate principal amount of not more than $40,000,000. Said Refunding Bonds shall be designated "Combined Utility System Refunding Revenue Bonds, Refunding" or such other designation as may be appropriate for the year and sequence of the issue, as may be set forth in a Supplemental Resolution, and shall be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof for any period of maturity, not exceeding the aggregate principal amount of Refunding Bonds maturing in the period of maturity for which the denomination is to be specified. The Refunding Bonds shall be numbered from AR-1 consecutively upward. The Refunding Bonds shall be dated; shall be in such aggregate principal amount (not to exceed $40,000,000); shall bear interest at such rate or rates, not exceeding the then legally permissible rate (not to exceed 8%), payable semiannually on such dates; shall mature on such dates (which may be annual or semi-annual) (not to exceed 35 years) and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Refunding Bonds.

A. The Refunding Bonds shall each initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Refunding Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Refunding Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Refunding Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Refunding Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a Refunding Bond or any other evidence of ownership of the Refunding Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Refunding Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Refunding Bonds, the Issuer and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Refunding Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption Price of or interest on such Refunding Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Bondholder under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Registrar with respect to the principal or Redemption Price of or interest on the Refunding Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Refunding Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Refunding Bonds so redeemed, but DTC may retain such Refunding Bonds and make an appropriate notation on the Refunding Bonds certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Refunding Bonds of such maturity which have been redeemed.

D. The Issuer, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Refunding Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Refunding Bonds, selecting the Refunding Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Refunding Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Refunding Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder with respect to (i) the Refunding Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Refunding Bonds, (iv) any notice which is permitted or required to be given to Bondholders under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Refunding Bonds, or (vi) any consent given or other action taken by DTC as Bondholder.

E. The book entry system for registration of the ownership of the Refunding Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Refunding Bonds; or (ii) the Issuer determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Refunding Bonds. In either of such events (unless in the case described in clause (iii) above, the Issuer appoints a successor securities depository), the Refunding Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Refunding Bonds.

Section 3.12. Delivery of Refunding Bonds.

A. The Issuer shall execute and deliver the Refunding Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Refunding Bonds to the Original Purchaser upon receipt of the documents set forth below:

(1) If not registered in the name of DTC or its nominee, a list of the names in which the Refunding Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(2) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Refunding Bonds to DTC for the benefit of the Original Purchaser;

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

(4) The unqualified approving opinion upon the Refunding Bonds by Bond Counsel; and

(5) Such other opinions, certificates and documents as shall be reasonably requested by the Original Purchaser.

Section 3.13. Form of Refunding Bonds. The definitive Refunding Bonds shall be in substantially the form set forth in EXHIBIT A – REFUNDING BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Refunding Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Refunding Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Refunding Bonds. Upon the issuance and delivery of the Refunding Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on the Refunding Bonds from the date thereof to the date of delivery thereof shall be deposited in the Refunding Bonds Sinking Fund and applied to payment of interest on the Refunding Bonds at the first interest payment date.

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

3. An amount of the proceeds of the Refunding Bonds equal to the entire outstanding principal of and all accrued interest on the Series 2010 A Bonds, less the amounts transferred from the Series 2010 A Bonds Sinking Fund and Series 2010 A Bonds Reserve Fund, if any, as set forth in the Supplemental Resolution shall be remitted to the Bond Commission to pay the Series 2010 A Bonds in full.

4. The amount of Refunding Bond proceeds which, together with other monies or securities deposited therein shall be equal to the Costs of Issuance of the Refunding Bonds shall be deposited with the Depository Bank in the Refunding Bonds Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Refunding Bonds at the written direction of the Issuer. Monies not to be applied immediately to pay such costs of issuance may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 120 days following the Closing Date for the Refunding Bonds, such unapplied proceeds shall be transferred by the Issuer to the Refunding Bonds Sinking Fund established in Section 4.01 hereof and applied to the next ensuing payment of interest on the Refunding Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Refunding Bonds from which such proceeds are derived.

ARTICLE IV
SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. Pursuant to this Article IV, the following special funds are created with (or continued if previously established by Prior Ordinances), and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other (except as set forth in this Section 4.01), and used solely for the purposes provided herein:

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

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

(3) Operation and Maintenance Fund (established by the Prior Ordinances).

Section 4.02. Establishment of Funds and Accounts with Bond Commission. The following special funds or accounts are hereby created (or continued is established by Prior Ordinances) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

(1) Series 1992 Bonds Sinking Fund (established by Prior Ordinances);

(2) Series 1992 Bonds Reserve Account established by Prior Ordinances);

(3) Series 1995 Bonds Sinking Fund (established by Prior Ordinances);

(4) Series 1995 Bonds Reserve Account established by Prior Ordinances);

(5) Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);

(6) Series 2000 A Bonds Reserve Account established by Prior Ordinances);

(7) Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);

(8) Series 2000 B Bonds Reserve Account established by Prior Ordinances);

(9) Series 2001 A Bonds Sinking Fund (established by Prior Ordinances);

(10) Series 2001 A Bonds Reserve Account established by Prior Ordinances);

(11) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);

(12) Series 2006 A Bonds Reserve Account established by Prior Ordinances);

(13) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);

(14) Series 2007 A Bonds Reserve Account established by Prior Ordinances);

(15) Series 2010 C Bonds Sinking Fund (established by Prior Ordinance);

(16) Series 2010 C Bonds Reserve Account (established by Prior Ordinance);

(17) Series 2010 D Bonds Sinking Fund (established by Prior Ordinance);

(18) Series 2010 D Bonds Reserve Account (established by Prior Ordinance);

(19) Series 2010 E Bonds Sinking Fund (established by Prior Ordinance);

(20) Series 2010 E Bonds Reserve Account (established by Prior Ordinance);

(21) Series 2010 A Bonds Sinking Fund (established by Prior Ordinance);

(22) Series 2010 A Bonds Reserve Account (established by Prior Ordinance);

(23) Series 2012 A Bonds Sinking Fund (established by Prior Ordinance);

(24) Series 2012 A Bonds Reserve Account (established by Prior Ordinance);

(25) Series 2012 B Bonds Sinking Fund (established by Prior Ordinance);

(26) Series 2012 B Bonds Reserve Account (established by Prior Ordinance);

(27) Series 2012 C Bonds Sinking Fund (established by Prior Ordinance);

(28) Series 2012 C Bonds Reserve Account (established by Prior Ordinance);

(29) Refunding Bonds Sinking Fund; and

(30) Refunding Bonds Reserve Account.

Section 4.03. System Revenues and Application Thereof. So long as any of the Refunding Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, from the monies in the Revenue Fund, on the first day of each month, simultaneously remit to the Commission (i) the amounts required by the Prior Ordinances to be deposited in the Prior Bonds Sinking Funds for payment of interest on the respective Prior Bonds; and (ii) beginning on the first day of that month which is 6 months prior to the first interest payment date on the Refunding Bonds, apportion and set apart out of the Revenue Fund and deposit in the Refunding Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Refunding Bonds on the next ensuing semiannual interest payment date, provided, that in the event the period to elapse

between the date of such initial deposit in the Refunding Bonds Sinking Fund and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date, and provided further, that the initial amount required to be transferred from the Revenue Fund and deposited in the Refunding Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Refunding Bonds deposited therein and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Refunding Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Refunding Bonds Sinking Fund.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and, simultaneously remit to the Commission (i) the amounts required by the Prior Ordinances to be deposited in the Prior Bonds Sinking Funds for payment of principal on the Prior Bonds; and (ii) for deposit in the Refunding Bonds Sinking Fund (and in the Refunding Bonds Redemption Account therein in the case of Term Bonds which are to be redeemed) on the first day of each month, beginning on the first day of that month which is 12 months prior to the first principal payment or mandatory Redemption Date of the Refunding Bonds, a sum equal to 1/12th of the amount (or 1/6th of the amount if the Refunding Bonds mature semiannually rather than annually) of principal which will mature or be redeemed and become due on the Refunding Bonds on the next ensuing principal payment or mandatory Redemption Date, provided, that in the event the period to elapse between the date of such initial deposit in the Refunding Bonds Sinking Fund and the next ensuing principal payment or mandatory Redemption Date is less than or greater than 12 months (or 6 months if the Refunding Bonds mature semiannually rather than annually), then such monthly payments shall be increased or decreased proportionately to provide, one month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Refunding Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and, simultaneously remit to the Commission (i) the amounts required by the Prior Ordinances to be deposited in the Prior Bonds Reserve Accounts for the Prior Bonds; and (ii) commencing 13 months prior to the first date of payment of principal of the Refunding Bonds or upon completion of construction of the Project, whichever is earlier, if not fully funded upon issuance of the Refunding Bonds, for deposit in the Refunding Bonds Reserve Account, an amount equal to 1/120th of the Refunding Bonds Reserve Requirement; provided that, no further payments shall be made into the Refunding Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Refunding Bonds Reserve Requirement; provided further, that if the amounts in the Refunding Bonds Reserve Account, as a result of a decrease in value of the Refunding Bonds Reserve Account below the Refunding Bonds Reserve Account Requirement or any withdrawal from the Refunding Bonds Reserve Account, the Issuer shall apply such monies for deposit into the Refunding Bonds Reserve Account, beginning with the first full calendar month following the date on which (i) the valuation of investments in the Refunding Bonds Reserve Account results in a determination that the amount of monies and the value of the Qualified Investments deposited to the credit of the Refunding Bonds Reserve Account is less than the Refunding Bond Reserve Account Requirement, or (ii) any amount is withdrawn from the Refunding Bonds Reserve Account

for deposit into the Refunding Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of monies on deposit in the Refunding Bonds Reserve Account to an amount equal to the Refunding Bond Reserve Account Requirement to the full extent that such Net Revenues are available; provided, however, that if the shortfall in the Refunding Bonds Reserve Account is due to a decrease in the value of investments therein, such shortfall shall be replenished by not less than 4 equal monthly payments, and if such shortfall is due to a withdrawal from the Refunding Bonds Reserve Account, such shortfall shall be replenished by not less than 12 equal monthly payments, and provided further, that no payments shall be required to be made into the Refunding Bonds Reserve Account whenever and as long as the amount deposited therein shall be equal to the Refunding Bond Reserve Account Requirement.

Amounts in the Refunding Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Refunding Bonds when due, when amounts in the Refunding Bonds Sinking Fund are insufficient therefor and for no other purpose.

(4) The Issuer shall next, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.

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

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

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Refunding Bonds Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Refunding Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The monies on deposit in the Revenue Fund and the Renewal and Replacement Fund in excess of the sum insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of municipal funds under the laws of the State.

D. Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds, the Refunding Bonds, all in accordance with the respective principal amounts then Outstanding.

ARTICLE V
INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any monies held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section (unless otherwise required by the Bond Insurer and as set forth in the Supplemental Resolution):

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

(B) The Issuer shall, or shall cause the Bond Commission to, annually transfer from the Refunding Bonds Reserve Account to the Sinking Fund any earnings on the monies deposited therein and any other funds in excess of the Refunding Bonds Reserve Requirement, provided, however, that there shall at all times remain on deposit in the Refunding Bonds Reserve Account an amount at least equal to the Refunding Bonds Reserve Requirement.

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

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

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

Section 5.02. Continuing Disclosure Agreement. The Issuer shall deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time, and the Issuer hereby instructs the Mayor and City Manager to take all actions necessary for the Issuer to comply with the continuing disclosure agreement.

Section 5.03. Arbitrage. This section applies if Refunding Bonds are issued on a tax-exempt basis. The Issuer covenants that (i) it will restrict the use of the proceeds of the Refunding Bonds in such manner and to such extent as may be necessary, so that such Refunding Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on the Refunding Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.04. Tax Certificate, Rebates, and Rebate Fund. This section applies if Refunding Bonds are issued on a tax-exempt basis. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate (the "Tax Certificate") to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Refunding Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer or the Board shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.04. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.04 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

ARTICLE VI
ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Refunding Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Refunding Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Refunding Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Refunding Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Gross Revenues of the System, the monies in the Refunding Bonds Sinking Fund and all accounts therein, the unexpended proceeds of the Refunding Bonds or monies in a

construction fund, if any, all as herein provided. No Holder or Holders of any Refunding Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Refunding Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Gross Revenues and Monies in Sinking Fund. The payment of the debt service of all of the Refunding Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Gross Revenues derived from the operation of the System on a parity with one another and with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds and, in the instance of the Refunding Bonds, all monies and securities in the Refunding Sinking Fund, including the Refunding Bonds Reserve Account therein, to the extent necessary to make the payments required under Section 4.03. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Refunding Bonds herein authorized, and to make the payments into the Refunding Bonds Sinking Fund, all monies and securities in the Refunding Bonds Sinking Fund, including the Refunding Bonds Reserve Account therein.

Section 6.04. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Refunding Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Refunding Bonds, including the Prior Bonds.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage. In any event, subject to the requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the current rate ordinance.

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in this Ordinance.

Section 6.06. Sale of the System. So long as the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, except as provided by the Prior Ordinances. Additionally, so long as the Refunding Bonds are Outstanding, the System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to defease the pledge created by this Ordinance as provided by Section 9.01. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Bond Commission for deposit in the Refunding Bonds Sinking Fund, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the Revenues of the System.

The foregoing provision notwithstanding, the Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of $250,000, the Board shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Board may then provide for the sale of such property. The proceeds of any such sale shall be used for any lawful purpose of the System. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of $250,000 but not in excess of $1,000,000, the Board shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Board may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of $250,000 and not in excess of $1,000,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of $1,000,000 and insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01, without the prior approval and consent in writing of any applicable Bond Insurer and the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the Bond Insurer and the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except Additional Parity Bonds provided for in Section 6.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Gross Revenues with the Refunding Bonds; and all obligations hereafter issued by the Issuer payable from the revenues of the System, except such Additional Parity Bonds, shall contain an express statement that such obligations are

junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Refunding Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such Additional Parity Bonds, being on a parity with the lien of the Refunding Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Refunding Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional Parity Bonds, as in this section defined, payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No such Additional Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto or the Prior Bonds, to pay claims which may exist against the revenues or facilities of the System, or all of such purposes.

No such Additional Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by an Independent Accountant, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the date of issuance of such Additional Parity Bonds, shall be not less than 115% of the Maximum Annual Debt Service on the following:

(1) The Refunding Bonds then Outstanding;

(2) The Prior Bonds Outstanding;

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

(4) The Additional Parity Bonds then proposed to be issued.

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

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

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

The term "Additional Parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made pursuant to Section 4.03(1), (2) and (3) have first been paid. The Issuer shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Refunding Bonds except in the manner and under the conditions provided in this section.

No Additional Parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding (excluding the Renewal and Replacement Fund), and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the Additional Parity Bonds and the Issuer shall then be in full compliance with all the covenants, agreements and terms in the Ordinance and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency with respect to such payments and compliance.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Refunding Bonds remain Outstanding, the Issuer or the Board will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies rated at least "A" by Standard & Poor's Corporation covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the event of any damage to or destruction of any portion of the System, the Board will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Board will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Board and the Issuer during construction of the Project in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than is customarily carried by municipalities of equivalent size with respect to works and properties similar to the System to protect the Issuer and the Board from claims for bodily injury and/or death and from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer and the Board from claims arising out of operation or ownership of motor vehicles of or for the System, provided that, the Board, with the review of an insurance consultant and the concurrence of the Issuer, may elect to self-insure, so long as the following requirements are met:

(i) The self-insurance program has been reviewed by an insurance consultant;

(ii) The self-insurance program includes an actuarially sound claims reserve fund out of which each self-insured claim shall be paid; the adequacy of such fund shall be evaluated on an annual basis by an insurance consultant; and any deficiencies in any self-insured claims reserve fund will be remedied in accordance with the recommendation of the insurance consultant;

(iii) The self-insured claims reserve fund shall be held in the United States of America in a separate trust fund by an independent corporate trustee; and

(iv) In the event the current funding of the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by an insurance consultant, shall be maintained.

If the Issuer determines in good faith that any required insurance is not commercially available at a reasonable cost with reasonable terms, it shall engage an insurance consultant to verify the determination and to make recommendations regarding the types, amounts and provisions of any such insurance that should be purchased or funded by the Issuer, taking into consideration the costs and practices of other municipal water and sewer systems of similar size and type in the State to the extent that such information is available. The Issuer may, upon resolution adopted in good faith and upon the

recommendations of the insurance consultant, adopt alternate or supplemental risk management programs which the Issuer determines to be reasonable, including the right to self-insure and participate in captive insurance companies.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Board and such payment bonds will be filed with the Clerk of the County Commission of Monongalia County prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

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

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 6.10. Services Rendered to the Board or Issuer. The Board will not render or cause to be rendered any free services of any nature by its System; and, in the event the Board, the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Board, the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Board or the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.11. Enforcement of Collections. The Issuer or the Board will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all

delinquent rates, rentals and other changes, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and any services and facilities of the Issuer's waterworks system, to all delinquent users of services and facilities of the System and will not restore such services of the System (or waterworks system) until all billing for charges for the services and facilities of the System, plus penalty charges for the restoration of service, has been fully paid or an appropriate payment plan has been established.

Section 6.12. No Competing Franchise. To the extent legally allowable, neither the Issuer nor the Board will grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Books and Records. The Board will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Board or the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Refunding Bond, shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Board relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Board. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Board. The Board shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Board shall be reported to such agent of the Board as it shall direct.

The Issuer or the Board shall file with the Original Purchaser and any Bond Insurer, and shall mail to any Bondholder requesting the same, an annual report within 30 days following the date of receipt of the final audit containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The Issuer or the Board shall also file with the Original Purchaser and any Bond Insurer, and mail to any Bondholder requesting the same, a monthly unaudited report within 30 days following the end of each month containing the following:

(A) A statement of Gross Revenues, Operating Expenses, and Net Revenues derived from the System; and

(B) A statement of account balances in the Sinking Fund accounts provided for in this Ordinance and status of said funds.

The Issuer or the Board shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by an Independent Accountant, shall mail upon request, and make available generally, the report of said Independent Accountant, or a summary thereof, to any Holder or Holders of Refunding Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.14. Operating Budget. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the charter of the Issuer, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of such a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Board shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and the Bond Insurer, if any, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.15. Mandatory Connections. The mandatory use of the sewerage portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer, and in order to assure the rendering harmless of sewage and waterborne waste matter produced or arising within the territory served by the sewerage portion of the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the sewerage portion of the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building and every such owner, tenant or occupant shall, after a 30 day notice of the availability of sewerage services of the System, pay the rates and charges established therefor.

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

Section 6.16. Statutory Mortgage Lien. For the further protection of the Holders of the Refunding Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon the issuance of the Refunding Bonds and shall be on a parity with one another and with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 6.17. Tax Covenants. This section applies if Refunding Bonds are issued on a tax-exempt basis. The Issuer hereby further covenants and agrees as follows:

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

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

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Refunding Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

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

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Refunding Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion. Without limiting the generality of the foregoing, the Issuer agrees to comply with the provisions of the Tax Certificate, which are hereby incorporated herein. This covenant shall survive payment in full or defeasance of the Refunding Bonds.

Section 6.18. Covenants Regarding the Municipal Bond Insurance Policy. This section applies if the Issuer obtains Municipal Bond Insurance Policies for the Refunding Bonds. In the event such Municipal Bond Insurance Policies are obtained, certain additional covenants of the Issuer will be required by the Bond Insurer as a condition to insuring the Refunding Bonds. These additional covenants shall be set forth in full in the Supplemental Resolution, shall apply to the Refunding Bonds and any other Bonds which may be insured by such Bond Insurer, and shall be controlling in the event any other provisions of this Ordinance may be in conflict therewith.

ARTICLE VII
DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Refunding Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Refunding Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Bondholder or any Insurer; or

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

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

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder (with the prior written consent of the applicable Bond Insurer) or any Bond Insurer may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Bondholders, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Refunding Bonds, as applicable;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Bondholders.

No remedy by the terms of this Ordinance conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such

remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall be made without the prior written consent of the applicable Bond Insurer or shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder or any Bond Insurer shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Refunding Bonds, and the Prior Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

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

Whenever all that is due upon the Refunding Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, and all monies due hereunder or under any Supplemental Resolution have been paid in full, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Bondholder shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the

Holders of the Refunding Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, any trustee or Bondholder's committee shall consider the effect on the Bondholders as if no Municipal Bond Insurance Policy were then in effect.

Section 7.04. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

ARTICLE VIII
REGISTRAR AND PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Refunding Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the Issuer, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Refunding Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Refunding Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a

certificate of an Authorized Officer of the Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Refunding Bonds, the first exchange of Refunding Bonds and the exchange of Refunding Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Refunding Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Refunding Bonds, or this Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Refunding Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately, provided that in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer, the applicable Bond Insurer or by the Holders of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer, the applicable Bond Insurer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar. Such removal shall take effect upon the date stated in such instrument, provided that in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Refunding Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be

appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any monies, books and records held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Refunding Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The West Virginia Municipal Bond Commission shall initially serve as Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Refunding Bond shall be and remain DTC-Eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from monies available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the

purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All monies received by the Paying Agents shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

ARTICLE IX
DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Refunding Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, and all other monies due hereunder have been paid, then this Ordinance and the pledges of the Gross Revenues and other monies and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Refunding Bonds made hereunder, as applicable, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Refunding Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said Redemption Date. Neither securities nor monies deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of

the principal of and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or Redemption Dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge.

ARTICLE X
MISCELLANEOUS

Section 10.01. Amendment of Ordinance. Prior to issuance of the Refunding Bonds, this Ordinance may be amended, modified or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Refunding Bonds, this Ordinance and any Supplemental Resolution may, without the consent of any Bondholder or other person, be amended, modified or supplemented in any manner which, in the opinion of Bond Counsel, does not materially adversely affect the interests of the Bondholders or any Bond Insurer, provided that, in the event any of the Bonds are insured, no such amendment or modification which affects the rights of the applicable Bond Insurer for such Bonds may be made without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Refunding Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Holder of such Bond, nor reduce the percentage of Refunding Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Bondholder or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Refunding Bonds held by a person executing any instrument as a Bondholder, the date of his holding such Refunding Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Holder of any Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Refunding Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Refunding Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this Ordinance to the contrary notwithstanding, any monies held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Refunding Bonds which remain unclaimed for two years after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment

to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such monies remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such monies then unclaimed will be returned to the Issuer.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, the Original Purchaser or the Bond Insurer shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY

The City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505
Attention: City Manager

REGISTRAR

[Name(s) and address(s) to be set forth in Supplemental Resolution]

PAYING AGENT

West Virginia Municipal Bond Commission
8 Capitol Street
Suite 500, Terminal Building
Charleston, West Virginia 25301
Attn: Executive Director

DEPOSITORY BANK

[Name(s) and address(s) to be set forth in Supplemental Resolution]

ORIGINAL PURCHASER

Crews & Associates, Inc.
2000 Union National Plaza
124 West Capitol
Little Rock, Arkansas 72201

BOND INSURER

[Name(s) and address(es) to be set forth in the Supplemental Resolution]

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council, the Board or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Refunding Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Refunding Bonds, the applicable Bond Insurer, if any, and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Holders of the Refunding Bonds, the Bond Insurer and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headlines. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed, provided however, that the Prior Ordinances shall remain in full force and effect so long as any of the Prior Bonds are Outstanding.

Section 10.13. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the Council of the Issuer to contain sufficient information to give notice of the contents of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the *Dominion Post*, a newspaper published and having a general circulation in The City of Morgantown, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Refunding Bonds described in this Ordinance and that any person interested may appear before the Council at the public hearing to be had at a public meeting of Council on the _____ day of _____, 2012, at _____ p.m., in the Council Chambers of the City Hall, Morgantown and present protests, and that a certified copy of this Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all protests and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

[Remainder of Page Intentionally Blank]

This Ordinance shall become effective following public hearing hereon in accordance with the Act.

First Reading:	October 30, 2012
Second Reading:	_____, 20_____
Effective following Public Hearing held on:	_____, 20_____

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AND CORRECT AS TO FORM:

_____
City Attorney

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the City Council of THE CITY OF MORGANTOWN at a regular meeting of the City Council held on _____, 20_____, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper having a general circulation in The City of Morgantown, the first publication having been not less than 10 days prior to such public hearing.

Dated this _____ day of _____, 20_____.

[SEAL]

_____
City Clerk

EXHIBIT A - REFUNDING BOND FORM

[DTC Legend]

No. R-_____

$_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN (WEST VIRGINIA)
COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, REFUNDING

INTEREST RATE:	MATURITY DATE:	BOND DATE:	CUSIP:
_____%	_____	_____	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF MORGANTOWN (West Virginia), a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on _____ 1 and _____ 1, in each year, beginning _____ 1, 20__ (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter-described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each _____ 15 and _____ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the Issuer maintained by _____, _____, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of $_____ designated "The City of Morgantown Combined Utility System Refunding Revenue Bonds, Refunding" (the "Refunding Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated _____, 2013, upon original issuance, the proceeds of which are to be used, together with other funds of the Issuer, (i) to paying in full the entire outstanding principal amount and all accrued interest on the Series 2010 A Bonds, (ii) to fund the Refunding Bonds Reserve Account and (iii) to pay certain costs of issuance of the Refunding Bonds and related costs. The Refunding Bonds are issued under the authority of and in full compliance with the Constitution and statute of the State of West Virginia, including particularly, Chapter 8, Article 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and an ordinance duly enacted by the City Council of the Issuer on _____, 2013, and supplemented by a supplemental resolution adopted by said Council on _____, 2013 (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Refunding Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Refunding Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in The City of Morgantown, West Virginia.

[The Refunding Bonds are additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by __[Bond Insurer]__.]

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S: (1) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1992 (WEST VIRGINIA SRF PROGRAM), DATED SEPTEMBER 8, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $11,900,000 (THE "SERIES 1992

BONDS"); (2) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM), DATED APRIL 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,601,477 (THE "SERIES 1995 BONDS"); (3) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,842,000 (THE "SERIES 2000 A BONDS"); (4) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 29, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,488,000 (THE "SERIES 2000 B BONDS"); (5) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED FEBRUARY 8, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,812,470 (THE "SERIES 2001 A BONDS"); (6) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 30, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,410,191 (THE "SERIES 2006 A BONDS"); (7) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2007 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,500,000 (THE "SERIES 2007 A BONDS"); (8) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $81,600 (THE "SERIES 2010 B BONDS"); (9) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $15,380,227 (THE "SERIES 2010 C BONDS"); (10) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $9,317,286 (THE "SERIES 2010 D BONDS"); (11) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 E (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $100,000 (THE "SERIES 2010 E BONDS"); (12) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 F (BANK QUALIFIED), OF THE ISSUER, DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $7,250,000 (THE "SERIES 2010 F BONDS"); (13) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM), DATED AUGUST 24, 2012, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF $570,000 (THE "SERIES 2012 A BONDS"); (14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (WEST VIRGINIA DWTRF PROGRAM), DATED AUGUST 24, 2012, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF $444,835 (THE "SERIES 2012 B BONDS"); AND (15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED), DATED OCTOBER 5, 2012, ISSUED IN THE ORIGINAL AGGREGATE AMOUNT OF $2,330,000 (THE "SERIES 2012 C BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

The Refunding Bonds are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on and after _____, 20____, are subject to redemption prior to maturity at the option of the Issuer on or after

_____, 20_____, in whole at any time and in part on any Interest Payment Date, as directed by the Issuer, in reverse order of maturity and by lot within a maturity, at the following Redemption Prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed (Dates Inclusive)	Redemption Price

_____(B) Mandatory Sinking Fund Redemption. The Bonds maturing on _____, 20_____ and 20_____ are subject to annual mandatory sinking fund redemption prior to maturity by random selection as may be determined by the Registrar, on _____ 1 of the years and in the principal amounts set forth below, at the Redemption Price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing _____ 1, 20

_____	Year (1)	Principal Amount

Bonds Maturing _____ 1, 20

_____	Year (1)	Principal Amount

_____
* Final Maturity

In the event of any redemption of less than all outstanding Refunding Bonds, the maturities to be redeemed shall be selected by the Paying Agent at the direction of the Issuer and Refunding Bonds to be redeemed shall be determined by lot within a maturity, or in such other manner deemed appropriate by the Paying Agent. If less than all the Refunding Bonds are to be redeemed, the Refunding Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Refunding Bond, unless waived, shall be given by the Paying Agent on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Refunding Bond or Refunding Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Paying Agent. Such notice shall also be given by the Paying Agent to the Registrar. Notice of redemption having been given as aforesaid, the Refunding Bonds or portions of Refunding Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Refunding Bonds or portions of Refunding Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Refunding Bond.

The Refunding Bonds and the interest thereon are payable only from and are secured by the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity in all respects with the pledge of the Gross Revenues created in favor of the holders of the Prior Bonds, all monies in the Refunding Bonds Sinking Fund, and the Refunding Bonds Reserve Account therein, established under the Ordinance, and the unexpended proceeds of the Refunding Bonds, and the Issuer hereby and in the Ordinance pledges such revenues and monies to such payment. Said Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Refunding Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the monies in the Refunding Bonds Sinking Fund and the Refunding Bonds Reserve Account and said unexpended Refunding Bond proceeds. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Refunding Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Refunding Bonds, including the Prior Bonds. The Issuer has entered into certain further covenants with the registered owners of the Refunding Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Refunding Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All monies received from the sale of the Bonds except for accrued interest thereon shall be applied solely to pay all costs of the Project, funding a reserve account for the Refunding Bonds and pay costs of issuance of the Bonds, and there shall be, and hereby is, created and granted a lien upon such monies, until so applied, in favor of the registered owners of said Refunding Bonds.

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

This Refunding Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Ordinance.

This Refunding Bond and the income therefrom are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

This Refunding Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

All provisions of the Ordinance, as defined on the reverse hereof, and the statutes under which this Refunding Bond is issued shall be deemed to be a part of the contract evidenced by this Refunding Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN (West Virginia) has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Refunding Bond to be dated as of the Refunding Bond Date specified above.

[SEAL]

_____

Mayor

_____

City Manager

ATTEST:

_____

City Clerk

CERTIFICATE OF AUTHENTICATION
AND REGISTRATION

This Refunding Bond is one of the fully registered Refunding Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Refunding Bonds.

Dated: _____, 2013.

_____,
As Registrar

By _____
Its Authorized Officer

STATEMENT OF INSURANCE

[Bond Insurance Legend]

(FORM OF)
ASSIGNMENT

Social Security or Other Identifying Number of Assignee

_____

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

Dated: _____, 20____.

_____

SIGNATURE GUARANTEED:

_____
(Bank, Trust Company or Firm)

_____
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

THE CITY OF MORGANTOWN, WEST VIRGINIA

COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, REFUNDING

BOND ORDINANCE

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SIGNATURES
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EXHIBIT A - REFUNDING BOND FORM

Parking Bond

THE CITY OF MORGANTOWN
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2012

SUPPLEMENTAL PARAMETERS RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES AND OTHER TERMS OF THE PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2012 OF THE CITY OF MORGANTOWN; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE ORIGINAL PURCHASER; APPOINTING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK FOR SUCH BONDS; APPROVING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, The City of Morgantown (the "Issuer" or the "City") in the County of Monongalia, State of West Virginia, is a municipal corporation and political subdivision of said State, the governing body of which is its City Council (the "Governing Body");

WHEREAS, the Governing Body has duly and officially enacted on July 3, 2012, an Ordinance (the "Ordinance") entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING PARKING REVENUE BONDS, SERIES 2002 AND FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2012, OF THE ISSUER IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO

EXCEED $5,500,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION THEREWITH; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT THERETO.

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

WHEREAS, the Ordinance provides for the issuance by the Issuer of its Parking System Refunding Revenue Bonds, Series 2012 in an aggregate principal amount not to exceed $5,500,000 (the "Series 2012 Bonds" or "Bonds") in accordance with Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the "Revenue Bond Act") and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (the "Refunding Act" and along with the Revenue Bond Act, the "Act");

WHEREAS, the Issuer is advised that current market conditions are such that present value debt service savings would result from the current refunding of its outstanding Parking System Revenue Bonds, Series 2002, dated December 12, 2002, issued in the original aggregate principal amount of $6,000,000 (the "Series 2002 Bonds") and the Issuer has determined that it is currently in the best interest of inhabitants of the City and other users of the System to currently refund the Series 2002 Bonds pursuant to the issuance of its Series 2012 Bonds;

WHEREAS, the Ordinance further provided that the exact dates, amounts, maturities, interest rates, redemption provisions, purchase price and other terms of the Bonds should be established by Supplemental Resolution or by a Certificate of Determinations, that a Registrar, Paying Agent and Depository Bank be designated, that a Registrar Agreement, Tax Certificate and other documents relating to the issuance of the Series 2012 Bonds be approved and that other matters pertaining to the Bonds be provided for by a Supplemental Resolution of the Governing Body or by a Certificate of Determinations, that additional covenants and provisions relating to the Bonds be provided therein, and that other matters pertaining to the Bonds be provided for by a Supplemental Resolution of this Governing Body or by a Certificate of Determinations;

WHEREAS, the Bonds are proposed to be purchased by United Bank, Inc. (the "Original Purchaser"), pursuant to the terms of a Commitment Letter of the Original Purchaser (the "Commitment Letter"); and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental parameters resolution (the "Supplemental Parameters Resolution") be adopted, that the Tax and Non-Arbitrage Certificate, the Registrar Agreement and the Prepayment Agreement hereinafter provided for be entered into by the Issuer, that the Mayor and City Manager be authorized to execute and deliver such other documents as may be necessary in connection with the issuance of the Series 2012 Bonds and with the current refunding of the Series 2002 Bonds, and that other matters relating to the Bonds be herein provided for all in accordance with the Ordinance;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGANTOWN:

SECTION 1. For the purposes of (i) paying the entire outstanding principal balance of and all accrued interest on the Issuer's outstanding Series 2002 Bonds and (ii) paying costs of issuance of the Series 2012 Bonds and related costs, the Governing Body of the Issuer hereby authorizes and orders the issuance of the Series 2012 Bonds in an aggregate principal amount not to exceed $4,500,000, provided that the Net Present Value of the savings of such refunding shall not be less than 3.0%.

SECTION 2. Pursuant to the Ordinance and the Act, this Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Series 2012 Bonds. The Series 2012 Bonds shall be issued in the aggregate principal amount not to exceed $4,500,000, bear interest at a rate not to exceed 3.5%, with interest and principal being repaid in semiannual amortizing installment payments, commencing approximately 7 months following the issue date of the Series 2012 Bonds, shall mature not later than December, 2023, shall be dated such date, upon original issuance, shall be subject to such redemption provisions, all as shall subsequently be approved by the Mayor and City Manager pursuant to the execution and delivery by the Mayor and City Manager of a Certificate of Determinations with respect to the Bonds, in the form attached hereto as **EXHIBIT A**, with such changes, insertions, modifications and omissions as may be approved by the Mayor and City Manager of the Issuer, the execution and delivery of such Certificate of Determinations by the Mayor and City Manager being conclusive proof of the approval of such modifications (the "Certificate of Determinations").

SECTION 3. The form of the Series 2012 Bonds shall be substantially in the form set forth in **EXHIBIT B- Bond Form** attached hereto and made a part hereof, with such amendments, insertions, deletions and modifications as shall be approved by the Mayor and City Manager of the Issuer which approval may be established by

the execution and delivery of such Series 2012 Bonds by the Mayor and City Manager of the Issuer. The final terms of the Series 2012 Bonds shall be approved by the Mayor and City Manager pursuant to their execution and deliver of the Certificate of Determinations, which final terms shall be within the parameters set forth in Section 2 hereof. All other provisions relating to the Series 2012 Bonds shall be as provided in the Ordinance, as the same may be modified hereby.

SECTION 4. The proceeds of the Bonds shall be expended solely for the purposes set forth in the Ordinance.

SECTION 5. The Series 2012 Bonds shall be issued in Authorized Denominations of $100,000 and any increment of $500 in excess thereof.

SECTION 6. The second paragraph of Section 3.01 of the Ordinance shall be revised so as to read as follows:

> The principal of and interest on the Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America. Such payments of principal and interest on the Bonds shall be paid by check or draft of the Paying Agent made payable and mailed to the Registered Owner thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of $1,000,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner; provided, however, that the final payment of the principal of and interest on the Bonds shall be made by the Paying Agent to such Registered Owner upon presentation of such Bonds to the Paying Agent for cancellation or destruction.

SECTION 7. The Series 2012 Bonds shall not be book-entry bonds registered in the name of the Depository Trust Company, but rather such Series 2012 Bonds shall be initially registered in the name of the Original Purchaser. All payments on the Bonds shall be made by the Paying Agent directly to the Registered Owner of the Bonds as of the Record Date immediately preceding such payment date. All notices required by the Ordinance to be provided to the Registered Owners of the Series 2012 Bonds shall be provided by the Issuer to the Registrar and thereupon provided by the Registrar to the Registered Owner of such Series 2012 Bonds.

SECTION 8. A Reserve Account will not be established with the Paying Agent or any other party in connection with the Series 2012 Bonds and no such Reserve Account will be funded in connection with the Series 2012 Bonds. Article V of the Ordinance is here by revised to eliminate any reference to a Reserve Account or the funding of the same in connection with the Series 2012 Bonds.

SECTION 9. The Series 2012 Bonds will be privately placed with the Original Purchaser and such issue will be structured in such a way that SEC Rule

15c2-12 (the "Rule") will either not apply to such issuance or such issuance will qualify for an exemption from such Rule. Thus, the Issuer will not deliver a Rule 15c2-12 Certificate in connection with the issuance of the Series 2012 Bonds and Section 6.04 of the Ordinance shall be revised to the extent inconsistent herewith.

SECTION 10. The name of the Original Purchasers of the Series 2012 Bonds and the notice address for such Original Purchasers as contained in Section 11.06 of the Ordinance shall be revised to such notice address for the Original Purchaser, United Bank, Inc., as shall be provided in the Certificate of Determinations.

SECTION 11. The Ordinance designated Crews & Associates, Inc., Morgantown, West Virginia as the proposed purchaser of the Series 2012 Bonds. Based upon a comparison of projected debt service savings and the proposed structure and terms of the Series 2012 Bonds, the Issuer now desires and does hereby designated United Bank, Inc. as the purchaser of the Series 2012 Bonds.

SECTION 12. The Issuer is advised and hereby finds that based upon the assumed principal amount, maturity schedule and interest rates for the Series 2012 Bonds presented to the Issuer by the Original Purchaser, the Series 2012 Bonds show a net present value debt service savings to the Issuer after deducting all expenses of the refunding of the Series 2002 Bonds and the costs of issuing the Series 2012 Bonds.

SECTION 13. The Tax and Non-Arbitrage Certificate, to be dated the date of execution and delivery of the Bonds (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form as shall be approved pursuant to the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager thereof shall be and the same are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Tax Certificate in the form to be approved pursuant to the Certificate of Determinations with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Tax Certificate by the Mayor and City Manger shall be conclusive evidence of any approval required by this Section.

SECTION 14. The Registrar Agreement, to be dated the date of execution and delivery of the Bonds, by and between the Issuer and the Registrar named herein (the "Registrar Agreement"), substantially in the form as shall be approved pursuant to the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager thereof shall be and the same are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Registrar Agreement in the form to be approved pursuant to the Certificate of Determinations with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Registrar Agreement by the Mayor and City Manger shall be conclusive evidence of any approval required by this Section.

SECTION 15. The Prepayment Agreement, to be dated the date of execution and delivery of the Bonds, by and between the Issuer and the West Virginia Municipal Bond Commission (the "Prepayment Agreement"), substantially in the form as shall be approved pursuant to the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor and City Manager thereof shall be and the same are hereby authorized, approved and directed. The Mayor and City Manager shall execute and deliver the Prepayment Agreement in the form to be approved pursuant to the Certificate of Determinations with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Prepayment Agreement by the Mayor and City Manger shall be conclusive evidence of any approval required by this Section.

SECTION 16. The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Bonds.

SECTION 17. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Series 2012 Bonds.

SECTION 18. The Issuer hereby appoints and designates United Bank, Inc., as the Depository Bank and Registrar for the Bonds.

SECTION 19. The Mayor, City Manager and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, required or desirable in connection with the Bonds to the end that the Bonds may be delivered on a timely basis to the Original Purchaser.

SECTION 20. The notice addresses for the Depository Bank, Paying Agent, Registrar and Original Purchaser shall be set forth and provided in the Certificate of Determinations.

SECTION 21. The issuance of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

SECTION 22. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Series 2012 Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 2012 Bonds to be an "arbitrage bond" as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor and City Manger of the Issuer are authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

SECTION 23. The Mayor, City Manager and City Clerk, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered

and directed to do any and all things proper and necessary to cause the Series 2012 Bonds to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

SECTION 24. This Supplemental Parameters Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Left Blank]

Adopted this ____ day of November, 2012.

THE CITY OF MORGANTOWN

By: _____

[SEAL] Its: Mayor

By: _____

Its: City Manager

Attest:

_____

City Clerk

6120115

CERTIFICATION

Certified a true copy of a Supplemental Parameters Resolution duly adopted by the City Council of THE CITY OF MORGANTOWN on November ____, 2012, which Supplemental Parameters Resolution has not been repealed, rescinded, modified, amended or revoked, as of the date hereof.

Dated this _____ day of _____, 2012.

By: _____
City Clerk

627490.00046

6120115

EXHIBIT A

FORM OF CERTIFICATE OF DETERMINATIONS

THE CITY OF MORGANTOWN
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2012

CERTIFICATE OF DETERMINATIONS

The undersigned, Ron Manilla, Mayor, and the undersigned Terrence R. Moore, City Manager, of The City of Morgantown (the "Issuer"), in accordance with the Supplemental Parameters Resolution adopted by the Governing Body of the Issuer on _____, 2012 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Parking System Refunding Revenue Bonds, Series 2012 (the "Series 2012 Bonds"), hereby finds and determines as follows:

1. The Series 2012 Bonds shall be issued in the original aggregate principal amount of $_____, shall be dated _____, 2012, shall bear interest at the fixed annual percentage rate of ____%, and the principal of and interest on the Series 2012 Bonds shall be payable in _____ equal amortizing semi- annual installment payments in the amount of $_____, commencing on _____1, 2013, and continuing on each _____ 1 and _____1 to and including _____ 1, 20____, which shall be the maturity date of the Series 2012 Bonds (the "Maturity Date"), at which time all principal of and interest on the Series 2012 Bonds not theretofore paid shall become due and payable.

2. The interest rate on the Series 2012 Bonds does not exceed 3.5%, being the maximum interest rate authorized by the Supplemental Parameters Resolution. The Net Present Value of the savings realized from such refunding is not less than 3.0%, which is the minimum savings threshold approved by the Supplemental Parameters Resolution.

3. The Series 2012 Bonds shall [not] be subject to [optional and/or mandatory] redemption as set forth on Schedule 1 attached hereto and incorporated herein.

4. The Series 2012 Bonds shall be sold to United Bank, Inc. (the "Original Purchaser"), pursuant to the terms of a Commitment Letter which has been delivered by the Original Purchaser to the Issuer.

5. The Series 2012 Bonds shall be initially issued in the form of one bond, numbered R-1, in the original aggregate principal amount of

$_____, the entire principal amount of which shall initially be registered in the Bond Register maintained by the Registrar in the name of the Original Purchaser.

6. The Series 2012 Bonds shall be issued in authorized denominations of $100,000 and increments of $500 in excess thereof.

7. The Record Dates for the Series 2012 Bonds shall be _____ 15 and _____ 15 each year during the term of the Series 2012 Bonds.

8. The Ordinance provides for the designation of Qualified Investments for the proceeds of the Bonds by this Certificate of Determinations. The proceeds of the Bonds are anticipated to be expended on the issue date thereof, or within 30 days thereafter, for the current refunding of the Series 2002 Bonds and the payment of costs of issuance of the Series 2012 Bonds. To the extent that the proceeds of the Bonds are not expended on the closing date or within 30 days thereafter for their intended purposes, such proceeds may be invested in United States Government Obligations maturing at such times and amounts so as to provide funds for the current refunding of the Series 2002 Bonds or in bank Certificates of Deposit which are market priced and either insured or secured by a pledge of Unites States Government Obligations.

9. Proceeds of the Series 2012 Bonds in the amount of $_____ shall be transferred on the issue date to the Paying Agent for deposit in the Series 2002 Bonds Sinking Fund for subsequent application, in combination with other funds on deposit in the Series 2002 Bonds Sinking Fund, to the current refunding and repayment in full of the Series 2002 Bonds.

10. Proceeds of the Series 2012 Bonds in the amount of $_____ shall be transferred on the issue date to the Paying Agent in payment of the fees and costs of the Paying Agent in connection with the current refunding of the Series 2002 Bonds and issuance of the Series 2012 Bonds.

11. Proceeds of the Series 2012 Bonds in the amount of $_____ shall be transferred on the issue date to the Depository Bank for deposit in the Costs of Issuance Fund for subsequent application by the Issuer to the payment of the Costs of Issuance of the Series 2012 Bonds.

12. There will be no Reserve Account for the Series 2012 Bonds and proceeds of the Series 2012 Bonds will not be applied to the funding of a Reserve Account.

13. The forms of the Tax and Non-Arbitrage Certificate, Registrar's Agreement and Prepayment Agreement attached hereto are hereby approved.

14. The notice addresses for the Depository Bank, Registrar, Original Purchaser and Paying Agent for the Series 2012 Bonds shall be as set forth below or as shall hereafter be designated in writing by such party to the Issuer:

REGISTRAR/DEPOSITORY BANK/ORIGINAL PURCHASER

United Bank, Inc.

_____

_____

_____

PAYING AGENT

West Virginia Municipal Bond Commission
900 Pennsylvania Avenue, Suite 1117
Charleston, West Virginia 25302
Attn: Executive Director

15. The undersigned hereby certifies that the foregoing terms and conditions of the Series 2012 Bonds are within the parameters prescribed by the Supplemental Parameters Resolution, and the Series 2012 Bonds may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

(Remainder of Page Intentionally Blank)

WITNESS my signature this _____ day of _____, 2012.

THE CITY OF MORGANTOWN

By: _____
Its: Mayor

By: _____
Its: City Manger

627490.00046

6120115

SCHEDULE 1

SERIES 2012 A BOND TERMS

Redemption Provisions

[Insert]

FORM OF TAX AND NON-ARBITRAGE CERTIFICATE

[Attached Hereto]

FORM OF REGISTRAR AGREEMENT

[Attached Hereto]

FORM OF PREPAYMENT AGREEMENT

[Attached Hereto]

EXHIBIT B- BOND FORM

THIS BOND IS REGISTERED WITH THE REGISTRAR, UNITED BANK, INC., AND IS NOT REGISTERED WITH THE DEPOSITORY TRUST COMPANY, AND ANY REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT SHOULD BE SUBMITTED TO THE REGISTRAR, UNITED BANK, INC.

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS BOND NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS BOND BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY ONLY (A) TO THE ISSUER, (B) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THE HOLDER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO A "NON U.S. PERSON" IN AN "OFFSHORE TRANSACTION" PURSUANT TO REGULATION S UNDER THE SECURITIES ACT, (D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE BOND FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO IT. THE REGISTERED OWNER OF THIS BOND ALSO AGREES THAT ALL BONDHOLDERS MUST AT ALL TIMES HOLD AN AUTHORIZED DENOMINATION OF THE SERIES 2012 BONDS, WHICH AUTHORIZED DONOMINATIONS EQUAL $100,000 OR ANY $1,000 INCREMENT IN EXCESS THEREOF, AND THE BONDHOLDERS AGREE TO TRANFER NO INTEREST IN THE SERIES 2012 BONDS WHICH WOULD CAUSE A VIOLATION OF SUCH REQUIREMENT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT IT WILL COMPLY WITH THE FOREGOING RESTRICTIONS.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
PARKING REFUNDING REVENUE BOND,
SERIES 2012

No. R-1 $_____

THE CITY OF MORGANTOWN, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer") for value received, hereby promises to pay, solely from the special fund provided therefore, as hereinafter set forth, to the order of

- UNITED BANK, INC. -

or registered assigns (the "Registered Owner"), the principal sum of _____ and 00/100 DOLLARS ($_____) in lawful money of the United States of America, together with interest thereon at the fixed annual percentage rate of ____ %, from the date of this Bond, in _____ equal amortizing semi-annual installments of principal and interest in the amount of $_____, commencing on _____ 1, 2013, and continuing on each _____ 1 and _____1 thereafter occurring to and including _____ 1, 20___, which shall be the maturity date of this Bond (the "Maturity Date"), at which time all principal of and interest on this Bond not theretofore paid shall become due and payable. Interest shall be computed on the basis of a year of 365 days and for the actual number of days elapsed during any month or portion thereof.

Notwithstanding any other provision of this Bond to the contrary, in the event of a Determination of Taxability, the rate of interest on this Bond shall be equal to _____% per annum (the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the Date of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Bond is asserted, declared or determined to be subject to federal income taxation, and shall continue until the entire principal of and interest on this Bond is paid, notwithstanding that the entire principal amount of this Bond may have been paid in full prior to the Determination of Taxability. Any interest being past due on this Bond by reason of such increase shall become immediately due and payable. In addition, in the event of a Determination of Taxability, the Registered Owner shall be entitled to payment, on demand, of any Special Charges. Special Charges means (a) an amount equal to any penalties or interest paid to the Internal Revenue Service or to the State of West Virginia by the present and former Registered Owner resulting from the failure to include interest on this Bond in its gross income for purposes of determining its federal income tax or State income tax, plus any tax payable by them as a consequence of the receipt of such amount; plus (b) an amount equal to all reasonable administrative, out-of-pocket and other expenses incurred by the present and former Registered Owner which are directly or indirectly attributable

to interest on this Bond becoming subject to federal or State income tax as a result of the failure to include interest on this Bond in its gross income for purposes of determining its federal or state income tax, including without limitation, costs incurred by the present and former Registered Owner in amending its federal or State tax returns.

As used herein the term "Determination of Taxability" means the interest on the Bonds in whole or in part is included in the gross income of a holder (or former holder) for federal income tax purposes for any reason, the determination of which is manifested by (a) a statutory Notice of Deficiency (90-day letter) from the Internal Revenue Service proposing to include such interest in the income of a holder (or former holder), or (b) delivery to the Registrar or Issuer of an opinion of Bond Counsel acceptable to the Registrar to the effect that (i) as a result of a change in the federal tax laws after the date of the issuance of the Bonds such interest on obligations of the general character of the Bonds will be included in whole or in part in the gross income of the holders thereof (for the purposes of this paragraph, such interest becomes subject to federal income taxation when the President of the United States of America signs such legislation) or (ii) that for any other reason, interest on the Bonds, in whole or in part, is included in the gross income of a holder or former holder of the Bonds; provided, however, no Determination of Taxability shall be deemed to exist if the Issuer shall, within 30 days after such assertion of taxability, cause to be delivered to the Registrar an unqualified opinion of Bond Counsel reasonably acceptable to the holder or former holder to the effect that interest on the Bonds has been and continues to be excludable from gross income for federal income tax purposes, then such holder or former holder shall at the expense of the Issuer contest such assertion of taxability by appropriate administrative proceedings through the Internal Revenue Service Appeals Office, whose determination as to taxability shall be final and binding and upon such determination by the Internal Revenue Service Appeals Office a Determination of Taxability shall be deemed to exist. In any such contest the holder or former holder shall cooperate with the Issuer and toward that end shall (a) give prompt notice of any such assertion and (b) permit the Issuer or its representatives to meet with the representatives of the holder or former holder dealing with the Internal Revenue Service to discuss the issues involved. All other capitalized terms used in this Bond but not defined in this Bond shall have the meaning set forth in the Ordinance (hereinafter defined).

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent. The Record Dates for the Series 2012 Bonds shall be each _____ 15 and _____ 15 during the term of the Series 2012 Bonds.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of $_____ designated "The City of Morgantown (West Virginia) Parking System Refunding Revenue Bonds, Series 2012" (the "Bonds") of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated _____, 2012, the proceeds of which are

to be used (i) to finance the costs of currently refunding the Issuer's Parking Revenue Bond, Series 2002, dated December 12, 2002, issued in the original aggregate principal amount of $6,000,000 (the "Series 2002 Bonds") and (ii) to pay costs of issuance of the Series 2012 Bonds and related costs. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and an ordinance duly enacted by the Council of the Issuer on _____, 2012, as supplemented by the Supplemental Resolution of the Issuer adopted on _____, 2012 (collectively, the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in the City of Morgantown, West Virginia.

The principal of and interest on the Bonds are payable from, and secured by a first lien on the Net Revenues of the Issuer's on-street and off-street motor vehicle parking facilities, together with all related facilities (the "System"), as more particularly described in the Ordinance, and all moneys in the Sinking Fund established under the Ordinance, and the Issuer hereby and in the Ordinance pledges such revenues and moneys to such payment.

The Bonds shall be subject to prepayment at the option of the Issuer, prior to the maturity thereof, in whole, or in part on any semiannual installment payment date, at a prepayment price equal to 100% of the principal amount prepaid, without premium, plus accrued interest at the applicable rate to the date of any such prepayment, and other payments due hereunder. Any partial prepayment shall be in integrals of $10,000 and shall be applied in such manner so as to reduce the principal amount of Bonds Outstanding, shall be made pro-rata as to each of the Bonds, in proportion to the outstanding principal amount of each such Bond, and the Paying Agent shall thereafter recalculate the installment payments then due on the Bonds. Such partial prepayment shall not affect the final maturity date of the Bonds.

Prepayment shall be made on the date selected by the Issuer, which date shall be not less than 15 days nor more than 45 days after receipt by the Paying Agent of a certificate of the Issuer (i) requesting that the Bonds or portion thereof be prepaid, and (ii) stating the principal amount of the Bonds to be so prepaid, and the date upon which the same will be prepaid.

Notice of prepayment, identifying the Bonds or portions thereof to be prepaid, shall also be given by the Paying Agent by mailing a copy of the prepayment notice by registered or certified mail at least 10 days prior to the date

fixed for prepayment to such Registered Owner of each Bond to be prepaid in whole or in part at the address shown on the Bond Register; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the prepayment of Bonds.

Notice of prepayment having been given in the manner hereinabove provided for, the Bonds or portion thereof shall on the date fixed for prepayment specified in such notice, become due and payable at the proper prepayment price as herein provided, and from and after the date fixed for prepayment (unless the Issuer shall default in the payment of the prepayment price) interest on such Bonds or portion thereof shall cease to accrue, and upon presentation and surrender of such Bonds at the office of any Paying Agent, such Bonds shall be paid at the prepayment price aforesaid.

This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from the sources set forth above. Under the Ordinance, the Issuer has entered into certain covenants with the Registered Owners, for the terms of which reference is made to said Ordinance. Remedies provided the Registered Owners are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth below, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Bond is transferable, as provided in the Ordinance, only by transfer of registration upon the books of United Bank, Inc., _____, West Virginia, as Registrar, to be made at the request of the Registered Owner hereof in person or by his attorney duly authorized in writing, and upon surrender hereof, together with a written instrument of transfer satisfactory to said registrar duly executed by the Registered Owner or his duly authorized attorney. Upon transfer hereof, there shall be issued another fully registered Bond or fully registered Bonds of the aggregate principal amount equal to the unpaid amount hereof.

This Bond shall only be transferable by transfer of registration upon the books of the Registrar as provided herein and in the Ordinance. This Bond shall be registered in the Bond Register and such registration shall be noted on this Bond. After such registration, no registration of transfer hereof shall be valid unless made on the Bond Register at the written request of the registered owner or his duly authorized attorney or legal representative and similarly noted on this Bond.

The Bond Registrar shall not be obligated to make any registration or transfer of (a) any Bonds during the 15 day period preceding (i) an interest payment date or (ii) the date of publication or mailing, whichever is earlier, of a notice of redemption, or (b) any Bonds called for redemption.

This Bond is hereby and in the Ordinance designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in issuance of this Bond exist, have happened and have been performed in due time, form and manner as required by law, and that the Bonds, together with all other obligations of the Issuer, do not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

This Bond shall not be valid or obligatory unless authenticated by the Registrar by the execution of the Registrar's Certificate of Authentication endorsed hereon.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, The City of Morgantown, has caused this Bond to be signed by its Mayor and City Manager and its corporate seal to be hereunto affixed and attested by its Clerk, and has caused this Bond to be dated the ____ day of _____, 2012.

The date of original delivery of this Bond is _____, 2012.

THE CITY OF MORGANTOWN

[SEAL]

By:_____
Mayor

By:_____
City Manager

ATTEST:

By: _____
Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is one of the Bonds described in and issued under the provisions of the within-mentioned Ordinance.

UNITED BANK, INC., as Registrar

By: _____
Authorized Officer

Date of Delivery: _____, 2012

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____ the City of Morgantown Parking Refunding Revenue Bond, Series 2012, in the amount of $_____ dated _____, 2012, and does hereby irrevocably constitute and appoint _____, attorney, to transfer said Bond on the books of the Registrar on behalf of the City with full power of substitution in the premises.

Dated: _____, _____

_____

IN THE PRESENCE OF:

_____

(No writing on this Bond except by the Registrar)

SCHEDULE OF REGISTERED OWNERS

Date of Registration	In Whose Name Registered	Signature of Registrar
	United Bank, Inc.	

10/22/2012
627490/00046

North Side Fire Station

City of Morgantown Ordinance

ORDINANCE OF THE CITY OF MORGANTOWN

AN ORDINANCE AUTHORIZING THE CURRENT REFUNDING AND REPAYMENT IN FULL BY THE MORGANTOWN BUILDING COMMISSION OF ITS OUTSTANDING LEASE REVENUE BONDS, SERIES 2008 A (NORTH SIDE FIRE STATION PROJECT) (THE "SERIES 2008 A BONDS"); AUTHORIZING AND APPROVING THE ISSUANCE BY THE MORGANTOWN BUILDING COMMISSION OF ITS NOT TO EXCEED $4,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF LEASE REFUNDING REVENUE BONDS, SERIES 2012 A (NORTH SIDE FIRE STATION PROJECT) FOR THE PURPOSE OF FINANCING THE CURRENT REFUNDING AND REPAYMENT IN FULL OF THE BUILDING COMMISSION'S OUTSTANDING SERIES 2008 A BONDS AND PAYING COSTS OF ISSUANCE OF THE SERIES 2012 A BONDS AND RELATED COSTS; AUTHORIZING AND APPROVING THE LEASING BY THE CITY OF MORGANTOWN FROM THE MORGANTOWN BUILDING COMMISSION OF THE PROJECT COMPONENTS WHICH WERE FINANCED WITH THE PROCEEDS OF THE SERIES 2008 A BONDS AND ALL RELATED APPURTENANCES AND IMPROVEMENTS THERETO; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT, A TAX CERTIFICATE AND AGREEMENT AND OTHER INSTRUMENTS AND AUTHORIZING AND APPROVING OTHER DOCUMENTS AND MATTERS RELATING TO THE ISSUANCE, TERMS AND SECURITY OF SUCH SERIES 2012 A BONDS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the "City") has, pursuant to an ordinance enacted August 16, 1988, created and established the Morgantown Building Commission (the "Issuer"), a public corporation and municipal building commission, pursuant to the authority granted to it in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Issuer, under the Act, has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or

any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, jail facilities, police stations, fire stations, and other public buildings, and the City has heretofore deemed the design, acquisition, construction and equipping of the North Side Fire Station and the acquisition of a fire truck to be necessary and appropriate for the public interest;

WHEREAS, the Issuer under the Act has the power and authority to raise funds by the issuance and sale of revenue bonds in the manner provided by certain provisions of Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the "Revenue Bond Act");

WHEREAS, pursuant to the Act, the Revenue Bond Act and a Bond Authorizing Ordinance enacted by the Issuer following a public hearing on September 16, 2008 (the "Bond Authorizing Ordinance"), the Issuer has heretofore issued its Lease Revenue Bonds, Series 2008 A (North Side Fire Station Project), dated October 16, 2008, in the original aggregate principal amount of $4,500,000 (the "Series 2008 A Bonds") for the purposes of financing costs of the design, acquisition, construction and equipping of a new North Side Fire Station and to acquire a new fire truck to be used in connection therewith and to be used in connection with the general firefighting activities of the City, together with all necessary appurtenances in connection therewith (the "Project") and to pay costs of issuance of such Series 2008 A Bonds and related costs;

WHEREAS, the Issuer and the City have been advised that present value debt service savings would be realized from the current refunding and repayment in full by the Issuer of its Series 2008 A Bonds and the issuance by the Issuer of its Lease Revenue Refunding Bonds, Series 2012 A (North Side Fire Station Project) (the "Series 2012 A Bonds") for the purpose of financing the costs of such current refunding and paying costs of issuance of the Series 2012 A Bonds;

WHEREAS, the City has requested that the Issuer issue its Lease Revenue Refunding Bonds, Series 2012 A (North Side Fire Station Project), in an aggregate principal amount of not to exceed $4,500,000 (the "Series 2012 A Bonds") to (i) finance costs of the current refunding and repayment in full of the Series 2008 A Bonds and (ii) pay costs of issuance of the Series 2012 A Bonds and related costs;

WHEREAS, the City has heretofore conveyed the site of the Project improvements, together with the buildings, improvements, appurtenances and personal property associated therewith, and the Project improvements thereto (the "Facilities"), unto the Issuer pursuant to such deeds and other appropriate instruments of transfer, and the Issuer has leased

such Facilities unto the City pursuant to an Agreement and Lease, dated September 16, 2008 (the "Prior Lease Agreement");

WHEREAS, in order to secure repayment of the Series 2008 A Bonds, the Issuer has heretofore executed and delivered that certain Lease Assignment, dated October 16, 2008 (the "Prior Lease Assignment"), by and between the Issuer and MVB Bank, Inc., as the original purchaser of the Series 2008 A Bonds from the Issuer (the "2008 Bond Purchaser") and that certain A Credit Line Deed of Trust, Fixture Filing and Security Agreement, dated October 16, 2008, by and among the Issuer, the trustees named therein, for the benefit and security of the 2008 Bond Purchaser (the "2008 Deed of Trust");

WHEREAS, in connection with the issuance of the Series 2012 A Bonds and the current refunding and repayment in full of the Series 2008 A Bonds the Issuer and the City desire to authorize and effect the release of the Prior Lease Agreement, the Prior Lease Assignment and the 2008 Deed of Trust and authorize the execution and delivery of a new Agreement and Lease, Lease Assignment, Credit Line Deed of Trust and an Indenture of Trust to secure the repayment of the Series 2012 A Bonds;

WHEREAS, the Issuer has agreed to issue the Series 2012 A Bonds pursuant to the terms of an Indenture of Trust (the "Indenture") by and between the Issuer and the bond trustee to be designated and approved by the Issuer pursuant to the Certificate of Determinations (the "Bond Trustee");

WHEREAS, in connection with the issuance of the Series 2012 A Bonds by the Issuer, the City will enter into a new Agreement and Lease with the Issuer (the "Lease Agreement"), under the terms of which the Issuer will lease the Facilities to the City and in return therefor the City will make lease payments to the Issuer, or directly to the Bond Trustee as the assignee of the Issuer, at times and in amounts which will permit the Issuer to make all debt service payments on the Series 2012 A Bonds, to make all mandatory or optional redemption payments on the Series 2012 A Bonds, and to pay the principal and interest of such Series 2012 A Bonds upon maturity (the "Lease Rentals");

WHEREAS, the Issuer, pursuant to the terms of the Indenture, will assign all Lease Rentals to be paid to it by the City under the Lease Agreement to the Bond Trustee, in order to secure repayment of the Series 2012 A Bonds by the Issuer;

WHEREAS, the Issuer and the City will enter into a Credit Line Deed of Trust, Fixture Filing, and Security Agreement, by and among the Issuer and the City, as grantors, the trustees named therein, and the Bond Trustee (the "Deed of Trust"), pursuant to the terms of which the Issuer and the City will convey their respective interests in and to the real and personal property described therein unto the Bond Trustee, in trust, to secure repayment of the Series 2012 A Bonds to the holders thereof;

WHEREAS, the Series 2012 A Bonds are proposed to be sold by the Issuer to Crews & Associates, Inc. (the "Underwriter"), pursuant to the terms of the Bond Purchase Agreement (the "Bond Purchase Agreement") among the Issuer, the Underwriter and the City;

WHEREAS, the Series 2012 A Bonds will be issued and sold pursuant to a Preliminary Official Statement (the "Preliminary Official Statement") and an Official Statement (the "Official Statement") containing, among other things, information regarding the Issuer and the City;

WHEREAS, the Issuer and the City will execute and deliver a Tax Certificate and Agreement, or other similar document, with respect to the issuance of the Series 2012 A Bonds (the "Tax Certificate") in order to assure the compliance by such parties with the requirements of the Internal Revenue Code which are necessary to maintain the tax-exempt status of the Series 2012 A Bonds for federal income tax purposes;

WHEREAS, the City shall approve the final terms of the Series 2012 A Bonds, and the forms of the Lease Agreement, Tax Certificate, Bond Purchase Agreement, Continuing Disclosure Agreement, Preliminary Official Statement, and other material documents to be executed and delivered by the City in connection with the issuance of the Series 2012 A Bonds by the Issuer (the "Bond Documents") pursuant to a Certificate of Determinations to be executed and delivered by the Chairman of the Issuer and the Mayor and City Manager of the City (the "Certificate of Determinations"); and

WHEREAS, the City desires to take all steps necessary to authorize the execution and delivery of all documents and instruments relating to the issuance of the Series 2012 A Bonds, the current refunding and repayment in full of the Series 2008 A Bonds and the leasing of the Facilities by the City from the Issuer for the purposes hereinabove stated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MORGANTOWN AS FOLLOWS:

Section 1. Authorization of Series 2012 A Bonds. The City hereby authorizes and agrees to the issuance by the Issuer of its Series 2012 A Bonds in the aggregate principal amount of not to exceed $4,500,000 for the purposes of financing the current refunding and repayment in full of the Issuer's outstanding Series 2008 A Bonds and paying costs of issuance of the Series 2012 A Bonds. The Series 2012 A Bonds shall be issued in such aggregate principal amount, shall be dated such dates, shall bear interest payable on such dates at such rates, shall mature on such dates and in such principal amounts, shall have such security provisions and provisions for redemption and shall have such other provisions all as shall be set forth in the Indenture and the Certificate of Determinations. The Series 2012 A Bonds shall be sold to the Underwriter at such prices, which may include an underwriters' discount, an original issue discount, and/or an original issue premium, and upon such other terms as shall be approved by the Mayor and City Manager of the City pursuant to the Certificate of Determinations.

Section 2. Approval of the Refunding. The current refunding and repayment in full of the Issuer's outstanding Series 2008 A Bonds, pursuant to the issuance by the Issuer of its Series 2012 A Bonds and the application of a portion of the proceeds of such Bonds to the repayment of the Series 2008 A Bonds, is hereby approved in all respects.

Section 3. Approval of Bond Documents and Execution and Delivery Thereof. The Bond Documents, substantially in the forms to be approved by the Mayor and City

Manager of the City pursuant to the Certificate of Determinations, shall be and the same are hereby approved in all respects. The Mayor and City Manager of the City shall execute and deliver the Bond Documents to which the City is a party, with such changes, insertions and omissions as may be approved by the Mayor and City Manager, and the Clerk of the City is hereby authorized and directed to affix the seal of the City thereto and to attest the same, where appropriate. The execution of the Bond Documents by said Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 4. Authorization and Execution of Lease Agreement. The City is hereby authorized to lease the Facilities, and all rights of way and other appurtenances associated therewith and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed from the Issuer for a term of years that is equal to the term of years for the repayment of the Series 2012 A Bonds by the Issuer. The City shall operate and maintain the Facilities during the lease term in accordance with the terms and provisions of the Lease Agreement. In exchange for the use of the Facilities during the lease term, the City shall pay lease rentals to the Issuer, or directly to the Trustee as provided in the Indenture, at such times and in such amounts as shall permit the Issuer to pay all debt service payments on the Series 2012 A Bonds, to make all mandatory and optional redemption payments, and to pay the interest on and principal of the Series 2012 A Bonds when due upon maturity. In accordance with the foregoing, the Lease Agreement, substantially in the form to be approved pursuant to the Certificate of Determinations, is hereby approved by the City and the Mayor and City Manager of the City are hereby authorized to execute and deliver the Lease Agreement with such changes as may be approved by the Mayor and City Manager prior to the execution thereof. The execution of the Lease Agreement by the Mayor and City Manager shall be conclusive evidence of the approval of any changes to the Lease Agreement. The City Clerk of the City is authorized to affix the seal of the City to the Lease Agreement and to attest the same.

Section 5. Appointment of Fiduciaries. The City and the Issuer shall appoint the Trustee, Registrar, Depository Bank, Paying Agent and Dissemination Agent for the Bonds pursuant to the Certificate of Determinations.

Section 6. Covenants. All covenants, stipulations, obligations and agreements of the City contained herein and contained in the Bond Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the City to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the City and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or the officials thereof by the provisions hereof and the aforesaid Bond Documents shall be exercised or performed by the City or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforesaid Bond Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity and neither the members of the City Council of the City nor any officer executing any of the Bond

Documents shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Section 7. Incidental Action. The execution, delivery and due performance of the Bond Documents are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the issuance of the Bonds, and it is hereby ordered that the Mayor, City Manager, City Clerk and other members and officers of the City execute and deliver the Bond Documents and all other documents relating thereto, and take such other action, including the granting of all necessary security interests and the investment of funds, as may be necessary or desirable to carry out the purposes of this Ordinance, the Series 2012 A Bonds and the Bond Documents.

Section 8. Conflicting Provisions Repealed. All orders, ordinances, resolutions or other actions or parts thereof of the City which conflict with this Ordinance are hereby expressly repealed.

Section 9. Notice and Public Hearing. Upon adoption of this Ordinance on first reading, the City Clerk of the City is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the City to contain sufficient information to give notice of the contents of such Ordinance, together with other information set forth in the notice in substantially the form attached hereto as **EXHIBIT A - NOTICE OF PUBLIC HEARING** and incorporated hereby by reference, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the Dominion Post, a newspaper published and having a general circulation in The City of Morgantown, West Virginia, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the City contemplates approval of the issuance of the Series 2012 A Bonds described in this Ordinance by the Issuer, that the City contemplates the approval and execution of the Bond Documents, including the Lease Agreement, and that any person interested may appear before the City at the public hearing to be had at a public meeting of the City on Tuesday, November 20, 2012, at 7:00 p.m., prevailing time, in the Council Chambers at Morgantown City Hall, 389 Spruce Street, Morgantown, West Virginia and present protests, and that a certified copy of this Ordinance is on file with the City Clerk of the City for review by interested parties during the office hours of the City. At such hearing all protests and suggestions shall be heard by the City Council of the City and it shall then take such action as it shall deem proper in the premises.

Section 10. Effective Date. This Ordinance shall become effective following public hearing hereon in accordance with the Act.

First Reading:	November 5, 2012
Public Hearing and Final Enactment Held On:	November 20, 2012

_____
Mayor

_____
City Manager

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The City of Morgantown does hereby certify that the foregoing Ordinance was duly enacted by The City of Morgantown at regular meetings duly held, pursuant to proper notice thereof, on November 5, 2012 and November 20, 2012, at Council Chambers at the Morgantown Municipal Building, a quorum being present and acting throughout, and which Ordinance has not been modified, amended or revoked and is a true, correct and complete copy thereof as witness my hand this _____, 2012.

By: _____
Its City Clerk

6123354

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING
TO RESIDENTS OF THE CITY OF MORGANTOWN
AND OTHER PERSONS INTERESTED -
ENACTMENT OF ORDINANCE AND ISSUANCE OF
LEASE REVENUE BONDS FOR
THE CITY OF MORGANTOWN

NOTICE IS HEREBY GIVEN, that THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia (the "City") contemplates the enactment of an ordinance (the "Ordinance") at a regular meeting to be held on **Tuesday, November 20, 2012, at 7:00 p.m.,** prevailing time, to consider for approval the issuance by the Morgantown Building Commission, a public corporation and municipal building commission of the State of West Virginia (the "Issuer") of its Lease Revenue Refunding Bonds, Series 2012 A (North Side Fire Station Project), in an amount not to exceed $4,500,000 (the "Series 2012 A Bonds"), pursuant to Chapter 8, Article 33 and applicable provisions of Chapter 8, Article 16 of the Code of West Virginia 1931, as amended, for the purposes of currently refunding and paying in full the Issuer's outstanding Lease Revenue Bonds, Series 2008 A (North Side Fire Station Project), dated October 16, 2008, issued in the original aggregate principal amount of $4,500,000 (the "Series 2008 A Bonds") and paying costs of issuance of the Series 2012 A Bonds and related costs. The Series 2008 A Bonds were issued for the purposes of financing costs of the design, acquisition, construction and equipping of a new North Side Fire Station, purchasing a new fire truck and relating improvements, equipment, furnishings and appurtenances (the "Project") and paying costs of issuance of such Bonds and related costs.

The Series 2012 A Bonds shall not constitute an indebtedness of the Issuer or the City, but shall be limited obligations of the Issuer, payable solely from the lease rentals to be paid by the City to the Issuer pursuant to an Agreement and Lease, by and between such parties, the funds and accounts pledged to such repayment pursuant to an Indenture of Trust to be entered into by and between the Issuer and the Bond Trustee, and the real and personal property constituting the Project facilities pursuant to a Credit Line Deed of Trust, Fixture Filing and Security Agreement, by and among the Issuer and the City, as grantors, the trustees named therein, and the Bond Trustee. The Series 2012 A Bonds, together with the interest thereon shall never be nor constitute a charge against the general credit or taxing powers of the Issuer, the City, the State of West Virginia or Monongalia County, nor shall the same ever constitute an indebtedness of the Issuer, the City, the State of West Virginia or Monongalia County within the meaning of any constitutional provision or statutory limitations.

A public hearing will be held on the Ordinance, the title of which is set forth below, and on the issuance of the Series 2012 A Bonds by the Issuer, the current refunding and repayment in full of the Series 2008 A Bonds, and the leasing of the Project facilities by the City from the Issuer, before the members of the City Council of the City at the Council Chambers at

Morgantown City Hall, 389 Spruce Street, Morgantown, West Virginia, on **Tuesday, November 20, 2012, at 7:00 p.m.** prevailing time, and any person or persons interested may appear before the City Council to present written or oral protests, comments and suggestions and be heard as to the proposed issue of Series 2012 A Bonds, the current refunding of the Series 2008 A Bonds, the leasing of the Project facilities by the City from the Issuer, and as to whether or not the Ordinance shall be put into effect:

> AN ORDINANCE AUTHORIZING THE CURRENT REFUNDING AND REPAYMENT IN FULL BY THE MORGANTOWN BUILDING COMMISSION OF ITS OUTSTANDING LEASE REVENUE BONDS, SERIES 2008 A (NORTH SIDE FIRE STATION PROJECT) (THE "SERIES 2008 A BONDS"); AUTHORIZING AND APPROVING THE ISSUANCE BY THE MORGANTOWN BUILDING COMMISSION OF ITS NOT TO EXCEED $4,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF LEASE REFUNDING REVENUE BONDS, SERIES 2012 A (NORTH SIDE FIRE STATION PROJECT) FOR THE PURPOSE OF FINANCING THE CURRENT REFUNDING AND REPAYMENT IN FULL OF THE BUILDING COMMISSION'S OUTSTANDING SERIES 2008 A BONDS AND PAYING COSTS OF ISSUANCE OF THE SERIES 2012 A BONDS AND RELATED COSTS; AUTHORIZING AND APPROVING THE LEASING BY THE CITY OF MORGANTOWN FROM THE MORGANTOWN BUILDING COMMISSION OF THE PROJECT COMPONENTS WHICH WERE FINANCED WITH THE PROCEEDS OF THE SERIES 2008 A BONDS AND ALL RELATED APPURTENANCES AND IMPROVEMENTS THERETO; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT, A TAX CERTIFICATE AND AGREEMENT AND OTHER INSTRUMENTS AND AUTHORIZING AND APPROVING OTHER DOCUMENTS AND MATTERS RELATING TO THE ISSUANCE, TERMS AND SECURITY OF SUCH SERIES 2012 A BONDS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Series 2012 A Bonds, the current refunding of the Series 2008 A Bonds and the Lease Agreement contemplated thereby. The City contemplates the approval of the issuance of the Series 2012 A Bonds by the Issuer and the approval of the Lease Agreement described in said Ordinance.

A certified copy of the Ordinance is on file with the Clerk of the City of Morgantown at the office of the City Clerk at the Morgantown City Hall, 389 Spruce Street, Morgantown, West Virginia, for review by interested parties during regular office hours.

Following said public hearing, the City Council of the City intends to vote on the adoption of said Ordinance upon final reading and to take such action as it deems proper.

Dated this November 5, 2012.

Linda Little /s/
Clerk of The City of Morgantown

6123354

AGENDA ITEM FOR WVU ALUMNI CENTER BOND MATTER

1. **CONSIDERATION FOR ADOPTION OF A RESOLUTION APPROVING THE MAKING OF CERTAIN AMENDMENTS TO THE CITY'S COMMERCIAL DEVELOPMENT REVENUE BONDS, AMENDED SERIES 2007 (WEST VIRGINIA UNIVERSITY ALUMNI ASSOCIATION, INC. PROJECT) AND DOCUMENTS RELATED THERETO AND APPROVING THE TAKING OF ALL NECESSARY ACTIONS RELATING TO THE FOREGOING.**

Bond Resolution

THE CITY COUNCIL OF MORGANTOWN, WEST VIRGINIA
RESOLUTION AUTHORIZING AMENDMENTS TO BONDS

RESOLUTION APPROVING THE MAKING OF CERTAIN AMENDMENTS TO THE CITY'S COMMERCIAL DEVELOPMENT REVENUE BONDS, AMENDED SERIES 2007 (WEST VIRGINIA UNIVERSITY ALUMNI ASSOCIATION, INC. PROJECT) AND DOCUMENTS RELATED THERETO AND APPROVING THE TAKING OF ALL NECESSARY ACTIONS RELATING TO THE FOREGOING.

WHEREAS, the City of Morgantown, West Virginia, a political subdivision of the State of West Virginia (the "City"), under Chapter 13, Article 2C of the Code West Virginia, 1931, as amended (the "Act"), has plenary power and authority to finance industrial and commercial projects by making loans to others to provide funds for the acquisition and construction of such projects and to issue revenue bonds for the purpose of defraying the costs of acquisition and construction of such projects or any additions, extensions or improvements thereto;

WHEREAS, the West Virginia University Alumni Association, Inc., a West Virginia nonprofit corporation (the "Association"), has heretofore financed the construction and equipping of a new alumni center and all necessary appurtenances and related facilities located in the City of Morgantown, West Virginia (the "Project");

WHEREAS, on November 2, 2007 the City issued $8,400,000 aggregate principal amount of its Commercial Development Revenue Bonds, Series 2007 (West Virginia University Alumni Association Project) (the "Bonds") pursuant to a Trust Indenture dated as of November 1, 2007 (the "Indenture") to permanently finance the acquisition, construction and equipping of a portion of the Project and loaned the proceeds of the Bonds to the Association to be used by the Association in funding a portion of the Project pursuant to a Loan Agreement dated as of November 1, 2007 (the "Loan Agreement");

WHEREAS, on June 1, 2010 the City Council of the City approved the making of certain amendments to the Indenture and the Loan Agreement as a result of certain changes agreed upon by the Association and WesBanco Bank, Inc. ("WesBanco") as the holder of the Bonds;

WHEREAS, the Association and Wesbanco have agreed to certain additional changes to the terms of the Bonds which the Association would like for the City to agree to in its capacity as issuer of the Bonds;

WHEREAS, Wesbanco has agreed to change certain terms of the Bonds such as the interest rate and the maturity schedule for the Bonds, including, specifically, adjusting the interest rate to a 2.45% fixed rate for the five year period commencing on the date of the amendments to the Financing Agreements, as defined below, with the rate adjusting every five years thereafter to a rate equal to the greater of (a) 2.45% or (b) 70% multiplied by the sum of the comparable LIBOR swap rate plus 2.50%. The remaining balance of the Bonds as of the effective date of the amendments is expected to be $4,200,000 and such amount will be amortized over a period ending no later than June 10, 2030;

WHEREAS, in order to make the amendments it will be necessary to amend the terms of the Bonds, the Indenture, the Loan Agreement and other documents related thereto (collectively, the "Financing Agreements") to reflect the agreement reached between the Association and Wesbanco with respect to the proposed amendments; and

WHEREAS, the proposed amendments to the Bonds will cause a "reissuance" of the Bonds to occur for federal income tax purposes; and

WHEREAS, the City desires to take all steps necessary for the amendments to the Bonds and related documents as soon as feasible;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MORGANTOWN, AS FOLLOWS:

Section 1. Authorization and Approval. The making of the proposed amendments to the Financing Documents is hereby authorized and approved. The officers, agents and employees of the City are hereby authorized, empowered and directed to execute any instruments and take any action required to make the amendments and to carry out the purposes described in the Financing Agreements and the preambles hereto.

Section 2. Forms of Documents Approved. The amendments to the Financing Agreements and other documents relating to the Bonds are hereby authorized in such form as may be approved by the Mayor, such approval to be evidenced by the execution by the Mayor of such Financing Agreements. The Mayor is authorized to negotiate and approve the final form and content of the Financing Agreements under such terms and conditions as are acceptable to the Mayor and the Association, with such changes, insertions and omissions as may be approved by the Mayor. The Mayor is hereby authorized, empowered and directed to execute and deliver the appropriate Financing Agreements or amendments thereto relating to the amendment of the Bonds and the Financing Documents on behalf of the City, in the forms and upon those terms and conditions as approved by the Mayor, and such approval shall be conclusively evidenced by the execution of the Financing Agreements by the Mayor or other authorized officer.

Section 3. Bonds to Constitute Limited Obligations. The Bonds shall be secured solely by the pledges effected by the Indenture. The Bonds, together with the interest thereon, are limited obligations of the City, payable solely from the Revenues, as such term is defined in the Indenture, and other sources set forth therein, and the Bonds

shall never constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing power, nor shall the Bonds create any personal liability upon any official or member of the City Council.

Section 4. Authentication of Bonds. The Trustee is hereby requested to authenticate and register the amended Bonds and to deliver them to or upon the order of the Mayor.

Section 5. Indemnification. Subject to the provisions of the Indenture and the Loan Agreement, the Association shall defend, indemnify and hold the City and its officials harmless from and against any and all loss, cost, expense, claim or action arising out of or connected with the adoption of this Resolution and the consummation of the transactions provided for herein and contemplated hereunder.

Section 6. Personal Liability. None of the present or future employees, officers or member of the City Council, or any person executing the Bonds or the Financing Agreements relating thereto, shall be personally liable for the Bonds or any other obligation relating to the issuance of such Bonds or be subject to any personal liability by reason of the issuance of the Bonds.

Section 7. Formal Actions. The City hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in accordance and in full compliance with the Code.

Section 8. Incidental Actions. The Mayor or other authorized officer of the City are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates and to take such other actions as may be necessary or appropriate in order to effectuate the execution, delivery and receipt, or any thereof, of the Financing Agreements and the amendment of the Bonds, and for carrying out the transactions contemplated therein, all in accordance with the Act, the Code and the foregoing sections hereof. The execution, delivery and due performance of the Financing Agreements are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the reissuance of the Bonds.

Section 9. Expenses and Fees. All expenses incurred by the City in connection with the amendment of the Bonds shall be paid to or reimbursed to the City by the Association.

Section 10. Governing Law. The laws of the State of West Virginia shall govern the construction of this Resolution and the amended Bonds.

Section 11. Severability. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution.

Section 12. Effective Time. This Resolution shall become effective immediately.

Adopted this 5th day of November, 2012.

THE CITY OF MORGANTOWN

By: _____
Mayor

6101090.4

CERTIFICATE

I, the undersigned Clerk of the City of Morgantown, West Virginia, hereby certify that the foregoing is a true, correct and complete copy of the text of a Resolution adopted by the City Council of the City of Morgantown, at a regular meeting held on November 5, 2012, after the giving of the required public notice and at which a quorum was present and acting throughout, and which resolution has not been amended, modified, rescinded, repealed, superseded, annulled, revoked or otherwise altered as of the date hereof.

Dated this____ day of November, 2012.

[SEAL]

By: _____
Linda Little, Clerk

Development Services
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MEMORANDUM

Date: Thursday, August 30, 2012

To: Terrence Moore, City Manager
Linda Little, City Clerk

RE: September 25, 2012 Council Committee of the Whole Agenda
RZ12-03 / Monazam / 3566 Collins Ferry Road / from R-1 to O-I

During its August 23, 2012 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to **deny** the above referenced Zoning Map Amendment petition.

Attached herewith is the related ordinance along with supplemental information provided to the Planning Commission at its August 23, 2012 hearing.

The following dates will keep to standard Planning and Zoning Code Map Amendment protocol:

- Committee of the Whole ..... Tuesday, September 25, 2012 at 7:00 PM
  City Council Chambers
- First Reading: ..... Tuesday, October 2, 2012 at 7:00 PM
  City Council Chambers
- Public Hearing and Second Reading: ..... Tuesday, November 6, 2012 at 7:00 PM
  City Council Chambers

Please include the attached ordinance on the City Council meeting agendas noted above and include this communication and attached supplemental information in the meeting packet for the September 25th Committee of the Whole meeting.

Thank you.

Christopher M. Fletcher

cc: Esmail Monazam (via email to monazam@earthlink.net)

ORDINANCE NO._____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF THREE PARCELS OF REAL ESTATE IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO PRO, PROFESSIONAL/RESIDENTIAL/OFFICE DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 6, 6.1, and 6.2 of County Tax Map 51; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcels 6, 6.1, and 6.2 of County Tax Map 51 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from the R-1 Single-Family Residential District to the PRO, Professional/Residential/Office District.

2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

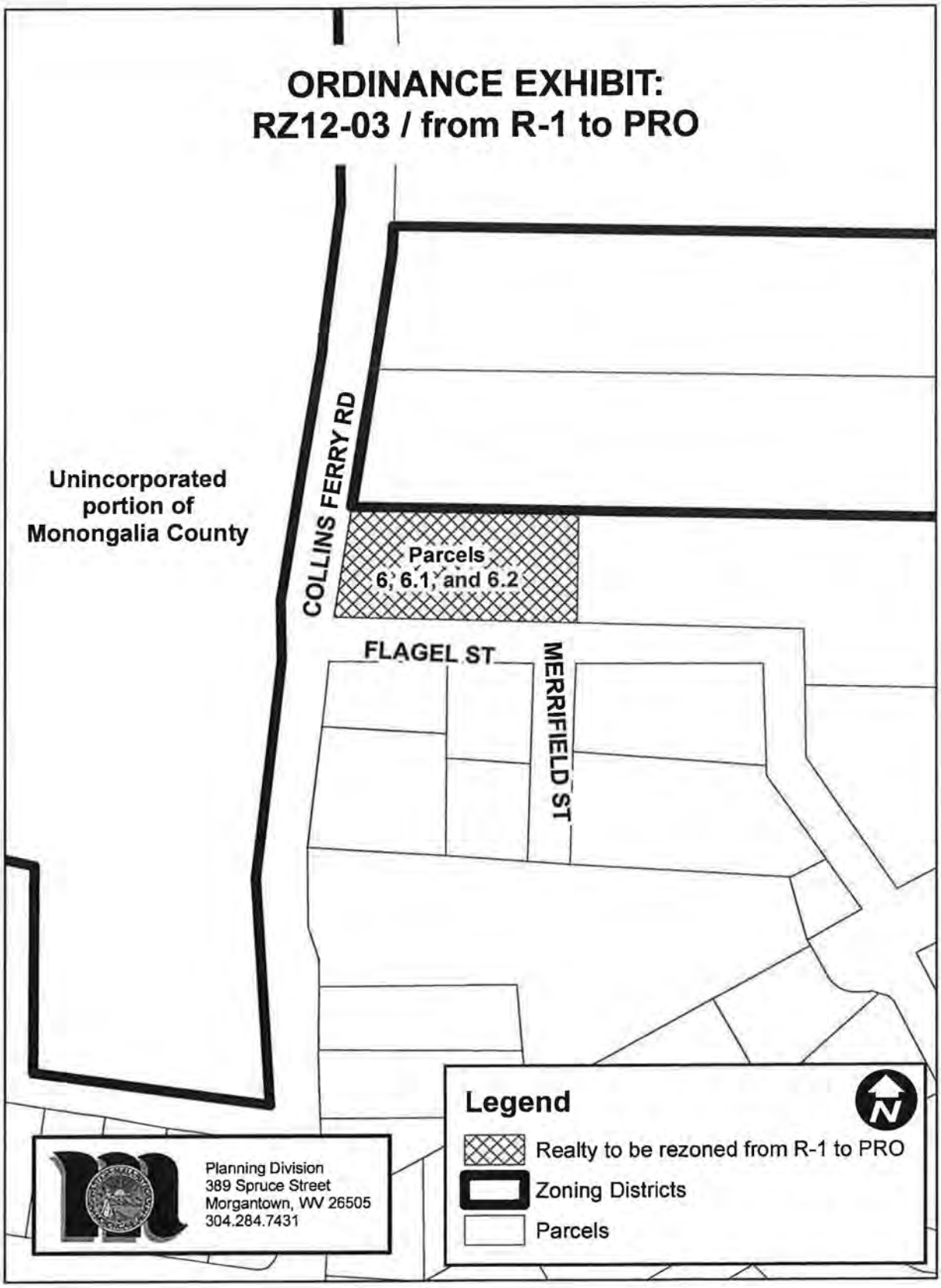
_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:


ORDINANCE EXHIBIT:
RZ12-03 / from R-1 to PRO
Unincorporated portion of Monongalia County
COLLINS FERRY RD
Parcels 6, 6.1, and 6.2
FLAGEL ST
MERRIFIELD ST
Legend
Realty to be rezoned from R-1 to PRO
Zoning Districts
Parcels
Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MORGANTOWN PLANNING COMMISSION

August 9, 2012
6:30 PM
City Council Chambers

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT

CASE NO: RZ12-03 / Monazam / 3566 Collins Ferry Road

REQUEST and LOCATION:

Request by Esmail Monazam for a Zoning Map Amendment from the R-1, Single-Family Residential District to the O-I, Office and Institutional District for property addressed as 3566 Collins Ferry Road and along Flagel Street

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 51, Parcels 6, 6.1, 6.2; R-1, Single-Family Residential District

SURROUNDING ZONING:

North: O-I, Office and Institutional District

South and East: R-1, Single-Family Residential District

West: Monongalia County R-4, High Density Residential (unincorporated)

BACKGROUND:

The petitioner seeks to reclassify Parcels 6, 6.1, and 6.2 of Tax Map 51 from the R-1, Single-Family Residential District to the O-I, Office and Institutional District. Addendum A of this report illustrates the location of the subject realty.

Parcel 6.1 currently contains a single-family dwelling unit and is addressed as 3566 Collins Ferry Road. This address is not currently included on the City's Rental Residential Property Registration list. Parcels 6 and 6.2 are vacant, undeveloped properties fronting Flagel Street.

Adjoining and to the north of the petitioner's property is the "Research Ridge" office complex. To the south of the subject site are single-family dwellings. These areas are located within the City of Morgantown.

To the west of Collins Ferry Road from the petitioner's property, the area of which is located outside the City of Morgantown, are multi-family residential complexes and an adult entertainment establishment. This area is included in the Monongalia County West Run Planning District for which the County enacted zoning regulations that became effective on July 1, 2011.

According to Monongalia County Planning Director Rich Wood, the County's zoning classification for the area west of the petitioner's property is R-4, High Density Residential. Multi-family residential development is permitted in this County zoning district. However, the adult entertainment establishment adjacent to the petitioner's property is considered a pre-existing, non-conforming, grandfathered use.

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

The petitioner advised Staff that he has made efforts to sell the property for single-family development. However, the petitioner maintains that the proximity of the adult entertainment establishment located outside the City of Morgantown has resulted in diminished market interest. As such, the petitioner seeks to amend the zoning classification for the subject property so that it can be marketed for development permitted in the O-I District.

In November 2001, the petitioner requested a zoning map amendment for the same property from the R-1 District to the B-1 District. After much deliberation and vocal public opposition, the Planning Commission voted unanimously to forward City Council a recommendation to deny the petitioner's request. The petitioner decided to withdraw the zoning map amendment petition prior to City Council's consideration of same.

In December 2001, the petitioner returned to the Planning Commission requesting a revised zoning map amendment from the R-1 District to the PRO District. Again, the Planning Commission voted unanimously to forward City Council a recommendation to deny the request.

In February 2002, City Council, having also heard vocal public opposition, concurred with the Planning Commission's December 2001 recommendation and voted unanimously to deny the petitioner's zoning map amendment petition.

In May 2002, the petitioner filed a Writ of Mandamus with the Circuit Court of Monongalia County seeking the Court to declare that the action taken by City Council in denying the petitioner's request for rezoning was unlawful, arbitrary, capricious, unreasonable, and discriminatory. Further, the petitioner requested the Court to order the City of Morgantown to rezone the subject property from the R-1 District to the PRO District. On January 13, 2004, Honorable Circuit Judge Robert B. Stone denied the petitioner's writ mandamus petition (see attached Order for Civil Action No. 02-C-375).

ANALYSIS:

Staff recognizes that the area north of the petitioner's property has experienced growth over the last decade including expansions by Mylan Pharmaceuticals, the U.S. Department of Energy's National Energy Technology Laboratory, and multi-family, offices, and commercial development. However, nearly all of this development occurred outside the City of Morgantown for which zoning regulations, until July 1, 2011, were not enacted by the Monongalia County Commission.

The "Timberline Apartments" complex and the adult entertainment establishment were present prior to the City of Morgantown's 1999 Comprehensive Plan Update and the petitioner's ownership of the subject property.

Specifically, the adult entertainment establishment adjacent to the petitioner's property appears to have been established there since at least the early 1990's. Staff's request to obtain related information prior to this period from the West Virginia Alcohol Beverage Control Administration is pending.

According to online data through the Monongalia County Assessor's Office, the petitioner purchased Parcel 6.1 in December 2000.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

President:
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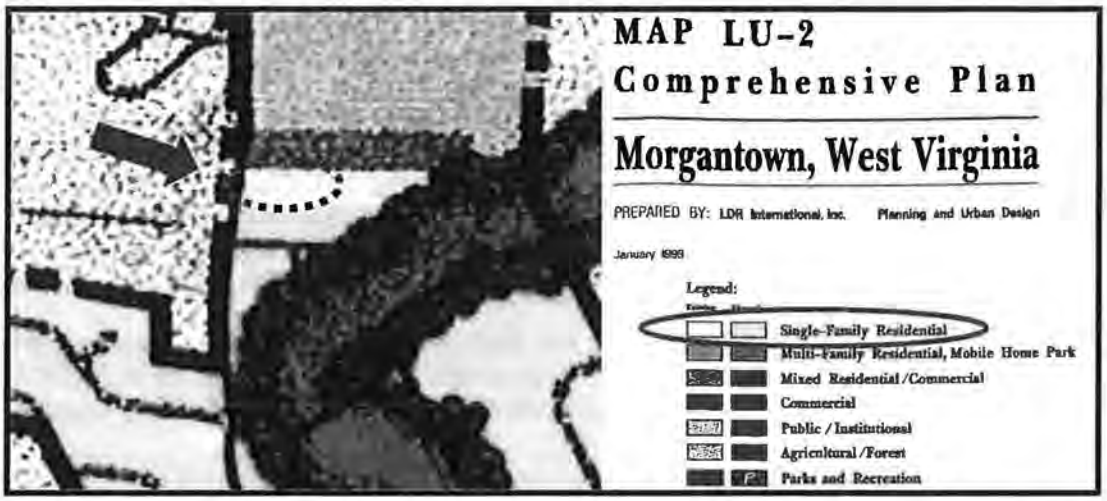
Ken Martis, Admin.
Jennifer Selin, City Councilor

The following figure is a portion of Map LU-2 of the 1999 Comprehensive Plan and illustrates that the planned use for the subject property was "Single-Family Residential."



Because the O-I, Office and Institutional District adjoins the petitioner's property, the requested zoning map amendment is considered a zoning district boundary adjustment.

According to Article 1343.01 of the Planning and Zoning Code, the purpose of the O-I, Office and Institutional District is to:

(A) Provide for office and institutional uses and customary accessory uses on appropriately-sized lots; and,

(B) Provide for a suitable environment for office and institutional uses that can be located adjacent to residential uses without undue harmful effects to such residential uses.

West Virginia State Code §8A-7-8 provides that if a zoning amendment is inconsistent with the adopted Comprehensive Plan, then City Council, with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioner's development intentions are extraneous and the Commission should consider the request on its merits as a land-use decision. In conducting such an analysis, the Commission should determine whether or not the O-I, Office and Institutional District is the most appropriate zoning classification for the petitioner's realty, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1343 "O-I, Office and Institutional District" and Table 1331.05.01 "Permitted Land Uses".

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

MORGANTOWN PLANNING COMMISSION

August 9, 2012
6:30 PM
City Council Chambers

President:
Peter DeMasters, 6th Ward

Vice-President:
Carol Pyles, 7th Ward

Planning Commissioners:
Sam Loretta, 1st Ward
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William Wyant, 3rd Ward
Bill Petros, 4th Ward
Mike Shuman, 5th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

STAFF RECOMMENDATION:

The Planning Division advises the Planning Commission to determine the following:

1. That the petitioner's zoning map amendment request is inconsistent with the 1999 Comprehensive Plan Update.

2. That the economic, physical, and social character of the development and land uses west of the petitioner's property and outside the City of Morgantown, the nature for and basis on which the petitioner has and presently seeks a zoning map amendment, has remained comparatively unchanged since:

   a. The January 1999 adoption of the City of Morgantown Comprehensive Plan Update;

   b. The December 2000 acquisition of the subject property by the petitioner;

   c. The February 2002 City Council denial of the petitioner's zoning map amendment request for same;

   d. The January 2004 Circuit Court denial of the petitioner's related Writ of Mandamus; and,

   e. The January 2006 City Council enactment of the present Planning and Zoning Code.

3. That the reclassification of the realty along Flagel Street from the R-1 District to any other district within which office, commercial, and/or institutional development is permitted would enable transformational encroachment of same onto a well-established single-family residential area.

4. That the orderliness of maintaining the R-1 District classification for the realty along Flagel Street in support of single-family residential development; the stabilization of single-family residential property values; the promotion of desirable home surrounds; and, the happiness and comfort of citizens within the area immediate to the petitioner's property transcend the private interest and benefit of the petitioner.

5. That the zoning reclassification of the realty along Flagel Street to any other district within which office, commercial, and/or institutional development is permitted would be arbitrary and would solely benefit the private interest of the petitioner.

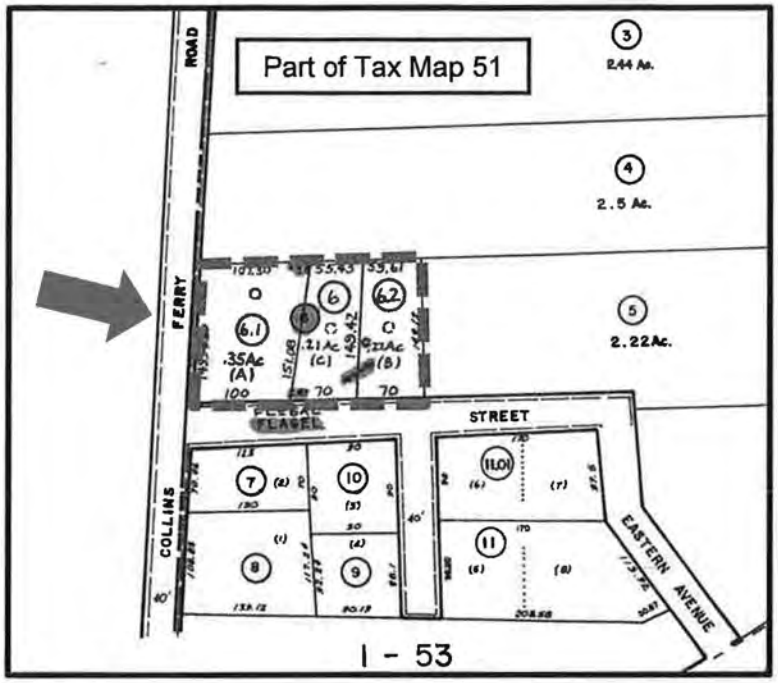
Therefore, the Planning Division advises the Planning Commission to forward a recommendation to City Council to deny the petitioner's zoning map amendment request RZ12-03.

Development Services
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A

RZ12-03 / Monazam / 3566 Collins Ferry Road



City of Morgantown, West Virginia

APPLICATION FOR
FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-03
RECEIVED:	6/13/12
COMPLETE:	

Zoning Map Amendment Process – See Addendum A of this Application

(PLEASE TYPE OR PRINT IN BLACK INK)

I. OWNER / APPLICANT

Name:	Esmail Monazam	Phone:	304-598-8882
Mailing Address:	Street: 308 Rotary St.	Mobile:	304-709-0211
	City: Morgantown State: WV Zip: 26505	Email:	Monazam@earthlink.net

II. AGENT / CONTACT INFORMATION

Name:		Phone:	
Mailing Address:	Street:	Mobile:	
	City: State: Zip:	Email:	
Mailings –	Send all correspondence to (check one): ☐ Applicant OR ☐ Agent/Contact		

IV. PROPERTY

Street Address (if assigned):	3566 Collins Ferry Rd.				
Tax Map(s) #:	51	Parcel(s) #:	6, 6.1, 6.2	Size (sq. ft. or acres):	0-75
Current Zoning Classification:	R1	Proposed Zoning Classification:	O-I		
Current Land Use:	Single Family	Proposed Land Use*:			

**The Planning Commission does not take proposed use into consideration. The question is asked merely for staff to determine if the proposed district allows the intended use.*

V. ATTEST

I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent and I agree to conform to all applicable laws of this jurisdiction, whether specified herein or not. I certify that I have read and examined this document and know the same to be true and correct. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions.

Esmail Monazam		6/13/2012
Type/Print Name of Applicant/Agent	Type/Print Name of Applicant/Agent	Date

Zoning Map Amendment Fee - $75

City of Morgantown, West Virginia

APPLICATION FOR FOR ZONING MAP AMENDMENT

OFFICE USE	
CASE NO.	RZ12-03
RECEIVED:	06/13/12
COMPLETE:	

ADDENDUM A - Zoning Map Amendment Process

Step 1	An application for an amendment, or change, to the City's Official Zoning Map is filed with the Planning Department.
Step 2	The Planning Department conducts a formal review of the completed application and prepares appropriate mapping and the petition.
Step 3	The Planning Department publishes a legal advertisement describing the petition for a zoning map amendment at least 15 days prior to the scheduled public hearing before the Planning Commission. The Planning Department also notifies property owners within 200 feet of the proposed map amendment.
Step 4	The Planning Commission holds a duly scheduled public hearing on the zoning map amendment petition, prepares a report, and makes a recommendation to City Council.
Step 5	City Council hears the petition in accordance with its rules and procedures, normally two readings and an additional public hearing.

APPROVED

If the petition for the zoning map amendment is approved by City Council, the applicant receives approval and is formally notified by mail by the Planning Department. The Planning Department amends the Official Zoning Map to reflect the approved map amendment.

DENIED

If the petition for the zoning map amendment is denied by City Council, the applicant is formally notified in writing by the Planning Department of the denial and the right to appeal the decision to the Circuit Court of Monongalia County.

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION NO. 1

STATE OF WEST VIRGINIA, EX REL.,
ESMAIL MONAZAM AND SHERRY MONAZAM,

Petitioners,

vs. **CIVIL ACTION NO. 02-C-375**

THE CITY OF MORGANTOWN, WEST VIRGINIA,

Respondent.

ORDER DENYING THE PETITIONER'S REQUEST TO VACATE THE RESPONDENTS' ZONING DECISION

This matter is before the Court upon the record, including the briefs of the petitioner and the respondent. The Court has studied the entire record and carefully considered the arguments raised in the parties' briefs and by oral argument. As a result of these deliberations. the Court has concluded that the decision of the City of Morgantown should not be vacated.

Opinion

On May 30. 2002, the Petitioners' filed a Writ of Mandamus seeking an order of this Court directing the City of Morgantown to rezone a parcel of real estate involved herein and located in Morgantown. Monongalia County. WV. from an R-1. single family residence. zoning classification to a PRO. professional office. zoning classification per Petitioners' request. The Petition filed by the petitioner seeks this Court to declare that the action taken by the Respondent.

the City of Morgantown, in denying the Petitioners' request for rezoning, was unlawful, arbitrary, capricious, unreasonable and discriminatory. On December 1, 2003, Petitioner Esmail Monazam appeared with counsel, Edmund J. Rollo, and the Respondent appeared by and through its counsel, Stephen R. Fanok, at which time oral arguments were presented to the Court.

Pursuant to Rule 52 of the West Virginia Rules of Civil Procedure, the Court hereby sets forth with specificity its findings of facts and conclusions of law:

FINDINGS OF FACT

1. Petitioners own property located at 3566 Collins Ferry Road, Morgantown, West Virginia, which is shown on Monongalia County Tax Map 51 as Parcel 6.

2. Petitioners' realty is zoned R-1, single family residential, with B-1, neighborhood business, zoned realty abutting to the North, and R-1, single family residential, zoned realty abutting it to the South and East. The area to the West and directly across Collins Ferry Road from Petitioners' realty is outside of the Morgantown city limits, is not regulated by zoning use requirements of any governmental entity, and contains a variety of business and residential uses.

3. On November 8, 2001, Petitioners filed an application with the City of Morgantown requesting that their realty be rezoned from an R-1 classification to a PRO, professional office, classification.

4. Section 14.1 of the City of Morgantown's Zoning Ordinance states:

> The PRO District is intended to provide a suitable environment for certain types of uses, primarily professional and office in character, that can be located adjacent to residential uses without undue harmful effects to such residential uses. The

> (PRO) District will be applied where a transition use buffer is appropriate between residential and incompatible uses.

5. On December 13, 2001, the Morgantown Planning Commission held a public hearing regarding Petitioners' request of the City of Morgantown that it rezone the above described parcel from an R-1, single family residential, zoning classification to a PRO. professional office, zoning classification.

6. In his December 13, 2001, Staff Report to the City's Planning Commission, the City Planner reminded the Commission that in considering the Monazam rezoning request it should determine if PRO is the appropriate zoning district for the site; that the analysis involved in that determination should properly weigh all possible future development scenarios for the site under PRO regulations; that there is no surrounding or adjacent PRO zoning in the immediate area; that one can fairly debate which option (either R-1 or PRO) provides the better buffer for the R-1 area; and that it is left to the Planning Commission and City Council to decide if there is a compelling reason to either grant the PRO designation or to keep the property residential.

7. The minutes of the December 13, 2001, Planning Commission meeting, indicate that the Planning Commission held a very thorough hearing on the Monazam rezoning request and that Mr. Monazam was there to speak in favor of his request and that several local residents spoke both for and against the rezoning. Those speaking for the rezoning offered that Mr. Monazam's proposed use of the property for an engineering office would be a "plus" for the neighborhood. Those speaking in opposition to the rezoning emphasized their concerns that the various permitted uses allowed by a rezoning to PRO would, or at least could, negatively impact their R-1 neighboring properties and their quality of life. At that meeting Mr. Monazam stated to

the Planning Commission that he purchased the residence at 3566 Collins Ferry Road [the realty at issue] in January of 2001 with the intention of remodeling it into an office for the engineering business that he owns and operates. After much discussion as to the pros and cons of any such rezoning, the Planning Commission voted to forward a recommendation to Morgantown City Council that it deny Petitioners' rezoning request. Mr. Pat Esposito, a member of the Planning Commission who owns the property north of petitioner's property, recused himself from the consideration of Mr. Monazam's petition.

8. On February 5, 2002, Petitioners' rezoning request and the Morgantown Planning Commission's recommendation that City Council deny the request were presented to Morgantown City Council. At the February 5, 2002, meeting of City Council, Mr. Monazam and his attorney were given the opportunity to speak to Council. Both argued that a PRO rezoning of Mr. Monazam's realty would be an appropriate transition use buffer between the R-1 property to the South of Mr. Monazam's reality and the B-1 property to the North of it. Both men also emphasized that several non-residential uses already existed to the West of Mr. Monazam's property, across Collins Ferry Road in unincorporated territory. Mr. Monazam's attorney stated that since City Council had approved the rezoning of the property abutting Mr. Monazam to the North from R-1 to B-1, City Council had paved the way for the rezoning of Mr. Monazam's property from R-1 to PRO. At that same February 5, 2002, City Council meeting, many residents of the area in question again spoke in opposition to the rezoning stating that it would negatively impact their residential properties. Other individuals spoke in favor of it. Following the public's comments, City Council discussed the matter. Council member Bane expressed concern that a rezoning of Mr. Monazam's property to PRO might result in other neighboring properties

wanting rezoned from R-1 to a more intense zoning usage district. Council member Merow stated that the residents of that neighborhood want to live in a residential neighborhood, that the City's Comprehensive Plan indicates that the area should remain single family residential, and that the Planning Commission had reviewed the matter and recommended to City Council that the rezoning request be denied. At the conclusion of City Council's discussion of the matter, the seven City Council members voted unanimously to deny the Monazam's request to rezone the property from R-1 to PRO.

9. On or about May 30, 2002, Petitioners filed their Petition for Writ of Mandamus with the Court seeking an order which would require Morgantown City Council to rezone the realty at issue from R-1 to PRO.

10. Petitioners' primary arguments in support of their petition are: (1) that property on the other side of Collins Ferry Road from Petitioners' realty is not single family residential in nature and has set a precedent for the City of Morgantown to rezone Petitioners' realty to a more intense use than R-1 single family residential and (2) that by previously rezoning the realty which abutts Petitioners' realty to the North from R-1 to B-1 (neighborhood business), the City has obligated itself to rezone Petitioners' realty to PRO so that it can be a buffer between the B-1 realty and neighboring R-1 properties. Additionally, petitioner argues that there will be no increase in traffic and no significant disruption to the character of the neighborhood.

11. Section 13 of the City of Morgantown's Zoning Ordinance defines a B-1 zoning district as follows:

> This [B-1] District is designed and *located in neighborhoods* to accommodate the shopping and service needs of the locality.

> Although limited in area occupied, these districts are important to the economic welfare of the community in placing "convenience" and "impulse" goods shops close to the consumer.

CONCLUSIONS OF LAW

Petitioners have sought judicial relief via the filing of a Petition for Writ of Mandamus. In that regard, mandamus is a proper remedy to require the performance of nondiscretionary legal duties by various governmental agencies or bodies. State ex rel. Allstate Ins. Co. v. Union Serv. Dist., 151 W.Va. 207, 151 S.E.2d 102 (1966); State ex rel. Anderson v. Board of Educ., 160 W.Va. 208, 233 S.E.2d 703 (1977). Furthermore, if the respondent, (governmental body), has discretion, in the manner it acts, it may be required by mandamus to act, but a court is without authority to command in what manner it shall act unless the action of the governmental body is so arbitrary and capricious as to create a question for judicial determination. State ex rel. Canterbury v. County Court, 151 W.Va. 1013, 158 S.E.2d 151 (1967); State ex rel. Lambert v. Cortellessi, 182 W.Va. 142, 386 S.E.2d 640 (1989). Caselaw nationwide and within this State has thoroughly addressed the authority of local governmental bodies on making zoning decisions in light of the foregoing arbitrary and capricious test.

The authority of local governments to enact zoning regulations is an exercise of police power. The only limitations on that power is that restrictions imposed must be reasonable and not arbitrary and that they bear substantial relation to public health, safety, morals, or general welfare. Carter v. City of Bluefield, 54 S.E.2d 747, 750 (W.Va. 1949). The United States Supreme Court in Ferguson v. Skrupa, 372 U.S. 726, 730, 83 S. Ct. 1028, 1031, 10 L. Ed. 2d 93,

97. 95 A.L.R. 2d 1347, 1352 (1963) addressed the issue of judicial intrusion:

> We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.

Cited in Hartsock-Flesher Candy v. Wheeling Wholesale, 328 S.E.2d 144 (W.Va. 1984): see also DeCoals, Inc. v. Bd. of Zoning Appeals, 284 S.E.2d 856 (W.Va. 1981) ("It is not ours to judge the wisdom or efficacy of those chosen means.") Furthermore, "If most of the factors necessary to the decision of a zoning case have both positive and negative aspects, it would appear that these matters are "fairly debatable", and in such cases, the court will not overrule the city authorities in the exercise of their legislative function." Town of Stonewood v. Bell and Town of Barrackville v. Griffin, 270 S.E.2d 787, 791 (W.Va. 1980).

It must be understood that a municipality is not required to enact the best ordinance under the circumstances, but rather must only enact a reasonable ordinance. Choices among alternative reasonable choices of action are to be determined by the legislature, not the courts; and so long as there is a reasonable or rational basis for a particular course of conduct, there is not a constitutional violation. DeCoals, at 856, 859. Therefore, the judicial role in reviewing a zoning ordinance is rigidly circumscribed: "If the end is legitimate, [the court's] inquiry is limited to whether the means are substantially related to that end". DeCoals, at 858. See also Barley v. Truby, 321 S.E.2d 302 (W.Va. 1984). In other words, the court merely determines whether the zoning regulation, as applied to the particular property promotes public health, safety, or general welfare. The concept of public welfare is broad and inclusive. It includes the orderliness of community growth, land, value, and aesthetic objectives. 5 ROHAN, ZONING AND LAND

USE CONTROLS Section 36.02 (2). In addition. general welfare means stabilization of property values, promotion of desirable home surrounds, and happiness and comfort of the citizens. Id at Section 36.02 (2).

The fact that a owner may otherwise make more profitable use of the property does not render a zoning ordinance unreasonable; it is the very nature of zoning regulations that "rights and privileges of some individuals are to some extent limited or controlled by every such zoning ordinance." G.M. Realty, Inc. v. City of Wheeling, 120 S.E.2d 252 (W.Va. 1961); 5 ROHAN Section 36.02 (5) (C).

Petitioners' argue that the City of Morgantown was obligated to rezone their realty from R-1 to PRO because of the non residential uses existing nearby, across Collins Ferry Road. As Respondent has pointed out, the area across Collins Ferry Road is outside of the City limits and the City has no legal authority to regulate or control its land use. It would be unreasonable to believe that the City should forsake its residents who live in long established R-1 residential neighborhoods, or its Comprehensive Plan which recommends those residential neighborhoods simply because of uncontrolled growth outside the City limits in territory over which the City has absolutely no control. The basis for the City's Comprehensive Plan and Zoning Ordinance is to promote the health, safety, and general welfare of the inhabitants of the City. For the City to begin rezoning properties within the City limits merely because they are near totally different types of uses which lie outside the City limits would be irresponsible. Even if the properties across Collins Ferry Road were within the City limits and zoned nonresidential, it would not be unreasonable for the City to maintain the R-1 area and neighborhood in which Petitioners' realty lies. In 1990, the West Virginia Supreme Court ruled that a zoning ordinance was not arbitrary

and unreasonable as applied to the property where, under the ordinance, properties abutting on one side of a highway could be used for nonresidential purposes, while those abutting on the other side of the highway could be used only for residential purposes. Par Mar v. City of Parkersburg, 183 W.Va. 706, 398 S.E.2d 532 (1990). This Court finds that petitioners' allegation regarding land use across Collins Ferry Road is without merit and does not form a basis for an arbitrary and capricious argument.

Petitioners' also argue that the City has a duty to rezone its property to PRO so that it can be a transition buffer between the B-1 realty to the North and neighboring R-1 properties to the South. Section 14.1(A) of the City's Zoning Ordinance addresses PRO zoning districts and states "that a PRO District will be applied where a transition use buffer is appropriate between residential and *incompatible* uses." Petitioners assert that that is the case with the B-1 zone being the incompatible use that justifies their PRO rezoning as a buffer between the B-1 and neighboring R-1 lots. This Court does not accept Petitioners' argument. Section 13 of the City's Zoning Ordinance defines a B-1 zoning district as follows:

> This [B-1] District is designed and located in neighborhoods to accommodate the shopping and service needs of the locality. Although limited in area occupied, these districts are important to the economic welfare of the community in placing "convenience" and "impulse" goods shops close to the consumer.

In light of the foregoing definition, it does not appear that a B-1 (neighborhood business) zoning district is necessarily or always an *incompatible* use needing buffered from abutting R-1 neighborhoods. The Morgantown Zoning Ordinance's definition of B-1 makes it clear that B-1 zoning and its permitted uses are not only compatible with R-1 single family residential districts.

but also, are intended to be located in neighborhoods to accommodate the shopping and service needs of its residents. Based upon the foregoing, this Court does not believe that Morgantown City Council had any legal duty to rezone Petitioners' property to PRO as a result of City Council's prior rezoning of abutting property to B-1.

The Court agrees with Respondent that in determining whether City Council acted arbitrarily and unreasonably in not rezoning Petitioners' reality to PRO the Court should take into consideration whether the existing R-1 zoning classification of Petitioners' realty is no longer reasonable or appropriate. In that regard, Petitioners have not demonstrated that such a condition exists. To the contrary, the record indicates that the residential R-1 area in question is a thriving single family neighborhood and that for Petitioners' realty to remain R-1 is reasonable. This Court agrees with the approach taken by the Virginia Court in such matters. The Virginia Court, which also follows the Fairly Debatable Doctrine, has offered:

> Where two uses of the land were presented, both reasonable, the legislative body did not err in choosing to retain the use permitted under present zoning, even though the proposed zoning might have been the most appropriate use for the land; the presumption of reasonableness of the legislative body's action stood unrebuttled and therefore was sufficient alone to sustain the denial of the rezoning request.

Board of Supervisors v. International Funeral Service, Inc. 221 Va. 840, 275 S.E.2d 586 (1981).

The Virginia Court has also held:

> A refusal to rezone will be upheld where no compelling need for the rezoning is shown, and it is not clearly demonstrated that the existing zoning classification is no longer reasonable or appropriate. The burden is on the one who seeks rezoning to show the need therefore, and in Virginia, the courts apply the fairly

> debatable rule in the case of denial of a rezoning application.

Town of Vienna Council v. Kohler, 218 Va. 966, 244 S.E.2d 542 (1978). Inasmuch as the West Virginia Supreme Court has historically adopted the principles of Virginia caselaw addressing zoning and the fairly debatable doctrine, when there is no West Virginia law on point, this Court believes that the principles set forth in both Virginia cases apply to the issue at hand. It clearly supports the action taken by City Council in denying Petitioners' rezoning request.

This Court believes it is important to note that Petitioners bought the R-1 realty in question in January of 2001 with the express intention of having it rezoned to PRO so that they could operate an engineering business at the site. Petitioners' purchase and intended office use, in light of the property's R-1 zoning, was a speculative business venture and investment risk. There was no guarantee that the property would be rezoned by the City of Morgantown to something other than R-1 residential use. This Court will not rule that such a speculative purchase, in light of the facts at hand, is reason to hold that the City should have rezoned the property for professional office usage. The caselaw simply does not support a rezoning under such circumstances.

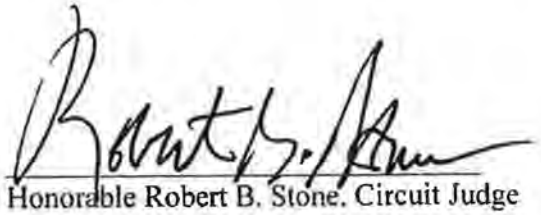
Whether or not Petitioners' realty should have been rezoned to PRO by Morgantown City Council is a matter of debate as evidenced by the Morgantown Planning Commission and Morgantown City Council public hearings on the matter. Petitioner argues that there will be no additional traffic nor will there be a disruption to the character of the neighborhood. Additionally, petitioner presented evidence that his rezoning efforts had the support of some his neighbors. These factors were weighed by the Planning Commission and City Council. This

Court finds that there is no evidence that R-1 zoning for the realty is no longer reasonable or appropriate. Reasonable minds might disagree as to the appropriate zoning of Petitioners' realty. Based upon the foregoing, the matter clearly falls within the Fairly Debatable Doctrine and the Court is precluded from substituting its opinion on the matter for that of Morgantown City Council.

Wherefore, given the foregoing, the Court **ORDERS** that Petitioners' petition for a writ mandamus be **DENIED** and that this matter be dismissed from the docket.

The Circuit Clerk shall provide copies of this order, findings of fact, and conclusions of law to counsel of record.

Entered this 13th day of January, 2004.



Honorable Robert B. Stone, Circuit Judge

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING PARTS OR PORTIONS OF ENSIGN AVENUE AND ACCEPTING THE DEDICATION OF ADDITIONS TO ENSIGN AVENUE LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA, IN CONJUNCTION WITH THE PARTIAL REALIGNMENT AND RELOCATION OF ENSIGN AVENUE

Whereas, the Common Council ("Council") of The City of Morgantown, West Virginia ("City"), finds and makes a legislative determination that Ensign Avenue ("Street") is a publicly dedicated and accepted easement and right of way for, among other purposes, street purposes, that is shown, illustrated, and depicted on, among other maps or plats of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia ("Clerk's Office"), (a) the map or plat of Peninsula Company entitled "Plan of that Part of 'North Morgantown' Between Fifth and Ninth Streets – East of Grant Ave.," of record in the Clerk's Office in Deed Book 182, at Page 250½, (b) the map or plat of the Clyde D. Barbe Plan of Lots of record in the Clerk's Office in Deed Book 348, at Page 97A, and Deed Book 538, at Page 426A, and (c) the map or plat prepared by Gary A. Pratt, P.S. No. 907, of Landmark Surveying Company, dated May 13, 2011, of record in the Clerk's Office in Envelope No. 104B of Map Cabinet No. 5; and

Whereas, the Council finds and makes a legislative determination that the Street is located and situate within the Fourth Ward of the municipal limits of the City, in Morgan District, Monongalia County, West Virginia; and

Whereas, the Council finds and makes a legislative determination that a part or portion of the Street is adjoined on either side by property of Metro Towers LLC, a West Virginia limited liability company ("Metro"); and

Whereas, the Council finds and makes a legislative determination that Metro has petitioned and/or made application to the City to partially realign and relocate the Street in the location where the Street is adjoined on either side by the property of Metro; and

Whereas, the Council finds and makes a legislative determination that it is in the best interests of the City and the public generally that the Street be partially realigned and relocated; and

Whereas, the Council finds and makes a legislative determination that to effect the partial realignment and relocation of the Street, three (3) separate and distinct parts or portions of the Street must be vacated, abandoned, and annulled by the City; and

Whereas, the Council finds and makes a legislative determination that to effect the partial realignment and relocation of the Street, three (3) separate and distinct parts or portions of the property of Metro must be dedicated by Metro to the City and accepted by the City for, among other purposes, street purposes; and

Whereas, a map or plat prepared by Gary A. Pratt, P.S. No. 907, of Landmark Surveying Company, dated September 6, 2012, designated as Project No. 2012-1124, File No. 1124-10-12-02, a reproduction of which is appended to this Ordinance as Exhibit No. 1 and incorporated into this Ordinance by this reference ("Exhibit Plat"), shows, illustrates, and depicts (a) the three (3) separate and distinct parts or portions of the Street that must be vacated, abandoned, and annulled by the City to effect the partial realignment and relocation of the Street (collectively, "Vacated Parcels") and (b) the three (3) separate and distinct parts or portions of the property of Metro that must be dedicated by Metro to the City and accepted by the City to effect the partial realignment and relocation of the Street (collectively, "Dedicated Parcels"); and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, the Vacated Parcels are not presently used, useful, or needed for street purposes or any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, the Vacated Parcels shall not subsequently be used, useful, or needed for street purposes or any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, no party nor any property of any party will be injured or damaged by either the partial realignment and relocation of the Street or the vacation, abandonment, and annulment of the Vacated Parcels; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Street be partially realigned and relocated and that the Vacated Parcels be vacated, abandoned, and annulled by the City for street purposes and any and all other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Dedicated Parcels be dedicated by Metro to the City and accepted by the City for, among other purposes, street purposes.

Now, Therefore, it is ordained by the Council, in regular session, duly and properly assembled, as follows:

Section 1. The findings and legislative determinations of the Council set forth and contained in the above recitals are incorporated and integrated into this Ordinance by this reference and adopted, confirmed, and affirmed as findings and legislative determinations of the Council.

Section 2. The Exhibit Plat is incorporated and integrated into this Ordinance by this reference.

Section 3. The Vacated Parcels are described as follows:

Parcel D: Beginning at a point in the northerly line of Sixth Street, corner to the lands of Metro Towers LLC; thence leaving said street and running with a line of Metro Towers LLC, S. 69° 22' 18" W. 43.33 feet to a point in the original line of Ensign Avenue, corner to Parcel C; thence running through Ensign Avenue, N. 74° 20' 40" W. 67.59 feet to a point in the original line of Ensign Avenue, corner to Parcel B; thence running with a line of lands of Metro Towers LLC and the original line of Ensign Avenue, N. 69° 22' 18" E. 156.55 feet to a point; thence crossing said avenue, S. 35° 06' 55" W. 71.06 feet to the place of beginning, containing 3,997.64 square feet or 0.09 acre, more or less.

Parcel E: Beginning at a point in the original line of Ensign Avenue, corner to Parcel C; thence with a line of said parcel and the lands of Metro Towers LLC, with a curve to the right having a radius of 70.15 feet, an arc length of 38.01 feet, and a chord of N. 76° 45' 16" W. 37.54 feet to a point; thence N. 61° 14' 03" W. 6.96 feet to a point, corner to Parcel A; thence running through Ensign Avenue, S. 74° 20' 40" E. 44.29 feet to the place of beginning, containing 99.22 square feet, more or less.

Parcel F: Beginning at a point in the original line of Ensign Avenue and in the southerly line of Lot 10 of Block 49 of the North Morgantown Addition; thence with two original lines of Ensign Avenue, N. 70° 45' 58" E. 44.37 feet to a point; thence S. 61° 14' 03" E. 111.88 feet to a point, corner to Parcel B; thence running through said Ensign Avenue, N. 74° 20' 40" W. 145.35 feet to the place of beginning, containing 1,844.36 square feet or 0.04 acre, more or less.

Section 4. Upon the adoption of this Ordinance, for the reasons set forth and contained in the above recitals, the easement and right of way of the City for street purposes and any and all other public uses or purposes in, of, and to the Vacated Parcels is and shall be vacated, abandoned, and annulled by the City, with the intent and effect that

from and subsequent to the date of the adoption of this Ordinance the Vacated Parcels shall cease to be a part or portion of a public easement and right of way or public street.

Section 5. Upon the adoption of this Ordinance, any and all right, title, interest, claim, and estate of the City, of any and every nature, kind, character, manner, and description, in, of, and to the Vacated Parcels is and shall be cancelled, terminated, vacated, abandoned, annulled, released, and relinquished in favor of and for the benefit of Metro and its successors and assigns.

Section 6. The City shall not keep, except, reserve, or retain any utility easements or rights of way in, on, over, upon, under, through, or across the Vacated Parcels of any nature, kind, character, manner, or description; provided, however, that neither the foregoing nor any other term or provision of this Ordinance, including, without limitation, Sections 4 and 5 of this Ordinance in particular, shall cancel, terminate, vacate, abandon, annul, release, or relinquish any (1) easements or rights of way that have been expressly granted to the City, acting by and through the Morgantown Utility Board, or its predecessors, by instruments or agreements of record in the Clerk's Office, or (2) other easements or rights of way for utility lines actually located within the Vacated Parcels as of the adoption of this Ordinance, if any.

Section 7. The dedication of the Dedicated Parcels by Metro to the City for, among other purposes, street purposes, is accepted by the City and no subsequent or further acts other than (1) the adoption of this Ordinance by the City, (2) the execution, recordation, and delivery by Metro of the Easement Declaration, and (3) the execution, recordation, and delivery by PNC and Metro of the Partial Release shall be requisite to effect such acceptance, even in the event that the Easement Declaration or the Partial Release shall be executed, delivered, or placed of record subsequent to the adoption of this Ordinance.

Section 8. Within ten (10) days of the adoption of this Ordinance, Metro shall execute and caused to be recorded in the Clerk's Office and subsequently deliver to the City an easement declaration substantially identical in form, substance, and content to the proforma easement declaration appended to this Ordinance as Exhibit No. 2 and incorporated into this Ordinance by this reference ("Easement Declaration").

Section 9. Within ten (10) days of the adoption of this Ordinance, PNC Bank, National Association ("PNC") and Metro shall execute and caused to be recorded in the Clerk's Office and subsequently deliver to the City a partial release and termination of the easements and rights of way to be granted to and dedicated in favor of and for the benefit of the City substantially identical in form, substance, and content to the proforma partial release and termination appended to this Ordinance as Exhibit No. 3 and incorporated into this Ordinance by this reference ("Partial Release").

Section 10. The Dedicated Parcels are described as follows:

Parcel A: Beginning at a point in the original southerly line of Ensign Avenue; thence running with two original lines of said avenue and the lands of Metro Towers LLC, N. 70° 45' 58" E. 40.44 feet to a point; thence S. 61° 14' 03" E. 101.97 feet to a point in the original right of way line of Ensign Avenue; thence running through the lands of Metro Towers LLC, N. 74° 20' 40" W. 132.48 feet to the place of beginning, containing 1,532.08 square feet or 0.04 acre, more or less.

Parcel B: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel F; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 20.14 feet to a point in said street right of way, corner to Parcel D; thence running with two original lines of said Ensign Avenue, S. 69° 22' 18" W. 6.02 feet to a point; thence N. 61° 14' 03" W. 15.70 feet to the place of beginning, containing 35.86 square feet or 0.001 acre, more or less.

Parcel C: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel E; thence running along two original lines of said street right of way, with a curve to the left having a radius of 70.15 feet, an arc length of 22.47 feet, and a chord bearing of N. 78° 32' 54" E. 22.37 feet to a point; thence N. 69° 22' 18" E. 33.47 feet to a point, corner to Parcel D; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 22.36 feet to a point in the northerly right of way line of Sixth Street; thence running with a line of said Sixth Street, S. 41° 46' 34" W. 33.41 feet to a point; thence leaving said street and running with a line through the lands of said Metro Towers LLC, N. 74° 20' 40" W. 54.54 feet to the place of beginning, containing 1,080.29 square feet or 0.03 acre, more or less.

Section 11. Upon the adoption of this Ordinance, the City Clerk shall provide a certified photocopy of this Ordinance to counsel for Metro for the purpose of such counsel admitting the same of record in the Clerk's Office as evidence of, among other matters, the vacation, abandonment, and annulment of a part or portion of the Street.

Section 12. This Ordinance shall be effective from the date of its adoption.

First Reading: _____, 2012

Second Reading: _____, 2012

Adopted: _____, 2012

Filed: _____, 2012

Recorded: _____, 2012

_____
Mayor

_____
City Clerk

EXHIBIT No. 1

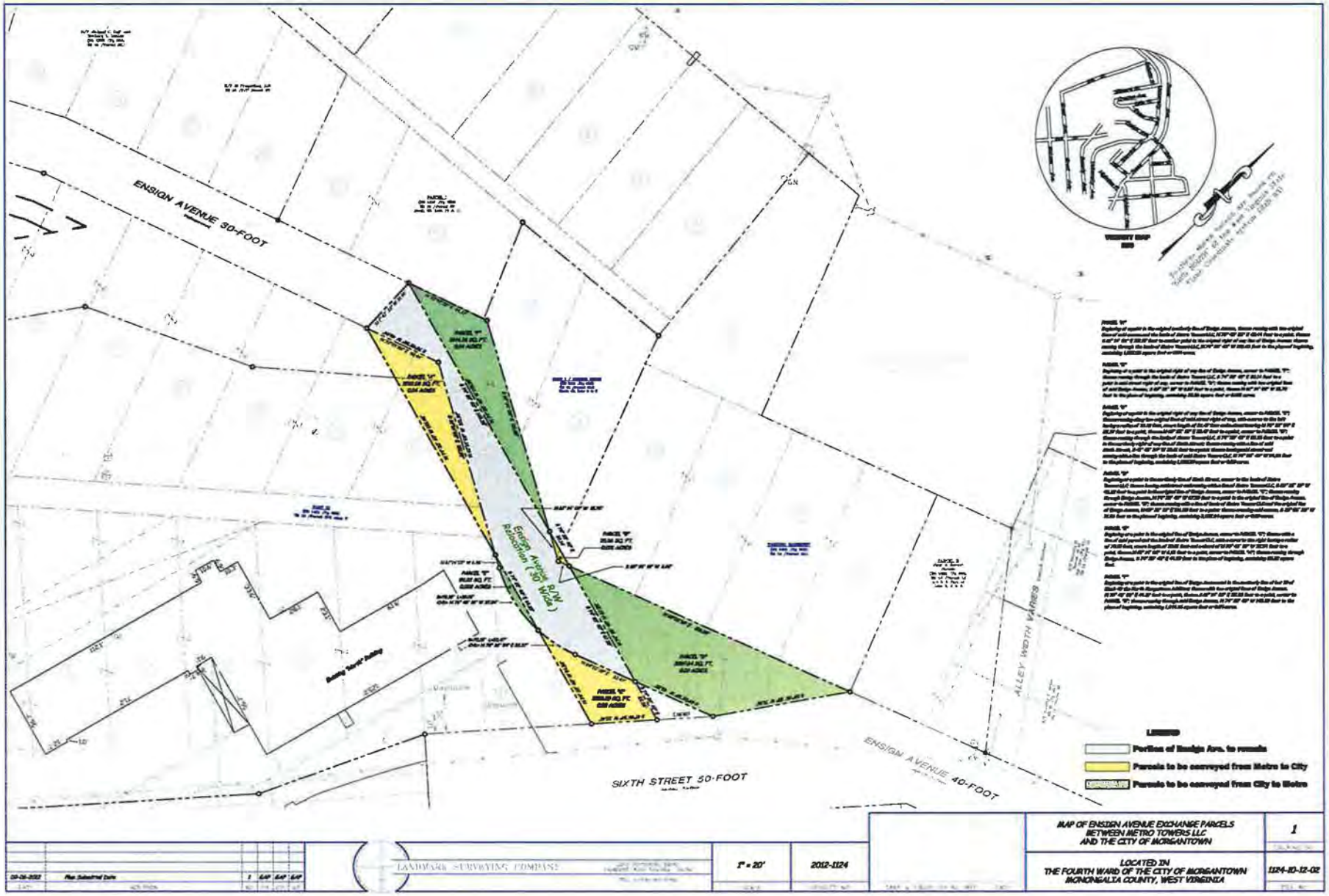

ENSIGN AVENUE 30-FOOT
SIXTH STREET 50-FOOT
ENSIGN AVENUE 40-FOOT
ALLEY WIDTH VARIES
Ensign Avenue R/W Relocation (30' Wide)
LEGEND
Portions of Ensign Ave. to remain
Parcels to be conveyed from Metro to City
Parcels to be conveyed from City to Metro
MAP OF ENSIGN AVENUE EXCHANGE PARCELS BETWEEN METRO TOWERS LLC AND THE CITY OF MORGANTOWN
LOCATED IN THE FOURTH WARD OF THE CITY OF MORGANTOWN MONONGALIA COUNTY, WEST VIRGINIA
1
1124-10-12-02
LANDMARK SURVEYING COMPANY
1" = 20'
2012-1124

EXHIBIT 2

This instrument was jointly prepared by:

Stephen R. Fanok
The City of Morgantown, West Virginia
389 Spruce Street
Morgantown, West Virginia 26505

Robert Louis Shuman
Reeder & Shuman
256 High Street
Post Office Box 842
Morgantown, West Virginia 26507-0842

Easement Declaration

This Declaration is made and entered into this the _____ day of _____, 2012, by Metro in favor of and for the benefit of City.

For and in consideration of the amount of Ten Dollars ($10.00), other good and valuable consideration, the receipt, sufficiency, and adequacy of all of which are acknowledged by Metro, and with the intent of being legally bound by and obligated under, in accordance with, and pursuant to this Declaration, Metro declares, covenants, and agrees in favor of and for the benefit of City as follows:

(1) Definitions: For the purposes of this Declaration, the following defined terms shall have the following meanings and definitions:

(a) "City" shall mean The City of Morgantown, West Virginia, a municipal corporation.

(b) "Declaration" shall mean this easement declaration and any and all amendments, modifications, supplements, and/or restatements of and/or to the same.

(c) "Dedicated Parcel A" shall mean that lot, parcel, or tract located and situate in the Fourth Ward of the City, Morgan District, Monongalia County, West Virginia, described as follows: Beginning at a point in the original southerly line of Ensign Avenue; thence running with two original lines of said avenue and the lands of Metro Towers LLC, N. 70° 45' 58" E. 40.44 feet to a point; thence S. 61° 14' 03" E. 101.97 feet to a point in the original right of way line of Ensign Avenue; thence running through the lands of Metro Towers LLC, N. 74° 20' 40" W. 132.48 feet to the place of beginning, containing 1,532.08 square feet or 0.04 acre, more or less.

(d) "Dedicated Parcel B" shall mean that lot, parcel, or tract located and situate in the Fourth Ward of the City, Morgan District, Monongalia County, West Virginia, described as follows: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel F; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 20.14 feet to a point in said street right of way, corner to Parcel D; thence running with two original lines of said Ensign Avenue, S. 69° 22' 18" W. 6.02 feet to a point; thence N. 61° 14' 03" W. 15.70 feet to the place of beginning, containing 35.86 square feet or 0.001 acre, more or less.

(e) "Dedicated Parcel C" shall mean that lot, parcel, or tract located and situate in the Fourth Ward of the City, Morgan District, Monongalia County, West Virginia, described as follows: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel E; thence running along two original lines of said street right of way, with a curve to the left having a radius of 70.15 feet, an arc length of 22.47 feet, and a chord bearing of N. 78° 32' 54" E. 22.37 feet to a point; thence N. 69° 22' 18" E. 33.47 feet to a point, corner to Parcel D; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 22.36 feet to a point in the northerly right of way line of Sixth Street; thence running with a line of said Sixth Street, S. 41° 46' 34" W. 33.41 feet to a

point; thence leaving said street and running with a line through the lands of said Metro Towers LLC, N. 74° 20' 40" W. 54.54 feet to the place of beginning, containing 1,080.29 square feet or 0.03 acre, more or less.

(f) "Dedicated Parcels" shall mean Dedicated Parcel A, Dedicated Parcel B, and Dedicated Parcel C.

(g) "Effective Date" shall mean the date of this Declaration.

(h) "Metro" shall mean Metro Towers LLC, a West Virginia limited liability company.

(i) "Plat" shall mean that plat of survey prepared by Gary A. Pratt, P.S. No. 907, of Landmark Surveying Company, dated September 6, 2012, designated as Project No. 2012-1124, File No. 1124-10-12-02.

(2) Incorporation of the Plat: The Plat is incorporated and integrated into this Declaration by this reference.

(3) Dedication of the Dedicated Parcels: Metro grants, conveys, and transfers to City and creates, dedicates, and establishes in favor of and for the benefit of City, in, on, over, upon, under, through, and across the Dedicated Parcels, easements and rights of way for the purposes of building, installing, constructing, improving, extending, maintaining, operating, inspecting, repairing, removing, replacing, rebuilding, reinstalling, reconstructing, re-improving, and re-extending a public way and street, with sidewalks and related appurtenances, and otherwise generally developing and improving the Dedicated Parcels for the foregoing purposes, including, without limitation, as rights appurtenant, material, essential, and integral to such easements and rights of way and such purposes, the rights to use and enjoy the Dedicated Parcels to (a) access the Dedicated Parcels by way of other easements, rights of way, and properties of City, (b) travel and traverse the Dedicated Parcels with persons, equipment, materials, and supplies, and (c) locate, set, stage, and operate equipment and machinery on and/or from the Dedicated Parcels while City shall be using or enjoying the Dedicated Parcels for the purposes set forth, contained, and provided for in this Declaration.

(4) Use and Enjoyment of the Encumbered Fee Estate: Metro shall have the right, power, capacity, and authority to use and enjoy and grant or license other parties the right to use and enjoy the Dedicated Parcels for any uses or purposes that shall not unreasonably and adversely interfere with the rights of City for the purposes set forth and provided for in this Declaration and any such use, enjoyment, grant, or license by Metro shall not be and shall not be deemed or construed to be, constitute, work, or effect an over-burdening or over-encumbering of the Dedicated Parcels; provided, however, that Metro shall not install, construct, build, erect, place, set, lay, improve, or extend any improvements, barriers, or obstacles, of any nature, kind, character, or description, on or over the surface of the Dedicated Parcels.

(5) Rules of Construction: Rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Declaration.

(6) Governing Law: The laws of the State of West Virginia, without resort to its conflicts of laws principles, shall govern the validity, construction, and interpretation of this Declaration.

(7) Singular, Plural, and Gender: Words used and employed in this Declaration, regardless of the number and gender specifically used and employed, shall be deemed, construed, and interpreted to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context shall require.

(8) Headings and Captions: The headings, titles, and captions set forth, contained, and provided for in this Declaration are inserted only as a matter of convenience and for reference purposes only and shall not in any way, manner, character, or nature define, limit, restrict, confine, constrain, extend, or prescribe the scope or intent of any provision of this Declaration.

(9) Modification: This Declaration shall not be amended, modified, supplemented, altered, changed, enlarged, and/or restated in any way, manner, character, or nature, by performance, acquiescence, course of conduct, or otherwise, except by a written instrument executed by City and Metro and/or their successors in interest.

(10) Severability: In the event that any one or more of the provisions set forth, contained, or provided for in this Declaration, or the application thereof, in any circumstance, shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of such provision or provisions in any other circumstance shall not be affected or impaired thereby, and the remaining provisions set forth, contained, and provided for in this Declaration shall remain of full force and effect and be construed and interpreted as if such invalid, illegal, or unenforceable provision or provisions were never included. The provisions of this Declaration shall be severable.

(11) Inclusion of Successors: A reference to a party in this Declaration shall be deemed to include the heirs, devisees, legatees, personal representatives, successors, and/or assigns of such party.

Declaration of Consideration or Value: Under, in accordance with, and pursuant to the provisions of Article 22 of Chapter 11 of the West Virginia Code, Metro declares that the transfer made and effected by this Declaration is exempt from the applicable excise taxes on the basis that City is a political subdivision of the State of West Virginia.

Witness the following signature.

Metro Towers LLC,
a West Virginia limited liability company

By: Biafora's Incorporated,
a West Virginia corporation
Title: Manager

By: _____
Name: Richard A. Biafora
Title: Manager

State of West Virginia,
County of Monongalia, to-wit:

The foregoing instrument was executed and acknowledged before me this the _____ day of _____, 2012, by Richard A. Biafora, in his capacity as president of Biafora's Incorporated, a West Virginia corporation, in its capacity as manager of Metro Towers LLC, a West Virginia limited liability company, for and on behalf of such limited liability company, as the act and deed of such limited liability company.

_____
Notary Public
My Commission expires: _____

Town-Gown Relations

One Community One Vision

Project Team: City of College Park Council Members, Prince George's County Council District 3, Prince George's Property Owners Association, and the University of Maryland

June 1st, 2012

Town/Gown Relations
One Community One Vision

The City of College Park encourages broad community involvement and collaboration, and is committed to enhancing the quality of life for everyone who lives, raises a family, visits, works and learns in the City. The City operates a government that delivers excellent services, is open and responsive to the needs of the community, and balances the interests of all residents and visitors.

UMCP has become one of the nation's leading public research institution dedicated to serving its state, the nation, and the world. With rigorous self examination and counsel from hundreds of alumni and friends, Maryland has created a bold new strategic plan, a 10 year road map, for elevating its rank among world class universities. The strategic plan is centered on four "institutional priorities:" 1) undergraduate education; 2) graduate education; 3) research, scholarship and the creative and perform arts; and 4) partnerships, outreach, and engagement. These are the pillars of a great public research university, an institution dedicated to education and research of the highest order and to outreach that enriches the academic enterprise and enhances the economic, social and cultural well-being of the larger community. (University of Maryland 2007-2008 Strategic Plan)

The University of Maryland and the City of College Park are involved in many joint projects and initiatives including the City University Partnership (CPCUP) which is currently developing a joint implementation plan for 2020. Building on this work, the Town and Gown 2012 class titled its project/strategic plan "One Community, One Vision." While many projects could evolve under this title, the class chose to focus specifically on the need to address the relationship between the student population and the year around residential community.

Objective: To identify a mutual need that both the University of Maryland and the City of College Park have and develop a Strategic Plan moving forward with the vision of "One **Community One Vision."**

After several collaborative meetings, the class collectively felt that to achieve our goal of *One Community One Vision* we need to:

- Identify the Stakeholders;
- Identify the current demographics of the City and University
- Identify the "needs"
- Identify the "outcomes"; and
- Create the manifest/activities that would bring about the outcomes we are seeking.

Stakeholders

We realized that the University and City were Stakeholders in this initiative, but there are many others who are affected by this:

- ***Students***: Students need to feel and understand that, while they may only be here for

four years, they are part of the community. We need to encourage leadership and civic engagement as they leave the institution they are already equipped to become viable citizens in their respective communities.

- *Faculty/Employees of University of Maryland*: Their involvement will be at grassroots level to encourage the students to be more involved and work together not only on campus but in the surrounding community.
- *Residents*: Residents need to feel that their community is not at risk and is a safe and secure environment, but also one that they can work in conjunction with the students and help assist these students to achieve their college goals and help them to understand the importance of civic engagement.
- *Alumni*: Alumni are crucial to help reinforce the productivity of the University's and City's mission. Students look to them as leaders as the University looks to them as a external partner to the viability of the institution.
- *Landlords*: Landlords are needed to connect information flow between the other stakeholders.
- *Business Owners*: Business Owners rely on both residents, students, and the greater University community as clients.
- *County*: The County desires a thriving communities and a growing tax base.
- *State*: The State resources help to benefit the above stakeholders.

Need

Strengthen the relationship between the student population and the year-round community.

Plan: Marketing Concept

Our campaign would be aggressive and reflect the diverse populations and technology savvy individuals in our demographics. We would launch/establish the groundwork for our campaign in the Fall of 2012 commencing with:

- College Park 101. This workshop would be offered to all students and their families whether they lived on campus and/or off campus. The course content would be based on the current partnership between the City and the University. The University would showcase their services: Student Housing, Transportation, Public Safety, introduction to the Student Government Board, Service-Learning. The City would give a historical overview, services we provide to the students, and participants would have the opportunity to learn more about the Planning Department, Public Services, Code Enforcement, and City Contract Officers.

  - Timeline:
    - Summer 2012 - Develop content by seeking input from the year around residential community, students, and campus community.
    - Work with the University Orientation Program under the Division of Student Affairs to include College Park 101.
    - Fall 2012 – Test the program and the different medium to offer the information (PowerPoint/Prezi Presentation, YouTube Video, social media).
    - Spring 2013 – Launch pilot program to test the content and the format. We could work with the Greek Life community and some other organizations to showcase the program.

- Practical Guide for Living Away from Home (Survival Guide) would be created and given to all the students to show the services the University and the City provides as well as contacts within the community. The guide would also include details on tenant's rights, businesses, churches, and non profits within the City. Transportation information such as Route 1 Ride would also be provided. It will also include quality of life, student behavior, good neighbor etiquettes, and expectations from the year around residents. The guide would be available online and there will be ways to make this information available via other outlets.
  - Timeline:
    - Fall 2012 – Assess and gather all pertaining information already posted on the web.
    - Create a web portal containing the different services offered by the University and the City.
    - Spring 2013 - Unveil the website that will serve all students, city residents, and campus community.
- Annual Parent/Student/Resident Survey to help us gauge how well we are communicating the services, and handling any issues, etc. as well as their perception about Public Safety alerts. Also, other stakeholders would be surveyed as well including residents, parents, landlords. Being transparent, effective and proactive is what we are looking for as the result of this.
  - Fall 2012 – Work with a professor from Urban Planning, Public Policy and/or Marketing to incorporate the task of developing a survey as part of a research project.
  - Summer 2013 – Deploy survey, collect data and prepare a report.
- Develop a creative, fun marketing strategy to disseminate this concept of *One Community One Vision* by utilizing social media at all levels such as YouTube and Twitter.
  - Timeline:
    - Fall 2012 – Develop a logo and tagline for the One Vision One Community Concept
    - Fall 2013 – Unveil a series of videos handling historical information about the City of College Park, good neighbor etiquettes, student behavior –quality of life, on campus and off campus services, being a tenant/landlord, etc.