



Office of the City Clerk

# The City of Morgantown

Linda L. Little, CMC  
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**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**REGULAR MEETING**  
**December 4, 2012**  
**7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting – November 20, 2012
5. **CORRESPONDENCE**
6. **PUBLIC HEARINGS:**
  - A. **PUBLIC HEARING on A BOND AUTHORIZING ORDINANCE OF CITY COUNCIL WHICH WOULD AUTHORIZE THE REFUNDING, PURCHASE IN THE OPEN MARKET, OR PLACING OF A TENDER OFFER TO BONDHOLDERS WITH RESPECT TO THE CITY'S OUTSTANDING COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A (DIRECT PAYMENT BUILD AMERICA BONDS) AND AUTHORIZING THE ISSUANCE BY CITY COUNCIL OF ITS COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, IN ONE OR MORE SERIES, ON A TAX EXEMPT OR TAXABLE BASIS IN AN AMOUNT NOT TO EXCEED \$45,000,000 IN CONNECTION WITH SUCH REFUNDING, OPEN MARKET PURCHASES OR TENDER OFFERS. (FIRST READING 11/5/2012, SECOND READING 11/20/2012)**
  - B. **PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY BOARD OF EDUCATION, AS THE SAME APPLIES TO A PREVENTION RESOURCES OFFICERS IN THE MONONGALIA COUNTY SCHOOL SYSTEM AT MORGANTOWN HIGH**

**SCHOOL. (FIRST READING 11/20/2012)**

- C. PUBLIC HEARING on AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND. (REVISION 02) (FIRST READING 11/20/2012)**

**7. UNFINISHED BUSINESS:**

- A. Consideration of APPROVAL of THIRD READING (ADOPTION) of A BOND AUTHORIZING ORDINANCE OF CITY COUNCIL WHICH WOULD AUTHORIZE THE REFUNDING, PURCHASE IN THE OPEN MARKET, OR PLACING OF A TENDER OFFER TO BONDHOLDERS WITH RESPECT TO THE CITY'S OUTSTANDING COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A (DIRECT PAYMENT BUILD AMERICA BONDS) AND AUTHORIZING THE ISSUANCE BY CITY COUNCIL OF ITS COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, IN ONE OR MORE SERIES, ON A TAX EXEMPT OR TAXABLE BASIS IN AN AMOUNT NOT TO EXCEED \$45,000,000 IN CONNECTION WITH SUCH REFUNDING, OPEN MARKET PURCHASES OR TENDER OFFERS.**
- B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY BOARD OF EDUCATION, AS THE SAME APPLIES TO A PREVENTION RESOURCES OFFICERS IN THE MONONGALIA COUNTY SCHOOL SYSTEM AT MORGANTOWN HIGH SCHOOL.**
- C. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND. (REVISION 02)**
- D. BOARDS AND COMMISSIONS**

**8. SPECIAL COMMITTEE REPORTS**

9. **NEW BUSINESS:**

- A. Consideration of **APPROVAL** of A RESOLUTION APPROVING THE FINANCING TERMS FOR THE CAPITAL LEASE PURCHASING PROJECT.
- B. Consideration of **APPROVAL** of A RESOLUTION AUTHORIZING THE ACCEPTANCE, ADMINISTRATION AND EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR MEMBERS OF DIVERSITY.

10. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

11. **CITY MANAGER'S REPORT:**

**NEW BUSINESS:**

- 1. Capital Escrow Budget Amendment for Capital Lease Purchase Agreement

12. **REPORT FROM CITY CLERK**

- A. Acceptance of Ward and Boundary Commission Report

13. **REPORT FROM CITY ATTORNEY**

14. **REPORT FROM COUNCIL MEMBERS**

15. **ADJOURNMENT**

**\*If you need an accommodation contact us at 284-7439\***

**REGULAR MEETING NOVEMBER 20, 2012:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Monday, November 20, 2012 at 7:00 P.M.

**PRESENT:** City Manager Terrence Moore, City Clerk Linda Little, Mayor Jim Manilla and Council Members: Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger, Bill Byrne, and Linda Herbst. Deputy City Manager Jeff Mikorski, and City Attorney Steve Fanok were absent.

**APPROVAL OF MINUTES:** The minutes of the Regular Meeting of November 5, 2012 were approved as printed.

**CORRESPONDENCE:** Mayor Manilla indicated that he is wearing the TCU team t-shirt, as a result of WVU's loss and his Big XII Mayor's Challenge bet. He then read a piece of correspondence from former Council Member Charlie Byrer, with regard to Council's pending decision on Vote By Mail.

**PUBLIC HEARING – AN ORDINANCE TO APPROVE REPLACEMENT PAGES TO THE CITY CODE.**

There being no appearances, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 105.48 OF ITS ADMINISTRATIVE CODE; DISCONTINUING THE CITY'S PARTICIPATION IN THE MUNICIPAL VOTE BY MAIL PILOT PROGRAM.**

Don Price, 251 Wagner Road, spoke in support of keeping Vote by Mail, and urged Council not to repeal the program. He stated that voter turnout is most important factor in the electoral process.

Chad Callen, on behalf of his father Michael K. Callen of 1420 Western Avenue, spoke in opposition to Vote by Mail, supporting Council's repeal of the program. He feels that Vote by Mail could compromise the electoral process.

Sam Wilkinson, 709 Park Street, spoke about Council's 4-3 votes, and alleged voter fraud arguments surrounding the Vote by Mail issue.

Richard Dumis, 444 Overhill Street, spoke in support of the repeal of Vote by Mail and took issue with the process with which it was handled.

Roger Banks, 444 Overhill Street, asked Council to repeal the Vote by Mail program. He stated the results were questionable, and that he does not want to participate in such an experiment.

Guy Panrell, South Hills Drive, reported on the success of the mail carries food drive, then spoke in support of the Vote by Mail repeal, as he feels it is a duplication of services and a bad idea.

George Pappandreas, 41 Euclid Street, thanked Council for addressing the Vote by Mail issue, stating that the repeal will correct a wrong that has been done to the citizens of Morgantown. He spoke on issues of integrity and voter turnout in the electoral process.

There being no other appearances, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING – AN ORDINANCE AMENDING SECTION 925.03 OF THE CITY OF MORGANTOWN'S STREETS, UTILITIES AND PUBLIC SERVICE CODE BY SETTING FORTH**

**THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE CITY OF MORGANTOWN.**

Tim Ball, Director of MUB, clarified the necessity behind the changes to the rates.

There being no other appearances, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING – 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.**

There being no appearances, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING – AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND. (REVISION 02).**

There being no appearances, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING – AN ORDINANCE OF THE CITY OF MORGANTOWN WHICH WOULD AUTHORIZE 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), ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,500,000, PURSUANT TO THE ISSUANCE BY THE MORGANTOWN BUILDING COMMISSION OF ITS LEASE REVENUE REFUNDING BONDS, SERIES 2012 A (NORTH SIDE FIRE STATION PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,500,000, AND THE EXECUTION AND DELIVERY BY THE CITY OF A LEASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH SUCH FINANCING.**

There being no appearances, Mayor Manilla declared the Public Hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE TO APPROVE CODE SUPPLEMENTS:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE TO APPROVE THE CURRENT REPLACEMENT PAGES TO THE CITY CODE.

Motion by Nugent, second by Herbst, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE DISCONTINUING THE VOTE BY MAIL PILOT PROGRAM:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 105.48 OF ITS ADMINISTRATIVE CODE; DISCONTINUING THE CITY'S PARTICIPATION IN THE MUNICIPAL VOTE BY MAIL PILOT PROGRAM.

Motion by Herbst, second by Nugent, to adopt the above entitled Ordinance. After extended discussion on the merits and detriments of Vote by Mail as well as possible alternatives, motion carried 4-3. Councilors Selin, Shamberger and Byrne voted NO.

**AN ORDINANCE AMENDING SEWER RATES, FEES AND CHARGES:** The below entitled Ordinance was presented for second reading:

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

Motion by Byrne, second by Shamberger, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE ANNULLING PORTIONS OF ENSIGN AVENUE:** The below entitled Ordinance was presented for second reading:

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.

Motion by Shamberger, second by Nugent, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING THE ANNUAL BUDGET, COAL SEVERANCE FUND:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND. (REVISION 02).

Motion by Shamberger, second by Selin, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING REFUNDING OF THE BUILDING COMMISSION'S NORTH SIDE FIRE STATION BONDS:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE OF THE CITY OF MORGANTOWN WHICH WOULD AUTHORIZE 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), ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,500,000, PURSUANT TO THE ISSUANCE BY THE MORGANTOWN BUILDING COMMISSION OF ITS LEASE REVENUE REFUNDING BONDS, SERIES 2012 A (NORTH SIDE FIRE STATION PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,500,000, AND THE

EXECUTION AND DELIVERY BY THE CITY OF A LEASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH SUCH FINANCING.

Motion by Nugent, second by Byrne, to adopt the above entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING REFUNDING OF THE MUB'S BUILD AMERICA BONDS:** The below entitled Ordinance was presented for second reading:

A BOND AUTHORIZING ORDINANCE OF CITY COUNCIL WHICH WOULD AUTHORIZE THE REFUNDING, PURCHASE IN THE OPEN MARKET, OR PLACING OF A TENDER OFFER TO BONDHOLDERS WITH RESPECT TO THE CITY'S OUTSTANDING COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 A (DIRECT PAYMENT BUILD AMERICA BONDS) AND AUTHORIZING THE ISSUANCE BY CITY COUNCIL OF ITS COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, IN ONE OR MORE SERIES, ON A TAX EXEMPT OR TAXABLE BASIS IN AN AMOUNT NOT TO EXCEED \$45,000,000 IN CONNECTION WITH SUCH REFUNDING, OPEN MARKET PURCHASES OR TENDER OFFERS.

Motion by Byrne, second by Nugent, to pass the above entitled Ordinance to third reading. Motion carried 7-0.

**BOARDS AND COMMISSIONS:** None.

**SPECIAL COMMITTEE REPORTS:** None.

**NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING AN AGREEMENT FOR A PREVENTION RESOURCES OFFICER AT MORGANTOWN HIGH SCHOOL:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY BOARD OF EDUCATION, AS THE SAME APPLIES TO A PREVENTION RESOURCES OFFICER IN THE MONONGALIA COUNTY SCHOOL SYSTEM AT MORGANTOWN HIGH SCHOOL.

Motion by Nugent, second by Shamberger, to pass the above entitled Ordinance to second reading. After explanation from the City Manager, motion carried 7-0.

**AN ORDINANCE AMENDING THE ANNUAL BUDGET, GENERAL FUND:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET HERETO ATTACHED AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND. (REVISION 02)

Motion by Shamberger, second by Bane, to pass the above entitled Ordinance to second reading. After explanation from the City Manager, motion carried 7-0.

**PUBLIC PORTION:**

There being no appearances, Mayor Manilla declared the public portion closed.

**CITY MANAGER'S REPORT:**

**INFORMATION:**

1. Update from Airport Advisory Committee

Mr. Moore gave clarification of the update provided, and the rules were suspended to allow further comments from Airport Director Mike Clow. Questions from Council were entertained as the discussion continued.

2. Arts Alive Festival Request Consideration

Mr. Moore shared information that can be considered to assist the program in the future. After further discussion, Mr. More agreed to provide more information at a later date, after following up with the Your Community Foundation.

**NEW BUSINESS:**

1. Health Plan Renewal Rates

After explanation from Mr. Moore, motion by Byrne, second by Shamberger to approve of the Health Plan Renewal Rates. Motion carried 7-0.

2. Bid Results for 4x4 Wheel Loader

After explanation from Mr. Moore, motion by Nugent, second by Byrne to accept the bid results as presented. After discussion, motion carried 7-0.

**REPORT FROM CITY CLERK:** Ms. Little announced that the City of Morgantown was recognized with the Fit Workplace Gold Achievement by the American Heart Association.

**REPORT FROM CITY ATTORNEY:** Absent.

**REPORT FROM COUNCIL MEMBERS:** *(Roll Reversal)*

Councilor Herbst:

Councilor Herbst welcomed her mother in the audience. She noted an issue with bus loading in front of the Met Theatre which impedes business access and traffic along High Street. Mr. Moore replied that a dialog has been started with Main Street Morgantown and an announcement from them will be forthcoming to accommodate the holiday season.

Councilor Byrne:

Councilor Byrne announced the South Hills community association covered dish dinner, and thanked the organizers of the event. He encouraged citizens to participate in local events and support youth in the arts and the Met Theatre. He then noted upcoming shows at

the theatre. He asked for a follow up with regard to the downtown mayhem issues. He suggested that a group of stakeholders be convened to address the problems. Mayor Manilla replied that this will be one of the first issues addressed by the new advisory committee after its formation in January. Councilor Byrne further suggested that a separate downtown group be formed.

Councilor Shamberger:

Councilor Shamberger thanked those who appeared to speak on the Vote by Mail issue. She commented that visitors from Oklahoma remarked how well they were treated here in Morgantown. She announced that she and Councilor Selin attended the first Human Rights Commission meeting and reported that she is looking forward to their progress. She commented that BOPARC has also discussed the bus issue with regard to the Met Theatre.

Councilor Selin:

Councilor Selin concurred that she appreciated the newly reformed Human Rights Commission. She thanked City Administration for the Airport update, as well as their efforts in public service. She raised concerns that residents cannot speak before a first reading of an issue, since Council has moved the Public Portion later in the agenda. She asked that Council consider returning the agenda order to its previous state.

Councilor Nugent:

Councilor Nugent mentioned a webinar where downtown issues have been discussed, he agreed that bringing the issue to the ITGA could be beneficial. He also noted other topics that will be discussed. He invited the public to the upcoming ITGA meeting, and suggested it be publicized for better community involvement. He then announced Small Business Saturday, and encouraged the support of local small businesses and shopping along with related events of the day.

Councilor Bane:

Councilor Bane thanked City Clerk Little for her dedicated service to the City of Morgantown, its citizens and Council for over 20 years. He recognized her for her hard work and excellent service to Council.

Mayor Manilla:

Mayor Manilla announced a Political Science class in attendance, and then announced an upcoming WV Service League book signing event.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:10 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

\*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.

# City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone 304-284-7407/Fax 304-284-7418

[jsabatelli@cityofmorgantown.org](mailto:jsabatelli@cityofmorgantown.org)

## MEMO

**DATE:** November 29, 2012

**TO:** Terrence Moore, ICMA-CM  
City Manager

**FROM:** JR Sabatelli, CPA   
Finance Director

**RE:** Capital Escrow Capital Lease Budget Revision

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The items below are the proposed budget adjustments for the Capital Escrow Fund for the fiscal year ending June 30, 2013. This adjustment is pending approval of the resolution authorizing the Capital Lease execution with BB&T. The adjustments to revenue reflect the transfer of proceeds from the General Fund to the Capital Escrow Fund for the Capital Lease. The Public Works Capital Outlay increase is to purchase an end loader, the bid for which was approved at the November 20th regular City Council meeting. The balance is included in contingency until bids are received and approved on the other equipment to purchased is known.

Budget Line	Current Budget	Proposed Revised Budget	Net Change
Revenues:			
General Fund Transfers	\$ -	\$ 1,000,000	<u>\$ 1,000,000</u>
			\$ 1,000,000
Expenses:			
Pub. Wrks Cap Outlay (End Loader)	\$ -	\$ 109,000	\$ 109,000
Contingency	\$ 194,817	\$ 1,085,817	<u>\$ 891,000</u>
			\$ 1,000,000
Net Revision			\$ -

## **BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES**

### **BOARD OF ZONING APPEALS:**

**James Shaffer and Leanne Cardoso' term expires on 12-31-12. City Clerk advertised deadline for applicants is December 7, 2012. No applicants, council will reappoint members on December 18<sup>th</sup>, 2012, Regular Meeting.** Residents appointed by City Council-5 members.

### **PLANNING COMMISSION:**

**Terms for William Petros, Mike Shuman and Carol Piles term expires on 12-31-12. City Clerk advertised deadline for applicants is December 7, 2012. No applicants, council will reappoint members on December 18<sup>th</sup>, 2012, Regular Meeting.** Nominated by City Manager on recommendation. Confirmed by City Council, Adv.

### **TRAFFIC COMMISSION:**

**Michael Wolfe, 6<sup>th</sup> ward representative per attached e-mail has resigned. Attached is a bio. From Lisa Mardis who is interested in serving.** Residents appointed by Council, must represent specific categories.

### **TRANSIT AUTHORITY BOARD OF DIRECTORS:**

**Jenny Dinsmore, City Appointment's term expires on 12-31-12. She wishes to continue to serve. There are no new applicants at this time. Council can reappoint member at the December 18<sup>th</sup>, 2012, Regular Meeting.** Residents appointed by Council, must represent specific categories.

### **URBAN LANDSCAPE COMMISSION:**

**Chamber of Commerce representative seat is still vacant and Chair is working with Chamber on replacement.** Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

**\*POLICE & FIRE CIVIL SERVICE COMMISSIONS: NEW PRESIDENTS APPOINTED IN JANUARY.**

***\*Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

***\*Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, the City Clerk will check with Council before scheduling a Special Meeting.***

**11/20/2012**

Zimbra

llittle@cityofmorgantown.org

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**Re: Traffic Commission**

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**From :** Damien Davis <ddavis@cityofmorgantown.org>

Tue, Nov 20, 2012 10:06 AM

**Subject :** Re: Traffic Commission**To :** Mike Wolfe <mwolfe@mecca911.org>**Cc :** Linda Little <llittle@cityofmorgantown.org>, Terry Hough <though@cityofmorgantown.org>, Bethany Sypolt <bsypolt@cityofmorgantown.org>, Roy Nutter <Roy.Nutter@mail.wvu.edu>**Reply To :** ddavis@cityofmorgantown.org

Mike,

I am sorry to here that you must resign. Thanks for your service on the Traffic Commission.

**J. Damien Davis, PE, CFM****Assistant City Engineer**

City of Morgantown

Public Works Department - Engineering Division

389 Spruce Street

Morgantown, WV 26505

Office: 304.284.7398

Fax: 304.284.7409

www.morgantown.com

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**From:** "Mike Wolfe" <mwolfe@mecca911.org>**To:** ddavis@cityofmorgantown.org**Sent:** Tuesday, November 20, 2012 9:52:13 AM**Subject:** Traffic Commission

Damien,

I'm not sure who to officially send this to, however, it is with great regret I need to resign from the Traffic Commission for the Sixth Ward. I have been unable to reach an agreement to purchase the home I've been renting. Although, I am still looking at another purchase option in the Sixth Ward, I won't be residing there until late spring, after December 31, 2012.

I truly am very disappointed in this, as I enjoyed the time I had on the commission and was looking forward to continuing to serve. If there is anything I can ever do to assist you, please do not hesitate to contact me.

Sincerely,

Mike

*Michael G. Wolfe*

Director  
Monongalia County  
Homeland Security & Emergency Management Agency  
& MECCA 9-1-1

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Morgantown, WV 26505  
(304) 598-0301 (office)  
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[mwolfe@mecca911.org](mailto:mwolfe@mecca911.org)

[www.mecca911.org](http://www.mecca911.org)

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Request Details 

# Request #27156 : Volunteer for City Boards and Commissions

<p><b>What is your work telephone number?</b></p> <p><b>Are you a Morgantown resident?</b> Yes</p> <p><b>If Yes, how many years have you lived in the City of Morgantown?</b> 4 yers</p> <p><b>In which City Ward do you live?</b> Sixth</p> <p><b>Who is your employer? (If retired, answer "retired")</b> Project Management Services</p> <p><b>What type of business are, or were, you employed in?</b> consulting</p> <p><b>What is your job description?</b></p> <p><b>Do you have any professional certifications or licenses?</b></p> <p><b>Do you have any pertinent special interests?</b></p> <p><b>On which commission(s) are you interested in serving?</b> Traffic Commission</p>	<p>Status: Completed</p> <p>Priority: Normal</p> <p>Received: 11/26/2012 at 12:10 PM</p> <p>Source of Request: Anon Online by Anonymous</p> <p>Assigned To: Bethany Sypolt</p> <p>Associated To: Anonymous</p> <p>Est. Completion: 12/6/2012</p> <p>Actual Completion: 11/27/2012</p> <p><input type="button" value="Reactivate"/> <input type="button" value="Print"/></p>
<p><b>Staff Activities</b></p> <p>Add New <span style="float: right;">Sort</span></p> <p>The status of the request was changed from Active to Completed. by Bethany Sypolt on 11/27/2012 at 10:36 AM</p>	<p><b>Citizen Information</b></p> <p>Lisa Mardis 1165 Hampton Ave Morgantown, WV 26505 304-692-7116 lisa.k.mardis@gmail.com</p> <p><b>Preferred Response Method:</b> E-Mail</p>
<p><b>Public Activities</b></p> <p>Add New <span style="float: right;">Sort</span></p> <p>Request was successfully submitted. by EXEC EXEC on 11/26/2012 at 12:10 PM</p> <p>will notify applicant of status of vacancies asap. by Bethany Sypolt on 11/27/2012 at 10:36 AM</p>	<p><b>Communication</b></p> <p>Select Communication Template</p> <p>Standard <input type="button" value="v"/></p> <p><input type="button" value="Print Letter"/></p> <p>View Email Text</p>

**Attachments**

Add New

©GovPartner 2012 :: GovPartner.GSS.Request

**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 FINANCED IN WHOLE OR IN PART WITH PROCEEDS OF THE REFUNDING 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 charges, 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:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
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\_\_\_\_\_(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:

<u>Bonds Maturing</u> _____ 1, 20____	
<u>Year (</u> _____ <u>)</u>	<u>Principal Amount</u>

<u>Bonds Maturing</u> _____ 1, 20____	
<u>Year (</u> _____ <u>)</u>	<u>Principal Amount</u>

\* 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\_\_\_\_.

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SIGNATURE GUARANTEED:

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(Bank, Trust Company or Firm)

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(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  
CERTIFICATION  
EXHIBIT A - REFUNDING BOND FORM

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY BOARD OF EDUCATION, AS THE SAME APPLIES TO A PREVENTION RESOURCES OFFICER IN THE MONONGALIA COUNTY SCHOOL SYSTEM AT MORGANTOWN HIGH SCHOOL.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Agreement hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

## **AGREEMENT**

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_ 2012 by and between the City of Morgantown, West Virginia (hereinafter referred to as "City") and the Monongalia County Board of Education, West Virginia (hereinafter referred to as "Board").

### **WITNESSETH:**

WHEREAS, the Board has established a Prevention Resources Officer Program (hereinafter referred to as "PRO Program"); and

WHEREAS, the Board agrees that the City have one police officer serve as a Prevention Resources Officer in the Monongalia County School System, Morgantown High School; and

WHEREAS, the City and the Board understand that the program is established for the purpose of assistance in the prevention of juvenile delinquency through programs specifically developed to respond to those factors and conditions which give rise to delinquency; and

WHEREAS, the City and the Board realize, the PRO Program is a great benefit to school administration, students and the community as a whole.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

### **SECTION 1: DUTIES AND RESPONSIBILITIES OF CITY**

- 1.01 The City will provide one (1) police officer assigned as a Prevention Resource Officer, (hereinafter referred to as "PRO") to the Board for assignment at Morgantown High School.
- 1.02 The PRO will abide by County School Board Policies and Laws, as they relate to School Prevention Resource Officer. The PRO will consult and coordinate instructional activities through the principal. Activities conducted by the PRO, which are part of the regular instruction program of the school, will be under the direction of the principal. The Board will approve the content of education programs and instructional materials used by the PRO.
- 1.03 The PRO will provide to students' instruction in various aspects of law enforcement, public safety, and education as requested and supervised by teachers.
- 1.04 City will be responsible for the control and direction of all aspects of employment of the police officer assigned to the PRO Programs.
- 1.05 City will ensure that the exercise of the law enforcement powers by the PRO is in compliance with the authority granted by law.

- 1.06 City will hold harmless the Board for any injuries suffered by PRO arising under their employment with the PRO Program.
- 1.07 The PRO will not function as a school disciplinarian or safety officer. It is not the responsibility of the PRO to intervene with the normal disciplinary procedures in the school the PRO will perform duties to the following:
- A. To perform law enforcement functions within the school setting.
  - B. To identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.
  - C. To foster a better understanding of the law enforcement function.
  - D. To develop a better appreciation of citizens' rights, obligation and responsibilities.
  - E. To provide information about crime prevention.
  - F. To provide assistance and support for crime victims identified with the school setting.
  - G. To promote positive relations between the students and the law enforcement officer.
  - H. To enhance knowledge of the fundamental concepts and structure of the law.
  - I. To be familiar with confidentiality requirements.
  - J. Any records generated by the officer as part of his/her "PRO Program" duties shall be considered as a school record subject to Family Educational Rights and Privacy Act (34 CFR 99.30 and 99.31).
- 1.08 The PRO will be on duty at the school during regular school hours when students are required to attend and when the required PRO Training Programs are conducted, unless police department emergency needs or law enforcement requirements prohibit.
- 1.09 The PRO will not be required to attend extracurricular activities, which are held beyond his/her regular workday nor require the PRO to leave his/her jurisdiction, but the PRO will have the option if they choose to do so.

## **SECTION 2: DUTIES AND RESPONSIBILITIES OF THE BOARD**

- 2.01 The Principal at Morgantown High School will be the on-site contact person for the PRO. The Superintendent of the Board will designate the Prevention Resource Office Coordinator to serve as the county liaison for the program.

- 2.02 A performance review will be performed at the end of the school year by the Principal and submitted in writing to the Police Chief.
- 2.03 The Board will furnish the City funds in the total sum of \$45,111.00 to offset the cost of salary and related benefits for the employee of the City, who will provide the contracted service and act as PRO to the schools pursuant to the terms hereinafter expressed.

**SECTION 3: TERMS OF AGREEMENT**

- 3.01 This Agreement will be made of a 12 month term beginning the 1<sup>st</sup> day of July 2012 through the 30<sup>th</sup> day of June 2013.
- 3.02 This Agreement will continue in effect until the duration of the term as described in paragraph 3.01 or until terminated by either of the parties in accordance with the term listed in section four (4) below.

**SECTION 4: TERMINATION**

- 4.01 Either party may terminate this agreement by serving written notice upon the other party at least thirty (30) days in advance of such termination.

**SECTION 5: INVALID PERSON**

- 5.01 Should any part of this Agreement be declared invalid by a court of law, such decision will not affect as if the invalid portion was never a part of this Agreement materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

**SECTION 6: INDEMNIFICATION**

- 6.01 The Board agrees to indemnify and hold harmless the City for any liability whatsoever arising out of negligent acts of the Boards' employees or agents in direction of the PRO in the performance of their instructional programs. The City agrees to indemnity and hold harmless the Board of any liability whatsoever arising to employment as defined by City Ordinances and West Virginia State Law. Nothing in this Agreement will affect any rights, privileges or immunities the City or Board may have.

**SECTION 7: ASSIGNMENT**

- 7.01 No Party of the Agreement will, neither directly nor indirectly, assign nor purport to assign this Agreement or any of its rights or obligations in whole or in partly to any third party without the prior written consent of the other party.

**SECTION 8: NO WAIVER**

8.01 The failure of either party to enforce at any time of the provision, rights, or elections or in any way effect the validity of the Agreement. The failure to exercise by either party in any of its rights herein contained will not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

**SECTION 9: COMPLETE AGREEMENT**

9.01 This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels, and terminates any and all prior agreements or understanding of the parties, whether written or oral, concerning the subject matter hereof.

**SECTION 10: CHOICE OF LAW**

10.01 This Agreement will be governed by and interpreted according to the laws of the State of West Virginia. It will be binding upon and insure to the benefit of the successors of the City and the Board.

**SECTION 11: NOTICES**

11.01 All notices or other communications required or permitted by the Agreement will be in writing and deemed effectively delivered upon mailing by certified mail, return receipt requested, or delivered personally to the following persons and addresses unless otherwise specified herein:

\_\_\_\_\_  
Terrence Moore, City Manager  
City of Morgantown, WV

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dr. Frank Devono, Superintendent  
Monongalia County Board of Education

\_\_\_\_\_  
Date

**AN ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

The City of Morgantown hereby ordains:

That the FY 2012-2013 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

\_\_\_\_\_  
City Clerk

**REQUEST FOR REVISION TO APPROVED BUDGET**

CONTROL NUMBER

**2012-2013**

Ora Ash, Director  
 West Virginia State Auditor's Office  
 200 West Main Street  
 Clarksburg, WV 26301  
 Phone: 627-2415 ext. 5114  
 Fax: 627-2417

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

FY

**General Fund**

FUND

**2**

REV. NO.

**1 of 1**

PG. OF NO.

City of Morgantown  
 GOVERNMENT ENTITY

389 Spruce Street  
 STREET OR PO BOX

**Municipality**

Government Type

Person To Contact Regarding  
 Budget Revision: **J.R. Sabatelli**  
 Phone: **304-284-7407**  
 Fax: **304-284-7418**

Morgantown 26505  
 CITY ZIP CODE

**REVENUES: (net each acct.)**

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
377	Capital Lease Revenues		1,000,000		1,000,000
305	Business and Occupation Tax	12,768,858		78,154	12,690,704
	#N/A				

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)** 921,846

**Explanation for Account # 378, Municipal Specific:**

**Explanation for Account # 369, Contributions from Other Funds:**

**EXPENDITURES: (net each account category)**

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
444	Contributions / Transfers to Other Funds	1,513,858	921,846		2,435,704
	#N/A				

**NET INCREASE/(DECREASE) Expenditures** 921,846

APPROVED BY THE STATE AUDITOR

BY: Director, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

City of Morgantown  
 General Fund  
 Budget Revision #2  
 Fiscal Year 2013

Non-wage items requiring adjustment:

	Current	New	Revision
Dept 70 Operating Transfers			
Contrib to Capital Escrow	1,513,858.00	2,435,704.00	921,846.00
Total nonwage	1,513,858.00	2,435,704.00	921,846.00
Total Increase overall			921,846.00
Totals by Department			
Dept 70 Operating Transfers			921,846.00
Contingencies			-
			<u>921,846.00</u>

Revenue Adjustment

	Current	New	Revision
Capital Lease Revenues	-	1,000,000.00	1,000,000.00
B&O Construction	<u>2,268,858.00</u>	<u>2,190,704.00</u>	<u>(78,154.00)</u>
	2,268,858.00	3,190,704.00	921,846.00

-

# *City of Morgantown*

## *Finance Department*

*389 Spruce Street*

*Morgantown, WV 26505*

*Phone (304) 284-7407/Fax 7418*

*jsabatelli@cityofmorgantown.org*

# MEMO

**DATE:** November 14, 2012

**TO:** Terrence Moore, ICMA-CM, City Manager

**FROM:** J.R. Sabatelli, CPA, Finance Director 

**RE:** General Fund Budget Revision 2

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Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2013 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect a decrease from the projected and approved Business & Occupation Tax on Construct and the anticipated Capital Lease. The "Request for Revision to Approved Budget" is required to include all B&O taxes, however the attached summary provides the detail breakdown for the specific B&O taxes affected. As per your direction, since further adjustments will be proposed, only a portion of the expected decrease in B&O taxes is included.

The adjustments to expenditures reflect the net activity associated with the Capital Lease (\$1,000,000) to be transferred to the Capital Escrow Fund and the decrease in contribution related to the one time B&O taxes on construction. The portion decreased due to the B&O taxes reflects the General Fund's contribution that is directly related to the Capital Escrow budget adjustment approved by City Council at their November 5<sup>th</sup> meeting.

Additional budget adjustments for the General Fund are expected in the near future for both revenues and expenditures.

## **Resolution Approving Financing Terms**

**WHEREAS:** The City of Morgantown, West Virginia (“City”) has previously determined to undertake a project for the lease purchase of a new fire truck, vehicles and other equipment, and City Administration has now presented a proposal for financing of such Project.

**NOW, THEREFORE, BE IT RESOLVED** by the City of Morgantown this \_\_\_\_ day of \_\_\_\_\_, 2012, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company (“BB&T”), in accordance with the proposal dated October 24, 2012, attached hereto. The amount financed shall not exceed \$1,000,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.79%, and the financing term shall not exceed 8 years from closing.
2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.
3. The City Manager is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer’s satisfaction. The City Manager is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the City Manager shall approve, with the City Manager’s release of any Financing Document for delivery constituting conclusive evidence of such officer’s final approval of the Document’s final form.
4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as “qualified tax-exempt obligations” for the purpose of Internal Revenue Code Section 265(b)(3).
5. The City intends that the adoption of this resolution will be a declaration of the City’s official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City’s General Fund, or any other City

fund related to the Project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.
7. This financing shall be completed in full compliance with the State of West Virginia Code Section 8-12-11 *Lease Agreements for equipment or materials with option to cancel or renew for one year authorized*. All documents and agreements regarding this financing shall meet with the referenced code section and documents that contradict these requirements shall be deemed void to the extent of the conflict.

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*Mayor*

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*City Clerk*

October 24, 2012

J.R. Sabatelli  
Finance Director  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

Governmental Finance

501 Tennessee Avenue  
Charleston, WV 25302  
(304) 353-1653  
Fax (304) 340-4702

Dear Mr. Sabatelli:

Branch Banking and Trust Company ("BB&T") is pleased to offer this proposal for the financing requested by the City of Morgantown, West Virginia ("City").

- (1) **Project:** Lease purchase of a new fire truck, vehicles and other equipment
- (2) **Amount To Be Financed:** up to \$1,000,000.00
- (3) **Interest Rates, Financing Terms and Corresponding Payments:**

<u>Term</u>	<u>Rate</u>
3 years	1.32%
5 years	1.52%
7 years	1.79%
10 years	2.15%

Payments shall be monthly or annual in arrears with the first payment due July 5, 2013, as requested. More than one of the above terms may be chosen to coincide with the useful life equipment being financed. See attached amortization schedules for information on payments.

The financing proceeds shall be deposited on behalf of the City in a project fund account with Branch Banking & Trust. Earnings on the project fund shall accrue to the benefit of the City for use on Project costs or interest payments.

The interest rates stated above are valid for a closing not later than 45 days after today. Closing of the financing is contingent upon completing documentation acceptable to BB&T and upon the condition of the property being acceptable to BB&T.

Remuneration for our legal expenses, preparation of documentation and for providing the project fund services for this financing transaction shall be \$0. All applicable taxes, permits, costs of lawyers for the City and any other costs shall be the City's responsibility and separately payable by the City. The financing documents shall allow prepayment of the principal balance in whole on a scheduled payment date without a prepayment premium.

The stated interest rates assume that the City expects to borrow less than \$10,000,000 in calendar year 2012 and that the City shall comply with IRS Code Sections 141, 148 and 149. BB&T reserves the

right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not qualified tax-exempt financing for the purpose of IRS Code Section 265(b)(3).

**(4) Financing Documents:**

BB&T proposes to use its standard form financing contracts and related documents for this installment financing. We shall provide a sample of those documents to you should BB&T be the successful proposer. This financing shall be secured by a first lien security interest in all personal property acquired with proceeds.

\* \* \* \* \*

BB&T appreciates the opportunity to make this financing proposal and requests to be notified within five days of this proposal should BB&T be the successful proposer.

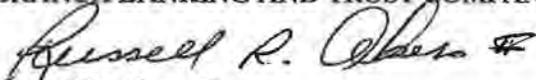
BB&T shall have the right to cancel this offer by notifying the City of its election to do so (whether or not this offer has previously been accepted by the City) if at any time prior to the closing there is a material adverse change in the City's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the City or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to BB&T. We reserve the right to negotiate and/or terminate our interest in this transaction should we be the successful proposer.

Should we become the successful proposer, we have attached the form of a resolution that your governing board can use to award the financing to BB&T. If your board adopts this resolution, then BB&T shall not require any further board action prior to closing the transaction.

Please call me at (304) 353-1635 with your questions and comments. We look forward to hearing from you.

Sincerely,

BRANCH BANKING AND TRUST COMPANY

  
Russell R. Akers, II  
Vice President

Enclosure

**RESOLUTION**

*WHEREAS, the City of Morgantown submitted the necessary paperwork to obtain \$5,000 for the Members of Diversity(a 501(c)(3) organization) through the Governor's Community Participation Grant Program, and the grant application has been approved for funding; and*

*WHEREAS, the grant (11LEDA0652) will allow the Members of Diversity to purchase equipment and materials to assist in conducting career fairs and career training for Morgantown youth; and*

*WHEREAS, Morgantown City Council is of the opinion that this will be of great benefit to the residents of Morgantown, and therefore agrees to administer the grant contract.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 4th day of December, 2012, that the City agrees to the conditions of the contract and authorizes the Mayor to sign the West Virginia Development Office contract, and City Manager to administer the execution of the grant*

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**CITY OF MORGANTOWN**

**THIS AGREEMENT**, entered into this 1st day of July, 2010, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Morgantown and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee.** The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services.** The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to purchase equipment and materials to assist Members of Diversity in conducting career fairs and career search training for Morgantown youths.
3. **Personnel.** The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 2010, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2013. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2013.
5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$5,000. This amount constitutes complete compensation for all services rendered. In no

instance shall the agreed upon compensation exceed \$5,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

**The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.**

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

**Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

**In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:**

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering.** The Grantee shall procure architectural or engineering services in accordance with West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build.** The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment.** The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A111.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its

designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code

§6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Morgantown upon authorization of the City of Morgantown by adoption and passage of a resolution, motion or similar official action.

**IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.**

**STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE**

\_\_\_\_\_  
**J. Keith Burdette, Executive Director**

**CITY OF MORGANTOWN**

By: \_\_\_\_\_  
**Jim Manilla, Mayor**

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.

Project Number: 11LEDA0652



*State of West Virginia*  
*Earl Ray Tomblin*  
*Governor*

Office of the Governor  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Telephone: (304) 558-2000  
Toll Free: 1-888-438-2731  
FAX: (304) 342-7025  
www.governor.wv.gov

October 29, 2012

The Honorable Jim Manilla  
Mayor  
City of Morgantown  
389 Spruce Street  
Morgantown, West Virginia 26505

2ND COPY

Dear Mayor Manilla:

Thank you for your application to the Governor's Community Participation Grant Program.

I, along with Delegate Barrill, Delegate Fleischauer, Delegate Marshall, and Delegate Pasdon, am pleased to approve your request in the amount of \$5,000. These funds will enable you to purchase equipment and materials to assist Members of Diversity in conducting career fairs and career search training for Morgantown youths.

To proceed with this project, please fax this letter to 304-558-2246, or mail a copy to: Community Participation Program, West Virginia Development Office, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. Please note that funds should not be obligated prior to the full execution of a contract with the State of West Virginia.

We are pleased to work with you to make this improvement a reality for the citizens of Morgantown.

Sincerely,

A handwritten signature in black ink that reads "Earl Ray Tomblin".

Earl Ray Tomblin  
Governor

ERT:kf

Project Number: 11LEDA0652

November 20, 2012 Meeting of the Morgantown Ward Boundary Commission – 11-20-1

**Members:**

*First Ward: Don West 651 Standard Avenue. 304-291-6355 h, 304-285-3155 w, [papadon1970@aol.com](mailto:papadon1970@aol.com)*

*Second Ward: David Huffman 705 Grand St. 304-296-3332 h, 304-216-3332 c*

*Third Ward: Robert Feathers 123 Hoffman St. 304-599-8263 h*

*Fourth Ward: Stephen Carpenter 456 Rotary St. 304-285-7585 h, 304-284-7585 w*

*Fifth Ward: William "Bill" Ryan 1133 Charles Ave. 304-1982 h*

*Sixth Ward: Marca Paparozzi 788 Mountain View Pl. 304-285-4273 w EPS, 304-376-1483 c*

*Seventh Ward: Alan Donaldson 1300 Heritage Pl. 304-599-0539 h, 304-685-4223 c, [acdonalds@comcast.net](mailto:acdonalds@comcast.net)*

*h, home phone; w, work phone; c, cell phone; + e-mail addresses*

The November 20, 2012 meeting was scheduled for 10 a.m. in the conference room of the Public Service Building (PBS). Alan Donaldson arrived at 9:15 a.m. and placed on the table 2 large maps showing precinct and ward boundary data from the November 6, 2012 general election provided by city election register, April Davies and illustrated by cartographer/engineer Damian Davis. City Clerk, Linda Little, set up a speaker-phone on the table in order to communicate with member David Huffman as pre-arranged by telephone. Alan and Linda had previously contacted the Morgantown Ward Boundary Commission (MWBC) members, who each had been provided a 5- page document, (included here as an attachment) which indicated the same voter registration data illustrated on a small map and 4 pages that displayed the numerical data and analyzed the information. Each member was able to evaluate the data, draw conclusions and make recommendations prior to the November 20<sup>th</sup> meeting. The MWBC members all have served several terms and have shown good consistent judgment in balancing variables of size, shape, and distribution of precincts within a ward. An important guideline for equality is their community strengths that enhance the quality of life for Morgantown citizens. Presently, five wards of the city indicate acceptable November 2012 voter registration results of deviations of 15% or less from the average ward of the seven wards. The remaining two wards of the City of Morgantown deviate but not excessively from the average ward. When Linda and Alan talked with six of the seven MWBC members prior to the November 20<sup>th</sup> meeting, they commented that no change in ward boundaries is warranted for 2012.

The Morgantown Ward Boundary Commission thanks April Davies and Linda Little for their continuing help and support.

*Alan Donaldson*

Alan Donaldson,  
Chairman, Morgantown Ward Boundary Commission

District	Precinct	D	L	M	N	R						OTHER	Total
First Ward	01	467	0	2	165	207	0	0	0	0	0	7	848
	02	680	3	5	236	314	0	0	0	0	0	12	1250
SECOND WARD	04	703	7	2	277	298	0	0	0	0	0	14	1301
	06	428	4	6	244	120	0	0	0	0	0	15	817
6th Ward	08	611	5	6	238	253	0	0	0	0	0	11	1124
3rd Ward	10	628	7	5	582	375	0	0	0	0	0	23	1620
5th Ward	13	345	6	3	272	202	0	0	0	0	0	7	835
	14	527	10	3	413	360	0	0	0	0	0	8	1321
	15	117	1	2	57	65	0	0	0	0	0	5	247
3rd Ward	16	596	5	4	320	288	0	0	0	0	0	17	1230
4th Ward	20	192	1	0	179	91	0	0	0	0	0	8	471
4th Ward	21	599	5	2	564	496	0	0	0	0	0	13	1679
7th Ward	23	688	2	2	217	375	0	0	0	0	0	14	1298
4th Ward	26	393	1	0	124	218	0	0	0	0	0	12	748
7th Ward	27	191	1	0	76	113	0	0	0	0	0	3	384
6th Ward	30	630	2	1	234	252	0	0	0	0	0	14	1133
7th Ward	90	159	3	0	75	118	0	0	0	0	0	5	360
<b>Total:</b>		7954	63	43	4273	4145	0	0	0	0	0	188	16666

District	Precinct	D	L	M	N	R						OTHER	Total
	01	467	0	2	165	207	0	0	0	0	0	7	848
	02	680	3	5	236	314	0	0	0	0	0	12	1250
	04	703	7	2	277	298	0	0	0	0	0	14	1301
	06	428	4	6	244	120	0	0	0	0	0	15	817
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	14	527	10	3	413	360	0	0	0	0	0	8	1321
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	20	192	1	0	179	91	0	0	0	0	0	8	471
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	27	191	1	0	76	113	0	0	0	0	0	3	384
	30	630	2	1	234	252	0	0	0	0	0	14	1133
	90	159	3	0	75	118	0	0	0	0	0	5	360
<b>Total:</b>		7954	63	43	4273	4145	0	0	0	0	0	188	16666

*Alan  
Alvordson*

Ward	Voter Registration AVERAGE	Deviation from Average in VR	%
Ward 1	2098	2098 - 2381 = -283	12
Ward 2	2118	2118 - 2381 = -263	11
Ward 3	2850	2850 - 2381 = +469	16
Ward 4	2898	2898 - 2381 = +517	18
Ward 5	2403	2403 - 2381 = +22	1
Ward 6	2257	2257 - 2381 = -124	5
Ward 7	2042	2042 - 2381 = -339	14
<b>Total</b>	<b>16,666</b>		

Preliminary

Draft by Alan Donaldson  
 Analyzing voter Registration  
 city data verified by April Davies  
 on 11-9-12

PRECINCTS BY WARDS/DISTRICTS

2012 Registered voters  
 Primary 7-3-2012

CITY OF MORGANTOWN

1st Ward	2nd Ward	3rd Ward	4th Ward	5th WARD	6th Ward	7th Ward
1, 2	4, 6	10, 16	20, 21, 26	13, 14, 15	8, 30	23, 27 90
Ward 1	Ward 2	Ward 3	Ward 4	Ward 5	Ward 6	Ward 7
① 812	④ 1252	⑩ 1456	20 420	13 771	8 1095	23 1223
② 1224	⑥ 762	⑩ 1105	21 1518	14 1237	30 1100	27 364
<u>2036</u>	<u>2014</u>	<u>2561</u>	<u>2655</u>	<u>2248</u>	<u>2195</u>	<u>90 350</u>
						<u>1934</u>
Total = 15,646 City Ward Ave. = 2,235						

Voter Registration DATA 11-09-2012  
 General Election

Precincts

1st ward	2nd Ward	3rd Ward	4th Ward
① 848	④ 1301	⑩ 1620	②⑩ 471
② 1250	⑥ 817	⑩ 1230	②⑩ 1679
<u>2098</u>	<u>2118</u>	<u>2850</u>	②⑥ 748
			<u>2898</u>

★ What we will use

5th Ward

⑬ 835
⑭ 1321
⑮ 247
<u>2403</u>

6th Ward

⑧ 1124
③⑩ 1133
<u>2257</u>

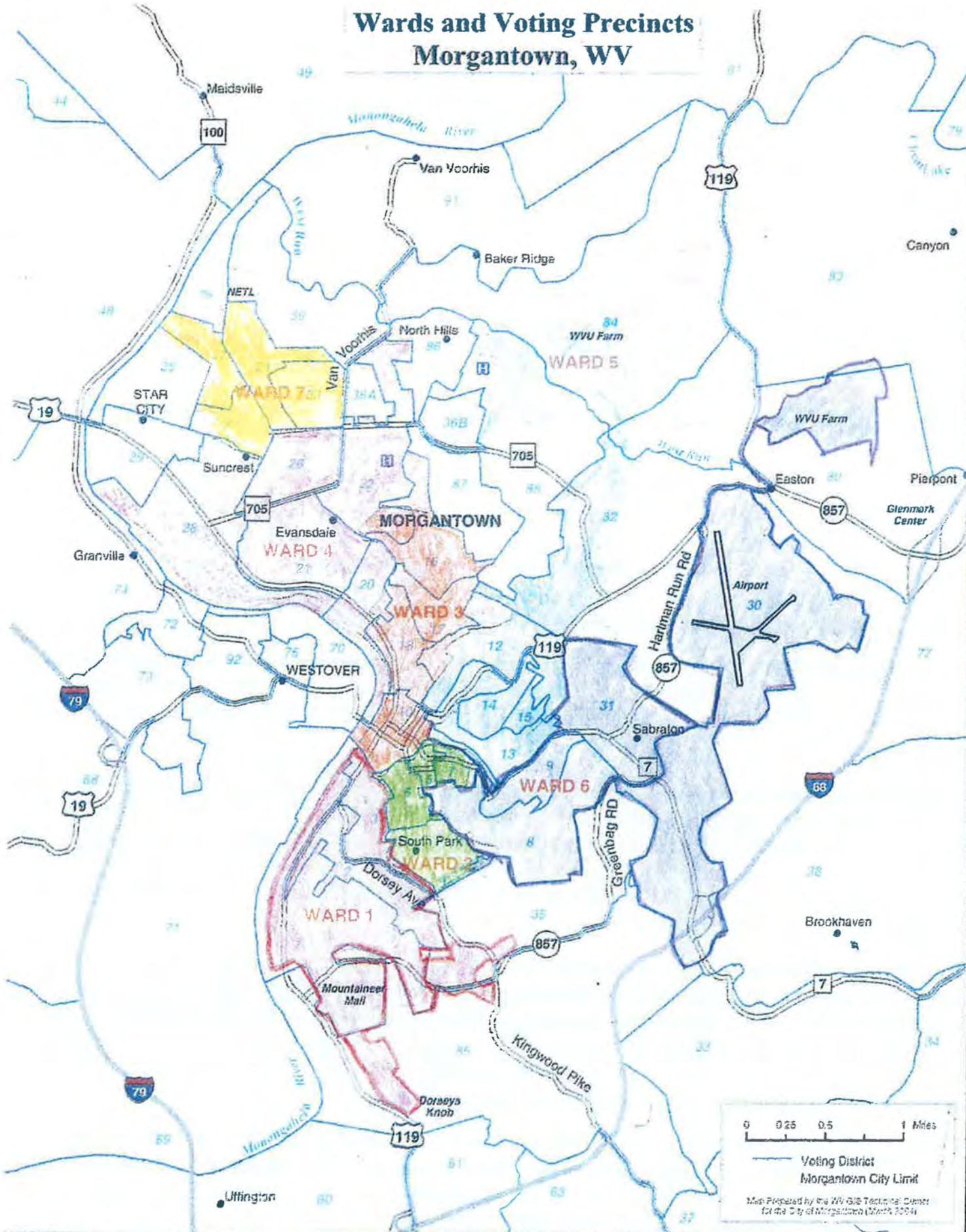
7th Ward

⑲ 1298
⑲ 384
⑨⑩ 360
<u>2042</u>

Total = 16,666

City Ward Ave = 2381

# Wards and Voting Precincts Morgantown, WV



January 4, 2006, the County Commission consolidated the following Precincts within the City of Morgantown

Precincts 3 and 2 consolidated and known as Precinct 2.	Precincts 11 and 10 consolidated and known as Precinct 10.
Precincts 5 and 4 consolidated and known as Precinct 4.	Precincts 22 and 21 consolidated and known as Precinct 21.
Precincts 7 and 6 consolidated and known as Precinct 6.	Precincts 24 and 23 consolidated and known as Precinct 23.
Precincts 9 and 8 consolidated and known as Precinct 8.	Precincts 31 and 30 consolidated and known as Precinct 30.

# City Commission Discusses Considerations for Morgantown Ward Boundaries

Posted on July 20, 2012 by City of Morgantown

FOR IMMEDIATE RELEASE

Morgantown, W.Va., July 19, 2012 – As voters research state and national candidates in preparation for going to the polls to cast their ballots in the November 2012 general election, the City of Morgantown Ward Boundary Commission is already working to prepare Morgantown for the April 2013 municipal election.

The Commission met Monday, July 16, to discuss preliminary considerations for setting ward boundaries. Alan Donaldson, Ward Boundary Chair, in a written statement, said, "The Commission considers deviation from the ward average of registered voters as a criterion for changing ward boundaries." According to Donaldson, municipal wards exceeding a 15-percent deviation in the number of voters is considered "undesirable and in need of remedies to correct imbalance."

In accordance with the City Charter, the Ward Boundary Commission is expected to submit a report to the City Clerk – between November 15 and November 30 of this year- containing a recommended plan and a map for the adjustment of ward boundaries to comply with specifications outlined in City Charter Section 7.05.

Specifications include wards formed from contiguous territory following precinct lines and center lines of streets wherever practicable, and as nearly as practicable the same number of qualified voters as determined from the last statewide general election in 2010. Mayor Jim Manilla said, "It's important to remember the City Charter states specifications are not to be construed to require the adjustment precinct boundaries or to sacrifice compactness of wards for the sake of achieving equality in numbers of registered voters among the seven wards of the City."

Following the official submission of the report of the Ward Boundary Commission, City Council may take action to approve the report as recommended and introduce a proposed ordinance providing for the ward boundaries in accordance with the specifications contained in the report. Otherwise, if City Council doesn't approve the report, the reasons will be stated for the record and City Council will introduce an ordinance adjusting ward boundaries consistent with the City Charter, unless a finding of fact is made that no ward boundary adjustments are necessary.

"Ward boundaries are the basis for representative government in our City," said Manilla, adding that "over time, as population changes so must ward boundaries so as to not disenfranchise citizens." Manilla mused, "I can remember when second ward school was actually in second ward. Today, the former second ward school is located in what is now sixth ward."

###

- 5 -