

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

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