



Office of the City Clerk

The City of Morgantown

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AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
May 28, 2013
7:00 p.m.

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

PRESENTATIONS:

- Partners In Education Certificates
- MUB: Acquisition of Scott's Run PSD
- Trash Status Report and Update by Republic Services
- Quarterly Financial Report
- FY 2013-2014 Airport Budget and Adopting Resolution
- Public Portion

ITEMS FOR DISCUSSION:

1. Amendments to Traffic Code:
 - Ordinance- Amending Section 365.01 and Repealing and Reenacting Section 365.12, Definitions, Gate and Pull Ticket Violations
 - Ordinance- Amending sections 363.07 and 363.08, Meter Enforcement, Time Limits and Fees
2. Text Amendments to Planning and Zoning Code:
 - Ordinance- Amending Table 1331.05.01 "Permitted Land Uses"
 - Ordinance- Amending Article 1365.09, Parking Development Standards
 - Ordinance- Amending Article 1363.04 "Special Requirements"
3. Ordinance: Increase in Fire Fee as Identified in FY 2014 Budget
4. Ordinance: Annulment of 6th Street
5. Ordinance: Intergovernmental Agreement, Woodburn Elementary School Property

If you need an accommodation contact us at 284-7439

MEMORANDUM

TO: City Council
Jeff Mikorski, City Manager

FROM: Timothy L. Ball, General Manager, MUB

DATE: May 23, 2013

SUBJECT: **BOND AND RATE ORDINANCES
ACQUISITION AGREEMENT
RELATED MUB RESOLUTIONS
SCOTTS RUN PSD ACQUISITION
COUNCIL COW MEETING INFORMATION
MAY 28, 2011**

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

The attached ordinances and acquisition agreement will facilitate MUB's acquisition of the Scotts Run PSD (SRPSD). SRPSD provides sanitary sewer service to the Osage area, including Mylan Park and University Town Centre. It was recently (10 years ago) constructed using a \$3.9 million grant and a combination of loans totaling \$9.9 million loan (0.5%, 30 years, 0.25%, 36 years). SRPSD currently serves about 970 customers.

The SRPSD has recognized that it lacks the staff and resources to properly manage its operations, and has asked to be acquired by MUB. The County Commission endorses this action. The acquisition is an attractive opportunity for MUB to expand its customer base and service area.

We have recently received the commitment of the WV DEP to allow MUB to assume the debt of CPSD. It is this commitment that makes the acquisition feasible. We will not pay any other consideration to SRPSD for this acquisition. The assumption of the debt necessitates the proposed Bond Ordinance.

We propose to keep the existing rates in place that currently apply to the SRPSD service area. Addition of these rates to the MUB tariff necessitates the proposed Rate Ordinance.

This acquisition will allow a valuable system addition to be done, and without subsidization by MUB.

The acquisition agreement is an Exhibit to the Bond Ordinance. Approval of the Bond Ordinance will, by that act, include approval of the acquisition agreement. However, separate consideration and approval of the acquisition agreement is requested. The Mayor will need to execute the acquisition agreement AFTER PSC approval has been obtained.

I include Resolutions approved by the MUB Board endorsing the acquisition agreement and the bond ordinance and assumption of debt.

Please note that the attached documents are in draft form. Final documents with signatures will be provided for your official meeting of June 4.

Please note also that you should expect public comment from some members of the Scotts Run community who oppose the proposed acquisition. Several such persons spoke at the MUB meeting and the SRPSD meeting, both held May 22, 2013. After taking these comments into consideration, both Boards voted to proceed with the acquisition.

In addition to your approval, the acquisition must be approved by both the County Commission and the Public Service Commission.

I will attend the Council meeting, and will be happy to provide any further explanation that you may desire.

Utility Board Resolution – Scott’s Run PSD

THE CITY OF MORGANTOWN

Assumption of

Scott’s Run Public Service District Sewerage System Revenue Bonds, Series 1991 A
(West Virginia Water Development Authority)

Scott’s Run Public Service District Sewerage System Revenue Bonds, Series 1991 B
(West Virginia Water Development Authority)

Scott’s Run Public Service District Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

Scott’s Run Public Service District Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

Scott’s Run Public Service District Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

**AUTHORIZING RESOLUTION OF
MORGANTOWN UTILITY BOARD**

RESOLUTION RECOMMENDING THE ASSUMPTION, AND RE-DESIGNATION, OF THE SCOTT’S RUN PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM REVENUE BONDS, SERIES 1991 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SEWERAGE SYSTEM REVENUE BONDS, SERIES 1991 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA) FOR THE PURPOSE OF FINANCING, OR ACTING AS CONSIDERATION FOR, THE CITY OF MORGANTOWN’S ACQUISITION OF THE SEWERAGE SYSTEM OF SCOTT’S RUN PUBLIC SERVICE DISTRICT.

WHEREAS, in accordance with Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the “Act”), and pursuant to an ordinance enacted by the City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the

“City”) on September 1, 1987, as amended on May 1, 2007, the City created the Morgantown Utility Board (the “Utility Board”) and vested in the Utility Board the responsibility for the supervision, management, control and operation of the combined waterworks, sewerage and stormwater system of the City (the “System”);

WHEREAS, pursuant to the Act, the City is vested with the authority to issue, or assume, revenue bonds for the purpose of financing the cost of additions, betterments and improvements to the System;

WHEREAS, Scott’s Run Public Service District (the “District”) is a public service district and public corporation created by order of The County Commission of Monongalia County pursuant to the provisions of Chapter 16, Article 13A of the Act;

WHEREAS, the District currently provides sewerage collection and transportation service to approximately 970 customers in Monongalia County, West Virginia;

WHEREAS, the District’s public sewerage system consists of a collection and transportation system, including associated mains, pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment and personal property used and useful in providing sewerage services to customers of the District, together with all real property, lands, easements, rights-of-way, permits, certificates of convenience and necessity, deposit accounts, savings accounts, investments, security deposits, accounts receivable, bond sinking funds, bond reserve accounts and all other tangible and intangible assets owned or held by the District and used or useful in providing sewerage collection and transportation service to the District’s customers (collectively, the “District’s Sewerage System”);

WHEREAS, the District currently has outstanding the following indebtedness secured by the District’s Sewerage System: (i) Sewerage System Revenue Bonds, Series 1991 A (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$137,568; (ii) Sewerage System Revenue Bonds, Series 1991 B (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$4,586; (iii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated November 25, 2003, issued in the original aggregate principal amount of \$8,111,813; (iv) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated December 18, 2009, issued in the original aggregate principal amount of \$1,688,394; and (v) Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), dated December 18, 2009, issued in the original aggregate principal amount of \$3,939,585 (collectively, the “District Bonds”);

WHEREAS, the Utility Board and the District are parties to a Sewer Service Agreement, whereby the Utility Board provides sewerage treatment services for wastewater from the District's Sewerage System;

WHEREAS, the Utility Board has determined that it is in the best interests of the City to acquire the District's Sewerage System and has adopted a resolution dated the date hereof recommending such acquisition;

WHEREAS, the City shall pay a purchase price for the District's Sewerage System that is equal to the aggregate outstanding principal amount of the District Bonds which shall be assumed by the City on the date of the acquisition;

WHEREAS, the Utility Board has determined that the District's existing sewerage service rates should be adopted by the City applicable only to the customers served by the District's Sewerage System; and

WHEREAS, as the entity vested by the City with responsibility for the supervision, management, control and operation of the System, pursuant to its adoption of this Authorizing Resolution, the Utility Board wishes to recommend to the City that it assume the outstanding balances associated with the District Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE MORGANTOWN UTILITY BOARD:

Section 1. The Utility Board hereby recommends the enactment by the City of an ordinance substantially in the form attached hereto and made a part hereof as Exhibit A, in connection with assuming the outstanding balances associated with the District Bonds.

Section 2. The Utility Board hereby recommends the enactment by the City of an ordinance substantially in the form attached hereto and made a part hereof as Exhibit B, in connection with the sewerage service rates to be applicable only to the customers served by the District's Sewerage System.

Section 3. The Utility Board hereby repeals any resolution or ordinance which it has previously enacted which is inconsistent with the provisions hereof.

Section 4. This Authorizing Resolution shall be effective immediately following the adoption hereof.

Adopted this 22nd day of May, 2013.

MORGANTOWN UTILITY BOARD

By: _____
Its: Chairman

627490.00053

EXHIBIT A

Form of Bond Ordinance

DRAFT

EXHIBIT B

Form of Rate Ordinance

BOND ORDINANCE

THE CITY OF MORGANTOWN

**ASSUMPTION OF THE
SCOTTS RUN PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 1991 A
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
SEWER REVENUE BONDS, SERIES 1991 B
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
SEWER REVENUE BONDS, SERIES 2003 A
(WEST VIRGINIA SRF PROGRAM); AND
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)**

AND

RE-DESIGNATED AND REPLACED AS

**THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D
(WEST VIRGINIA SRF PROGRAM); AND
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E
(WEST VIRGINIA SRF PROGRAM)**

ORDINANCE AUTHORIZING THE ACQUISITION OF THE SEWER SYSTEM OF SCOTTS RUN PUBLIC SERVICE DISTRICT; AUTHORIZING THE ASSUMPTION AND REDESIGNATION OF THE SCOTTS RUN PUBLIC SERVICE DISTRICT'S SEWER REVENUE BONDS, SERIES 1991 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); SEWER REVENUE BONDS, SERIES 1991 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM); AND SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) IN CONNECTION WITH THE ACQUISITION OF THE SEWER SYSTEM AND THE RE-DESIGNATION BY THE CITY OF MORGANTOWN OF THE SCOTTS RUN PUBLIC SERVICE DISTRICT SEWER REVENUE BONDS, SERIES 1991 A (WEST VIRGINIA WATER

DEVELOPMENT AUTHORITY); SEWER REVENUE BONDS, SERIES 1991 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM); AND SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) AS THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D (WEST VIRGINIA SRF PROGRAM); AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ASSUMPTION AND RE-DESIGNATION OF SUCH BONDS; ASSUMING, APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT, BOND PURCHASE AGREEMENT AND ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE ASSUMPTION AND RE-DESIGNATION AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF MORGANTOWN:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 20, Chapter 22C, Article 1 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Morgantown (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. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired from the Scotts Run Public Service District (the "District") the existing sewer system of the District (collectively, the "District Assets") from the District, which District

Assets constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing combined waterworks, sewerage and stormwater system of the Issuer, the District Assets and any further additions, betterments and improvements thereto are herein called the "System"), pursuant to an Acquisition Agreement by and among the Issuer, the Board and the District, which Acquisition Agreement shall be approved by Supplemental Resolution (the "Acquisition Agreement").

C. The District has heretofore financed the acquisition and construction of public sewerage facilities to provide sewer service to approximately 970 customers in Monongalia County, by the issuance of its (i) Sewer Revenue Bonds, Series 1991 A (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$137,568; (ii) Sewer Revenue Bonds, Series 1991 B (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$4,586; (iii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated November 25, 2003, issued in the original aggregate principal amount of \$8,111,813; and (iv) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated December 18, 2009, issued in the original aggregate principal amount of \$1,688,394 (collectively, the "District Bonds").

D. The District Bonds were issued pursuant to Resolutions of the District previously enacted for such purpose (such resolutions, as amended and supplemented, are herein called the "District Resolutions").

E. It is deemed necessary and desirable for the Issuer to provide for the acquisition of the District Assets and the Assumption and Re-designation of the District Bonds.

F. The District permanently financed the acquisition of the District Assets through the issuance of the District Bonds to the West Virginia Water Development Authority (the "Authority").

G. It is deemed necessary for the Issuer to assume the District Bonds and Re-Designate them as: (i) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 B (West Virginia Water Development Authority)"; (ii) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 C (West Virginia Water Development Authority)"; (iii) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 D (West Virginia SRF Program)"; and (iv) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 E (West Virginia SRF Program)", (collectively, the "Series 2013 Bonds"), as consideration for acquisition of the District Assets.

H. The period of usefulness of the System is not less than 36 years.

I. It is in the best interests of the Issuer that the Series 2013 B Bonds and Series 2013 C Bonds continue to be held by the Authority pursuant to the terms and provisions of a Loan Agreement by and between the District and the Authority in form satisfactory to the respective parties (the "Loan Agreement"), which Loan Agreement shall be assumed by the

Issuer contemporaneously with the acquisition of the District Assets and assumption of the District Bonds, and which assumption is specifically approved hereby.

It is in the best interests of the Issuer that the Series 2013 D Bonds continue to be held by the Authority pursuant to the terms and provisions of a Bond Purchase Agreement dated November 6, 2003 by and among the District, the Authority and the DEP in form satisfactory to the respective parties (the "Bond Purchase Agreement"), which Bond Purchase Agreement shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and assumption of the District Bonds, and which assumption is specifically approved hereby.

It is in the best interests of the Issuer that the Series 2013 E Bonds continue to be held by the Authority pursuant to the terms and provisions of a ARRA Assistance Agreement dated December 18, 2009 by and among the District, the Authority and the DEP in form satisfactory to the respective parties (the "ARRA Assistance Agreement"), which ARRA Assistance Agreement shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and assumption of the District Bonds, and which assumption is specifically approved hereby.

J. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2013 Bonds as to liens, pledge, source of and security for payment, being the Issuer's:

- (1) Combined Utility System Revenue Bond, 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");
- (2) Combined Utility System Revenue Bond, 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");
- (3) Combined Utility System Revenue Bond, 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");
- (4) Combined Utility System Revenue Bond, 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");
- (5) 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");

- (6) Combined Utility System Revenue Bond, 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");
- (7) 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");
- (8) Combined Utility System Revenue Bond, 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 Bond, 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 Bond, 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 Bond, 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), dated January 28, 2010, issued in the original aggregate 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 principal amount of \$570,000 (the "Series 2012 A Bonds");
- (14) Combined Utility System Revenue Bonds, Series 2012 C (Bank Qualified), dated October 5, 2012, issued in the original aggregate principal amount of \$2,330,000 (the "Series 2012 C Bonds"); and
- (15) Combined Utility System Revenue Bonds, Series 2013 A (West Virginia Infrastructure Fund), to be assumed from Canyon Public Service District (collectively, the "Prior Bonds").

K. Prior to the assumption and re-designation of the District 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 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 2013 A Bonds to the assumption and re-designation of the District Bonds on a parity with the Prior Bonds. The Series 2010 A Bonds, 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.

L. The estimated revenues to be derived in each year after completion of the acquisition of the District Assets and assumption and re-designation of the District Bonds from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest on the Series 2013 Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein.

M. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement, the Bond Purchase Agreement, and the ARRA Assistance Agreement relating to authorization of the acquisition of the District Assets and the assumption and re-designation of the District Bonds, or will have so complied prior to the assumption and re-designation of the District Bonds or any thereof, including, among other things, the approval of the acquisition of the District Assets and the assumption and re-designation of the District Bonds by the Public Service Commission of West Virginia.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2013 Bonds by the Registered Owners of the same from time to time, this Bond Legislation 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 Bondholders of any and all of such Series 2013 Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means, collectively, Chapter 8, Article 20, Chapter 22C, Article 1 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement dated December 18, 2009 by and among the District, the Authority and the DEP providing for the issuance of the District's Series 2009 A Bonds, in form satisfactory to the respective parties, which ARRA Assistance Agreement shall be assumed by the Issuer contemporaneously with the

acquisition of the District Assets and assumption of the District Bonds, and which assumption is specifically approved hereby.

“Authority” means the West Virginia Water Development Authority, which is the original purchaser and Registered Owner of the Series 2013 Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization under the Act.

“Authorized Officer” means the Mayor or the City Manager of the Issuer, and, in the instance of the Board, the Chairman, the General Manager or the Assistant General Manager, or any other officer of the Issuer or Board specifically designated by resolution of the Governing Body or the Board, as appropriate.

“Board” means the Morgantown Utility Board.

“Bondholder,” “Holder of the Bonds,” “Holder,” “Registered Owner” or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

“Bond Legislation,” “Ordinance,” “Bond Ordinance” or “Local Act” means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

“Bond Registrar” means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

“Bonds” means, collectively, the Series 2013 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated November 6, 2003 by and among the District, the Authority and the DEP providing for the District's Series 2003 A Bonds, in form satisfactory to the respective parties, which Bond Purchase Agreement shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and assumption of the District Bonds, and which assumption is specifically approved hereby.

“Bond Year” means 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.

“City Clerk” means the City Clerk of the Issuer.

“City Manager” means the City Manager of the Issuer.

“Closing Date” means the date upon which the District Assets are transferred to the Issuer and the Series 2013 Bonds are assumed and re-designated by the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineers” means any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions. “Consulting Engineer” shall also include a licensed professional engineer employed by the Board, who is responsible for design and/or supervision of improvements, additions or modifications to the System.

“DEP” means the West Virginia Department of Environmental Protection, or any other agency, board or department of the State that succeeds to the functions of the DEP.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

“Depreciation Fund” means the Depreciation Fund created by the Prior Ordinances and continued hereby.

"District" means the Scotts Run Public Service District.

“District Assets” means all assets of the District, including all property, real or personal, tangible or intangible, which is part of the sewerage collection and transportation system of the District.

"District Bonds" means the Scotts Run Public Service District's: (i) Sewer Revenue Bonds, Series 1991 A (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$137,568; (ii) Sewer Revenue Bonds, Series 1991 B (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$4,586; (iii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated November 25, 2003, issued in the original aggregate principal amount of \$8,111,813; and (iv) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated December 18, 2009, issued in the original aggregate principal amount of \$1,688,394.

"District's Series 1991 A Bonds" means the Scotts Run Public Service District Sewer Revenue Bonds, Series 1991 A (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$137,568.

"District's Series 1991 B Bonds" means Scotts Run Public Service District Sewer Revenue Bonds, Series 1991 B (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$4,586.

"District's Series 2003 A Bonds" means the Scotts Run Public Service District Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated November 25, 2003, issued in the original aggregate principal amount of \$8,111,813.

"District's Series 2009 A Bonds" means Scotts Run Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated December 18, 2009, issued in the original aggregate principal amount of \$1,688,394.

"FDIC" means the Federal Deposit Insurance Corporation and 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.

"Governing Body" means the council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"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).

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountant" means 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 other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Issuer” means The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia, in Monongalia County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Loan Agreement” means the Loan Agreement, heretofore entered into by and between the District and the Authority, providing for the purchase of the District's Series 1991 A Bonds and District's Series 1991 B Bonds from the District by the Authority, which Loan Agreement shall be assumed by the Issuer contemporaneously with the acquisition of the District Assets and the assumption of and re-designation of the District Bonds by the Issuer, the content of which is hereby approved (with any amendments or modifications required by the Authority as a result of the assumption of and re-designation of the District Bonds), and the assumption by the Issuer authorized and directed.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2013 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts.

“Net Revenues” means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

“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.

“Operation and Maintenance Fund” means the Operation and Maintenance Fund established by the Prior Ordinances and continued hereby.

“Outstanding” when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for

purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

“Parity Bonds” means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

“Paying Agent” means the Commission or other entity designated as such for the Series 2013 Bonds in the Supplemental Resolution.

“Prior Bonds” means, collectively, the 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 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 C Bonds and Series 2013 A Bonds.

“Prior Ordinances” means, collectively, the ordinances authorizing the Prior Bonds.

“Qualified Investments” means and includes any of the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations

pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least “A” by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

“Registered Owner,” “Bondholder,” “Holder” or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

“Registrar” means the Bond Registrar.

“Regulations” means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

“Reserve Accounts” means, collectively, the respective Reserve Accounts established for the Series 2013 Bonds and the Prior Bonds.

“Reserve Requirement” means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2013 Bonds.

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

“Series 1995 Bonds” means the Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer’s Combined Utility System Revenue Bond, 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 Issuer's Combined Utility System Revenue Bond, 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 Issuer's 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 Issuer's Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program), dated August 24, 2012, issued in the original aggregate principal amount of \$570,000.

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

"Series 2013 Bonds" means, collectively, the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 D Bonds and Series 2013 E Bonds.

"Series 2013 A Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2013 A (West Virginia Infrastructure Fund), to be issued with the acquisition of the Canyon Public Service District.

"Series 2013 B Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2013 B (West Virginia Water Development Authority), of the Issuer, authorized by this Bond Legislation.

"Series 2013 B Bonds Reserve Account" means the District's Series 1991 A Bonds Reserve Account which is authorized to be assumed and re-designated by the Issuer as Series 2013 B Bonds Reserve Account pursuant to Section 5.02 hereof.

"Series 2013 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2013 B Bonds in the then current or any succeeding year.

"Series 2013 B Bonds Sinking Fund" means the District's Series 1991 A Bonds Sinking Fund which is authorized to be assumed and re-designated by the Issuer as Series 2013 B Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 2013 C Bonds" means the Issuer's Combined Utility System Revenue Bonds, Series 2013 C (West Virginia Water Development Authority), of the Issuer, authorized by this Bond Legislation.

“Series 2013 C Bonds Reserve Account” means the District’s Series 1991 B Bonds Reserve Account which is authorized to be assumed and re-designated by the Issuer as Series 2013 C Bonds Reserve Account pursuant to Section 5.02 hereof.

“Series 2013 C Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2013 C Bonds in the then current or any succeeding year.

“Series 2013 C Bonds Sinking Fund” means the District’s Series 1991 B Bonds Sinking Fund which is authorized to be assumed and re-designated by the Issuer as Series 2013 C Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2013 D Bonds” means the Issuer’s Combined Utility System Revenue Bonds, Series 2013 D (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

“Series 2013 D Bonds Reserve Account” means the District’s Series 2003 A Bonds Reserve Account which is authorized to be assumed and re-designated by the Issuer as Series 2013 D Bonds Reserve Account pursuant to Section 5.02 hereof.

“Series 2013 D Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2013 D Bonds in the then current or any succeeding year.

“Series 2013 D Bonds Sinking Fund” means the District’s Series 2003 A Bonds Sinking Fund which is authorized to be assumed and re-designated by the Issuer as Series 2013 D Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2013 E Bonds” means the Issuer’s Combined Utility System Revenue Bonds, Series 2013 E (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

“Series 2013 E Bonds Reserve Account” means the District’s Series 2009 A Bonds Reserve Account which is authorized to be assumed and re-designated by the Issuer as Series 2013 E Bonds Reserve Account pursuant to Section 5.02 hereof.

“Series 2013 E Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2013 E Bonds in the then current or any succeeding year.

“Series 2013 E Bonds Sinking Fund” means the District’s Series 2009 A Bonds Sinking Fund which is authorized to be assumed and re-designated by the Issuer as Series 2013 E Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Sinking Funds” means, collectively, the respective Sinking Funds established for the Series 2013 Bonds and the Prior Bonds.

“SRF Administrative Fee” means any administrative fee required to be paid pursuant to the Bond Purchase Agreement and the ARRA Assistance Agreement.

“SRF Program” means the State’s Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

“SRF Regulations” means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution authorizing the sale of the Series 2013 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2013 Bonds, and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2013 Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Depreciation Fund, the Sinking Funds and the Reserve Accounts.

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

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

**AUTHORIZATION OF ACQUISITION OF THE DISTRICT ASSETS AND THE
ASSUMPTION AND RE-DESIGNATION OF THE DISTRICT BONDS**

Section 2.01. Authorization of Acquisition of the District Assets. There is hereby authorized and ordered the acquisition of the District Assets pursuant to the terms of an Acquisition Agreement by and between the Issuer and the District.

Section 2.02. Authorization of Assumption and Re-designation of the District Bonds. There is hereby authorized and ordered the assumption by the Issuer in full of the entire Outstanding principal of and the interest on the District Bonds on the Closing Date.

The Issuer also authorizes the re-designation of the District Bonds as (i) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 B (West Virginia Water Development Authority)"; (ii) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 C (West Virginia Water Development Authority)"; (iii) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 D (West Virginia SRF Program)"; and (iv) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 E (West Virginia SRF Program)".

ARTICLE III

**AUTHORIZATION, TERMS, EXECUTION, REGISTRATION
AND ASSUMPTION OF DISTRICT BONDS; ASSUMPTION OF
LOAN AGREEMENT, BOND PURCHASE AGREEMENT AND ARRA
ASSISTANCE AGREEMENT**

Section 3.01. Authorization of Assumption of District Bonds. For the purposes of serving as consideration for the acquisition of the District Assets, the Issuer hereby authorizes the assumption of the indebtedness evidenced by the District Bonds, and the substitution of a new bond of the Issuer for each the District Bonds.

The District Bonds shall be assumed as four series of bonds and re-designated as (i) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 B (West Virginia Water Development Authority)"; (ii) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 C (West Virginia Water Development Authority)"; (iii) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 D (West Virginia SRF Program)"; and (iv) "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 E (West Virginia SRF Program)" and shall have such terms as set forth hereinafter and in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2013 Bonds shall be assumed in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and

shall be redeemable, in whole or in part, all as exists on the Closing Date and as the Issuer shall prescribe in a Supplemental Resolution. The Series 2013 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2013 Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

As provided by the Supplemental Resolution, the Series 2013 Bonds shall initially be four series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2013 Bonds. The Series 2013 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Section 3.03. Execution of Bonds. The Series 2013 Bonds shall be executed in the name of the Issuer by the Mayor and the City Manager, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2013 Bonds shall cease to be such officer of the Issuer before the Series 2013 Bonds so signed and sealed have been actually assumed, redesignated and delivered, such Bonds may nevertheless be assumed, redesignated 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 Series 2013 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2013 Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2013 Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2013 Bonds shall be and have all of the

qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2013 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 of West Virginia, 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 the Series 2013 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2013 Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging the Series 2013 Bonds or transferring the registered Series 2013 Bonds are exercised, all Series 2013 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2013 Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2013 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2013 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2013 Bonds or, in the case of any proposed redemption of Series 2013 Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2013 Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, 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 satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2013 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the System as herein provided. No Holder or Holders of the Series 2013 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2013 Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2013 Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2013 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation and Prior Ordinances are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver as substitute for the District Bonds, the Series 2013 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2013 Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2013 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2013 Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. Executed copies of the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement; and
- E. The unqualified approving opinions of bond counsel on the Series 2013 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2013 Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the assumption and re-designation thereof:

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(FORM OF SERIES 2013 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

Replacement Bond
for
Scotts Run Public Service District
Sewer Revenue Bonds, Series 1991 A
(West Virginia Water Development Authority)

No. BR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of _____, 2013, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____) in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, ___ to and including _____ 1, 2031 as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said EXHIBIT A. The interest of 7.75% per annum on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, ___, to and including _____ 1, 2031 as set forth on EXHIBIT A attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the Registered Owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Scotts Run Public Service District (the "District") and the Authority, dated _____, 1991, and assumed by the Issuer on _____, 2013.

This Bond has been assumed from the District by the Issuer in consideration for the acquisition of the assets of the District comprising the District's sewerage collection and transportation system (the "District Assets") from the District. The existing public combined waterworks, sewerage, and stormwater system of the Issuer, the District Assets, and any further extensions, additions, betterments or improvements thereto are herein called the "System." The Issuer has re-designated the District Bonds as "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 B (West Virginia Water Development Authority)". This Bond is assumed and re-designated under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2013, and a Supplemental Resolution duly adopted by the Issuer on _____, 2013 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ASSUMED 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 BOND, 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");

(2) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(3) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(4) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(5) 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");

(6) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(7) 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");

(8) COMBINED UTILITY SYSTEM REVENUE BOND, 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 BOND, 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 BOND, 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 BOND, 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), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE 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 PRINCIPAL AMOUNT OF \$570,000 (THE "SERIES 2012 A BONDS");

(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED), DATED OCTOBER 5, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,330,000 (THE "SERIES 2012 C BONDS");

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 A BONDS"), (COLLECTIVELY, THE "PRIOR BONDS");

(16) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 C BONDS");

(17) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D (WEST VIRGINIA SRF PROGRAM), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 D BONDS"); AND

(18) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E (WEST VIRGINIA SRF PROGRAM), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 E BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2013 C Bonds, Series 2013 D Bonds, Series 2013 E Bonds and the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 2013 B Bonds Reserve Account"). Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, 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 moneys in the Series 2013 B Bonds Reserve Account and unexpended proceeds of the Bonds, if any. Pursuant to the Bond Legislation, 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2013 C Bonds, Series 2013 D Bonds, Series 2013 E Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2013 B Bonds Reserve

Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2013 C Bonds, Series 2013 D Bonds, Series 2013 E Bonds and the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the assumption and re-designation of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2013 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: _____, 2013.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

EXHIBIT A
DEBT SERVICE SCHEDULE

DRAFT

(Form of)

ASSIGNMENT

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

Dated: _____, 20__.

In the presence of:

(FORM OF SERIES 2013 C BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

Replacement Bond
for
Scotts Run Public Service District
Sewer Revenue Bonds, Series 1991 B
(West Virginia Water Development Authority)

No. CR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of _____, 2013, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____) in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20__ to and including _____ 1, 2031 as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Scotts Run Public Service District (the "District") and the Authority, dated _____, 1991, and assumed by the Issuer on _____, 2013.

This Bond has been assumed from the District by the Issuer in consideration for the acquisition of the assets of the District comprising the District's sewerage collection and transportation system (the "District Assets") from the District. The existing public combined

waterworks, sewerage, and stormwater system of the Issuer, the District Assets, and any further extensions, additions, betterments or improvements thereto are herein called the "System." The Issuer has re-designated the District Bonds as "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 C (West Virginia Water Development Authority)." This Bond is assumed and re-designated under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2013, and a Supplemental Resolution duly adopted by the Issuer on _____, 2013 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ASSUMED 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 BOND, 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");

(2) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(3) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(4) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(5) 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");

(6) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(7) 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");

(8) COMBINED UTILITY SYSTEM REVENUE BOND, 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 BOND, 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 BOND, 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 BOND, 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), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE 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 PRINCIPAL AMOUNT OF \$570,000 (THE "SERIES 2012 A BONDS");

(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED), DATED OCTOBER 5, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,330,000 (THE "SERIES 2012 C BONDS");

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 A BONDS"), (COLLECTIVELY, THE "PRIOR BONDS");

(16) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 B BONDS");

(17) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D (WEST VIRGINIA SRF PROGRAM), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 D BONDS"); AND

(18) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E (WEST VIRGINIA SRF PROGRAM), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 E BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2013 B Bonds, Series 2013 D Bonds, Series 2013 E Bonds and the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 2013 C Bonds Reserve Account"). Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, 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 moneys in the Series 2013 C Bonds Reserve Account and unexpended proceeds of the Bonds, if any. Pursuant to the Bond Legislation, 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2013 B Bonds, Series 2013 D Bonds, Series 2013 E Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2013 C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2013 B Bonds, Series 2013 D Bonds, Series 2013 E Bonds and the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the assumption and re-designation of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal on this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2013 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: _____, 2013.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE

DRAFT

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond on
the books kept for registration of the within Bond of the said Issuer with full power of
substitution in the premises.

Dated: _____, 20__.

In the presence of:

(FORM OF SERIES 2013 D BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D
(WEST VIRGINIA SRF PROGRAM)

Replacement Bond
for
Scotts Run Public Service District
Sewer Revenue Bonds, Series 2003 A
(West Virginia SRF Program)

No. DR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of _____, 2013, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____) in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20__ to and including September 1, 2043 as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference. The SRF Administrative Fee of 0.5% (as defined in the hereinafter defined Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year as set forth on EXHIBIT A attached hereto.

This bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Scotts Run Public Service District (the "District"), the Authority and the West Virginia Department of Environmental Protection, dated November 6, 2003, and assumed by the Issuer on _____, 2013.

This Bond has been assumed from the District by the Issuer in consideration for the acquisition of the assets of the District comprising the District's sewerage collection and transportation system (the "District Assets") from the District. The existing public combined waterworks, sewerage, and stormwater system of the Issuer, the District Assets, and any further extensions, additions, betterments or improvements thereto are herein called the "System." The Issuer has re-designated the District Bonds as "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 D (West Virginia SRF Program)". This Bond is assumed and re-designated under the authority of and in full compliance with the Constitution and statutes 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 (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2013, and a Supplemental Resolution duly adopted by the Issuer on _____, 2013 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ASSUMED 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 BOND, 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");

(2) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(3) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(4) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(5) 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");

(6) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(7) 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");

(8) COMBINED UTILITY SYSTEM REVENUE BOND, 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 BOND, 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 BOND, 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 BOND, 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), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE 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 PRINCIPAL AMOUNT OF \$570,000 (THE "SERIES 2012 A BONDS");

(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED), DATED OCTOBER 5, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,330,000 (THE "SERIES 2012 C BONDS");

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 A BONDS"), (COLLECTIVELY, THE "PRIOR BONDS");

(16) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED _____, 2013, ISSUED SIMULTANEOUSLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 B BONDS");

(17) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED _____, 2013, ISSUED SIMULTANEOUSLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 C BONDS"); AND

(18) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E (WEST VIRGINIA SRF PROGRAM), DATED _____, 2013, ISSUED SIMULTANEOUSLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 E BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 E Bonds and the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 2013 D Bonds Reserve Account"). Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, 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 moneys in the Series 2013 D Bonds Reserve Account and unexpended proceeds of the Bonds, if any. Pursuant to the Bond Legislation, 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 E Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2013 D Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 E Bonds and the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to

110%. The Issuer has entered into certain further covenants with the Registered Owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the assumption and re-designation of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal on this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2013 D Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: _____, 2013.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE

DRAFT

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond on
the books kept for registration of the within Bond of the said Issuer with full power of
substitution in the premises.

Dated: _____, 20__.

In the presence of:

(FORM OF SERIES 2013 E BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E
(WEST VIRGINIA SRF PROGRAM)

Replacement Bond
for
Scotts Run Public Service District
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

No. ER-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this the _____ day of _____, 2013, THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia in Monongalia County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____) in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20__ to and including December 1, 2049 as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference. The SRF Administrative Fee of 0.25% (as defined in the hereinafter defined Bond Legislation) shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year as set forth on EXHIBIT A attached hereto.

This bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Scotts Run Public Service District (the "District"), the Authority and the West Virginia Department of Environmental Protection, dated December 18, 2009, and assumed by the Issuer on _____, 2013.

This Bond has been assumed from the District by the Issuer in consideration for the acquisition of the assets of the District comprising the District's sewerage collection and transportation system (the "District Assets") from the District. The existing public combined waterworks, sewerage, and stormwater system of the Issuer, the District Assets, and any further extensions, additions, betterments or improvements thereto are herein called the "System." The Issuer has re-designated the District Bonds as "The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 E (West Virginia SRF Program)". This Bond is assumed and re-designated under the authority of and in full compliance with the Constitution and statutes 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 (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2013, and a Supplemental Resolution duly adopted by the Issuer on _____, 2013 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ASSUMED 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 BOND, 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");

(2) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(3) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(4) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(5) 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");

(6) COMBINED UTILITY SYSTEM REVENUE BOND, 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");

(7) 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");

(8) COMBINED UTILITY SYSTEM REVENUE BOND, 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 BOND, 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 BOND, 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 BOND, 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), DATED JANUARY 28, 2010, ISSUED IN THE ORIGINAL AGGREGATE 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 PRINCIPAL AMOUNT OF \$570,000 (THE "SERIES 2012 A BONDS");

(14) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 C (BANK QUALIFIED), DATED OCTOBER 5, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,330,000 (THE "SERIES 2012 C BONDS");

(15) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 A BONDS"), (COLLECTIVELY, THE "PRIOR BONDS");

(16) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 B BONDS");

(17) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 C BONDS"); AND

(18) COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D (WEST VIRGINIA SRF PROGRAM), DATED _____, 2013, ISSUED SIMULTANEOUSLY HEREWITH IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2013 D BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the holders of the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 D Bonds and the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 2013 E Bonds Reserve Account"). Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, 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 moneys in the Series 2013 E Bonds Reserve Account and unexpended proceeds of the Bonds, if any. Pursuant to the Bond Legislation, 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 D Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2013 E Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2013 B Bonds, Series 2013 C Bonds, Series 2013 D Bonds and the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to

110%. The Issuer has entered into certain further covenants with the Registered Owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the assumption and re-designation of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal on this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF MORGANTOWN has caused this Bond to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2013 E Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: _____, 2013.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE

DRAFT

(Form of)

ASSIGNMENT

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

Dated: _____, 20____.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement. The District Bonds were sold to the Authority, pursuant to the terms and conditions of the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement. The Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement, including all schedules and exhibits attached thereto, and as assumed by the Issuer are hereby approved and incorporated into this Bond Legislation.

Section 3.12. Reserved.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (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 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) 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 1995 Bonds Sinking Fund (established by Prior Ordinances);
- (2) Series 1995 Bonds Reserve Account (established by Prior Ordinances);
- (3) Series 2000 A Bonds Sinking Fund (established by Prior Ordinances);

- (4) Series 2000 A Bonds Reserve Account (established by Prior Ordinances);
- (5) Series 2000 B Bonds Sinking Fund (established by Prior Ordinances);
- (6) Series 2000 B Bonds Reserve Account (established by Prior Ordinances);
- (7) Series 2001 A Bonds Sinking Fund (established by Prior Ordinances);
- (8) Series 2001 A Bonds Reserve Account (established by Prior Ordinances);
- (9) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);
- (10) Series 2006 A Bonds Reserve Account (established by Prior Ordinances);
- (11) Series 2007 A Bonds Sinking Fund (established by Prior Ordinances);
- (12) Series 2007 A Bonds Reserve Account established by Prior Ordinances);
- (13) Series 2010 A Bonds Sinking Fund (established by Prior Ordinances);
- (14) Series 2010 A Bonds Reserve Account (established by Prior Ordinances);
- (15) Series 2010 C Bonds Sinking Fund (established by Prior Ordinances);
- (16) Series 2010 C Bonds Reserve Account (established by Prior Ordinances);
- (17) Series 2010 D Bonds Sinking Fund (established by Prior Ordinances);
- (18) Series 2010 D Bonds Reserve Account (established by Prior Ordinances);

- (19) Series 2010 E Bonds Sinking Fund (established by Prior Ordinances);
- (20) Series 2010 E Bonds Reserve Account (established by Prior Ordinances);
- (21) Series 2010 F Bonds Sinking Fund (established by Prior Ordinances);
- (22) Series 2010 F Bonds Reserve Account (established by Prior Ordinances);
- (23) Series 2012 A Bonds Sinking Fund (established by Prior Ordinances);
- (24) Series 2012 A Bonds Reserve Account (established by Prior Ordinances);
- (25) Series 2012 C Bonds Sinking Fund (established by Prior Ordinances);
- (26) Series 2012 C Bonds Reserve Account (established by Prior Ordinances);
- (27) Series 2013 A Bonds Sinking Fund (established by Prior Ordinances);
- (28) Series 2013 A Bonds Reserve Account (established by Prior Ordinances);
- (29) Series 2013 B Bonds Sinking Fund;
- (30) Series 2013 B Bonds Reserve Account;
- (31) Series 2013 C Bonds Sinking Fund;
- (32) Series 2013 C Bonds Reserve Account;
- (33) Series 2013 D Bonds Sinking Fund;
- (34) Series 2013 D Bonds Reserve Account;
- (35) Series 2013 E Bonds Sinking Fund; and
- (36) Series 2013 E Bonds Reserve Account

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and 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 provided in the Prior Ordinances and this Bond Legislation. All moneys at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amounts required by the respective Prior Ordinances to pay interest on the Series 1995 Bonds, Series 2001 A Bonds, Series 2006 A Bonds, Series 2007 A Bonds, Series 2010 A Bonds, Series 2010 C Bonds, Series 2010 D Bonds, Series 2010 E Bonds, Series 2010 F Bonds, Series 2012 A Bonds and Series 2012 C Bonds; and (ii) for deposit in the Series 2013 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2013 B Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2013 B Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Sinking Funds for the Prior Bonds, the amounts required by the respective Prior Ordinances to pay the principal of the Prior Bonds; (ii) for deposit in the Series 2013 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2013 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2013 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; (iii) for deposit in the Series 2013 C Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2013 C Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the

Series 2013 C Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; (iv) for deposit in the Series 2013 D Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2013 D Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2013 D Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; and (v) for deposit in the Series 2013 E Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2013 E Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2013 E Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Reserve Accounts for the Prior Bonds, the amounts required by the respective Prior Ordinances to be deposited therein; (ii) for deposit in the Series 2013 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2013 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2013 B 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 Series 2013 B Bonds Reserve Requirement; (iii) for deposit in the Series 2013 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2013 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2013 C 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 Series 2013 C Bonds Reserve Requirement; (iv) for deposit in the Series 2013 D Bonds Reserve Account, an amount equal to 1/120th of the Series 2013 D Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2013 D 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 Series

2013 D Bonds Reserve Requirement; and (v) for deposit in the Series 2013 E Bonds Reserve Account, an amount equal to 1/120th of the Series 2013 E Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2013 E 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 Series 2013 E Bonds Reserve Requirement.

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

(5) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month transfer to the Depreciation Fund, an amount equal to 2 ½% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Depreciation 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. Withdrawals and disbursements may be made from the Depreciation Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Accounts (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with moneys from the Depreciation Fund.

(6) After making all of the foregoing deposits and payments, any excess moneys then remaining in the Revenue Fund ("Surplus Revenues") may be used for any lawful purpose of the System.

Moneys in the Series 2013 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2013 B Bonds, as the same shall become due. Moneys in the Series 2013 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2013 B Bonds, as the same shall come due, when other moneys in the Series 2013 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 2013 C Bonds Sinking Fund shall be used only for the purposes of paying principal of the Series 2013 C Bonds, as the same shall become due. Moneys in the Series 2013 C Bonds Reserve Account shall be used only for the purpose of paying principal of the Series 2013 C Bonds, as the same shall come due, when other moneys in the Series 2013 C Bonds Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 2013 D Bonds Sinking Fund shall be used only for the purposes of paying principal of the Series 2013 D Bonds, as the same shall become due. Moneys in the Series 2013 D Bonds Reserve Account shall be used only for the purpose of paying principal of the Series 2013 D Bonds, as the same shall come due, when other moneys in the Series 2013 D Bonds Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 2013 E Bonds Sinking Fund shall be used only for the purposes of paying principal of the Series 2013 E Bonds, as the same shall become due. Moneys in the Series 2013 E Bonds Reserve Account shall be used only for the purpose of paying principal of the Series 2013 E Bonds, as the same shall come due, when other moneys in the Series 2013 E Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2013 B Bonds Sinking Fund and the Series 2013 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2013 B Bonds, and then to the next ensuing principal payment due thereon.

All investment earnings on moneys in the Series 2013 C Bonds Sinking Fund and the Series 2013 C Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2013 C Bonds, and then to the next ensuing principal payment due thereon.

All investment earnings on moneys in the Series 2013 D Bonds Sinking Fund and the Series 2013 D Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2013 D Bonds, and then to the next ensuing principal payment due thereon.

All investment earnings on moneys in the Series 2013 E Bonds Sinking Fund and the Series 2013 E Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2013 E Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2013 B Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2013 B Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

Any withdrawals from the Series 2013 C Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2013 C Bonds Reserve Requirement shall

be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

Any withdrawals from the Series 2013 D Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2013 D Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

Any withdrawals from the Series 2013 E Bonds Reserve Account which results in a reduction in the balance therein to below the Series 2013 E Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2013 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2013 B Bonds Sinking Fund or the Series 2013 B Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2013 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 2013 C Bonds Sinking Fund or the Series 2013 C Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2013 C Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 2013 D Bonds Sinking Fund or the Series 2013 D Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2013 D Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 2013 E Bonds Sinking Fund or the Series 2013 E Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2013 E Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2013 Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2013 B Bonds Sinking Fund, Series 2013 B Bonds Reserve Account, Series 2013 C Bonds Sinking Fund, Series 2013 C Bonds Reserve Account, Series 2013 D Bonds Sinking Fund, Series 2013 D Bonds Reserve Account, Series 2013 E Bonds Sinking Fund, and Series 2013 E Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

Moneys in Series 2013 B Bonds Sinking Fund, Series 2013 B Bonds Reserve Account, Series 2013 C Bonds Sinking Fund, Series 2013 C Bonds Reserve Account, Series 2013 D Bonds Sinking Fund, Series 2013 D Bonds Reserve Account, Series 2013 E Bonds Sinking Fund, and Series 2013 E Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2013 B Bonds Sinking Fund and the Series 2013 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2013 B Bonds under the conditions and restrictions set forth herein.

The Series 2013 C Bonds Sinking Fund and the Series 2013 C Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2013 C Bonds under the conditions and restrictions set forth herein.

The Series 2013 D Bonds Sinking Fund and the Series 2013 D Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2013 D Bonds under the conditions and restrictions set forth herein.

The Series 2013 E Bonds Sinking Fund and the Series 2013 E Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2013 E Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, principal and reserve payments with respect to the Series 2013 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee pursuant to the Bond Purchase Agreement and the ARRA Assistance Agreement.

C. 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.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. The Issuer shall make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

E. The moneys in excess of the maximum amounts insured by FDIC in any of the funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

G. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

H. The Gross Revenues of the System shall only be used for purposes of the System.

I. All Tap Fees, as received, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI

[RESERVED]

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation 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 Series 2013 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2013 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2013 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2013 Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2013 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2013 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2013 Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on the Series 2013 Bonds and the Prior Bonds and to make all other payments provided for in this Bond Legislation and the Prior Ordinances are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted June 21, 2011 the sewer rate ordinance of the Issuer enacted November 20, 2012 and the stormwater rate ordinance of the Issuer enacted April 17, 2008, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2013 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2013 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, the Loan

Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation, the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2013 Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2013 Bonds, immediately be remitted to the Commission and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2013 Bonds. Any balance remaining after the payment of the Series 2013 Bonds and interest thereon shall be remitted to the Issuer by the 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 Issuer 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, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$50,000, the Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 but not in excess of \$200,000, the Board shall first, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds of any such sale shall be deposited in the Depreciation Fund. The payment of such proceeds into the Depreciation Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation.

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, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall

be in excess of \$200,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Series 2013 Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Series 2013 Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System. Moneys received upon any such sale under this paragraph, after deduction of all costs of such sale, shall be deposited in the Revenue Fund.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever 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 such revenues with the Series 2013 Bonds and the Prior Bonds. All obligations issued by the Issuer after the assumption and re-designation of the Series 2013 Bonds and 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 Series 2013 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, 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 being on a parity with the lien of the Series 2013 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2013 Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the System, or any other obligations related to the System.

Section 7.07. 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 Parity Bonds, payable out of the revenues of the System, shall be issued after the assumption and re-designation of the Series 2013 Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2013 Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of extensions, additions, improvements or betterments to the System or refunding any outstanding Bonds, or both such purposes.

No 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 the Independent Certified Public Accountants, 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 Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected 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 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 Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such 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 Certified Public Accountants, 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 the issuance of such Parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All 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 the 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 Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2013 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2013 Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinances, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinances.

Section 7.08. Books; Records and Audit. The Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the System at all reasonable times for the purpose of audit and examination. The Board shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the operation and maintenance of the System.

The Board shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times.

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 Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Board. Subsidiary records as may be required shall be kept in the manner and on the forms, books and 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 Issuer as the Board shall direct.

The Board shall file with the Authority and the DEP, or any other original purchaser of the Series 2013 Bonds, and shall mail in each year to any Holder or Holders of the Series 2013 Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Board shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountant (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountant, or a summary thereof, to any Holder or Holders of the Series 2013 Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2013 Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if there are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire the District Assets and shall do, is doing or has done all things necessary to acquire the District Assets. All real estate and interests in real estate and all personal property constituting the District Assets heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Board shall provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the assumption and re-designation of the Series 2013 Bonds, equitable rates or charges for the use of and service rendered by the System shall be 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 Series 2013 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2013 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit in the respective Series 2013 Bonds Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2013 Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2013 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2013 Bonds, including the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinances described in Section 7.04.

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 Certified Public 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.

Section 7.10. Operating Budget and Monthly Financial Report. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, 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. The Board shall within 30 days of adoption thereof mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her 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 Authority, the DEP and any Holder of any Bonds or anyone acting for and on behalf of such Holder of any Bonds.

Section 7.11. Operating Personnel. The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. 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. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, 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 of the sewerage portion of the System and any services and facilities of the waterworks portion of the System, to all users of the services of the sewerage system delinquent in payment of charges for the services of the sewerage system and will not restore such services of either the waterworks system or the sewerage system until all delinquent charges for the services of the sewerage system, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer shall use diligent efforts to enter into a termination agreement with the provider of such water services, subject to any required approval of such agreements by the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Board will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer or the Board, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves 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 Issuer, the Board and any such department, agency, instrumentality, officer or employee. 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 7.15. Insurance A. The Board hereby covenants and agrees that so long as the Series 2013 Bonds remain Outstanding, the Board will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Board will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Depreciation Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Board from claims for bodily injury and/or death and not less than \$500,000 per occurrence 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.

(3) WORKERS' 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 the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board or the Issuer 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.

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

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

Section 7.16. Mandatory Use. The mandatory use of the sewer facilities 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. Accordingly, to the extent permitted by the laws of the State and the rules and

regulations of the Public Service Commission of West Virginia, every owner, tenant or occupant of any real property located near the sewer portion of the System, and where sewer from real property affects or drains into the sewer portion of the System, shall be deemed to be a user served by the sewer portion of the System and it is declared that the mandatory use of the sewer portion of the System by such real property owner is necessary and essential for the health and welfare of the inhabitants and residents of the Issuer and the State. To the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, every such owner, tenant or occupant shall, after a 30-day notice of the availability of the sewer portion of the System, pay the rates and charges established therefor.

Section 7.17. Operation and Maintenance; Permits and Orders. The Board shall operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Board has obtained all permits required by state and federal laws for the acquisition of the District Assets and assumption and re-designation of the District Bonds and all approvals for acquisition of the District Assets and assumption and re-designation of the District Bonds required by state law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect.

Section 7.18. Compliance with Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement and Law. The Issuer and the Board shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement, the Bond Purchase Agreement, ARRA Assistance Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer and the Board shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer and the Board shall also comply with all applicable laws, rules and regulations issued by the Authority and the DEP or other state, federal or local bodies in regard to the operation, maintenance and use of the System.

The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia in the manner prescribed by the guidelines established by the Authority and the Public Service Commission of West Virginia.

Section 7.19. Reserved.

Section 7.20. Securities Laws Compliance. The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Reserved.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2013 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 delivery of the Series 2013 Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

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 investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, 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 Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2013 Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2013 Bonds from gross income for federal income tax purposes.

Section 8.02. Covenants as to Use of Proceeds. The Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2013 Bonds as may be necessary in order to maintain the status of the Series 2013 Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2013 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the DEP, as the case may be, from which the proceeds of the Series 2013 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Series 2013 Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2013 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2013 Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2013 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2013 Bonds and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

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

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due; (ii) by mandamus or other appropriate proceeding

enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System; (iii) bring suit upon the Bonds; (iv) 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 Registered Owners of the Bonds; and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided however, that all rights and remedies of the Holders of the Series 2013 Bonds shall be on a parity with those of the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond 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 Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and 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 Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds 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 Bond Legislation shall have been cured and made good, 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 Registered Owner of any Bonds 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 or her or it, 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 may be 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 Registered Owners of the Bonds. 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 Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, 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, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2013 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2013 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2013 Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the assumption and re-designation of the Series 2013 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following assumption and re-designation of the Series 2013 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2013 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2013 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2013 Bonds required for consent to the above-permitted amendments or modifications.

Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2013 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2013 Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Ordinances. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Manager, the City Clerk and members of the Governing Body and the Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Appointment. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson PLLC, Charleston, West Virginia, as bond counsel to the Issuer and the Board in connection with the assumption and re-designation by the Issuer of the Series 2013 Bonds.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Dominion Post, a newspaper published and of

general circulation in The City of Morgantown, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the assumption and re-designation of the Series 2013 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

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Section 11.09. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

Passed on First Reading: June 4, 2013

Passed on Second Reading: June 18, 2013

Passed on Final Reading
Following Public Hearing: July 2, 2013

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AND CORRECT AS TO FORM:

By: _____
City Solicitor

627490.00053

DRAFT

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF MORGANTOWN on the ____ day of _____, 2013.

Dated: _____, 2013.

[SEAL]

City Clerk

DRAFT

BOND ORDINANCE

THE CITY OF MORGANTOWN

**ASSUMPTION OF THE
SCOTTS RUN PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 1991 A
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
SEWER REVENUE BONDS, SERIES 1991 B
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
SEWER REVENUE BONDS, SERIES 2003 A
(WEST VIRGINIA SRF PROGRAM); AND
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)**

AND

RE-DESIGNATED AND REPLACED AS

**THE CITY OF MORGANTOWN
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 B
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY);
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 D
(WEST VIRGINIA SRF PROGRAM); AND
COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 E
(WEST VIRGINIA SRF PROGRAM)**

Table of Contents

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01.	Authority for this Ordinance.
Section 1.02.	Findings.
Section 1.03.	Bond Legislation Constitutes Contract.
Section 1.04.	Definitions.

ARTICLE II

**AUTHORIZATION OF ACQUISITION OF THE DISTRICT ASSETS AND THE
ASSUMPTION AND RE-DESIGNATION OF THE DISTRICT BONDS**

- Section 2.01. Authorization of Acquisition of the District Assets.
Section 2.02. Authorization of Assumption and Re-designation of the District Bonds.

ARTICLE III

**AUTHORIZATION, TERMS, EXECUTION, REGISTRATION
AND ASSUMPTION OF DISTRICT BONDS; ASSUMPTION OF
LOAN AGREEMENT, BOND PURCHASE AGREEMENT AND ARRA
ASSISTANCE AGREEMENT**

- Section 3.01. Authorization of Assumption of District Bonds.
Section 3.02. Terms of Bonds.
Section 3.03. Execution of Bonds.
Section 3.04. Authentication and Registration.
Section 3.05. Negotiability, Transfer and Registration.
Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost
Section 3.07. Bonds not to be Indebtedness of the Issuer.
Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to
Prior Bonds.
Section 3.09. Delivery of Bonds.
Section 3.10. Form of Bonds.
Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan
Agreement, the Bond Purchase Agreement and the ARRA Assistance
Agreement
Section 3.12. Reserved.

ARTICLE IV

[RESERVED]

ARTICLE V

**FUNDS AND ACCOUNTS; SYSTEM REVENUES
AND APPLICATION THEREOF**

- Section 5.01. Establishment of Funds and Accounts with Depository Bank.
Section 5.02. Establishment of Funds and Accounts with Commission.
Section 5.03. System Revenues; Flow of Funds.

ARTICLE VI

[RESERVED]

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01.	General Covenants of the Issuer.
Section 7.02.	Bonds not to be Indebtedness of the Issuer.
Section 7.03.	Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds.
Section 7.04.	Rates and Charges.
Section 7.05.	Sale of the System.
Section 7.06.	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances.
Section 7.07.	Parity Bonds.
Section 7.08.	Books; Records and Audit.
Section 7.09.	Rates.
Section 7.10.	Operating Budget and Monthly Financial Report.
Section 7.11.	Operating Personnel
Section 7.12.	No Competing Franchise.
Section 7.13.	Enforcement of Collections.
Section 7.14.	No Free Services.
Section 7.15.	Insurance
Section 7.16.	Mandatory Use.
Section 7.17.	Operation and Maintenance; Permits and Orders.
Section 7.18.	Compliance with Loan Agreement, the Bond Purchase Agreement and the ARRA Assistance Agreement and Law.
Section 7.19.	Reserved.
Section 7.20.	Securities Laws Compliance.
Section 7.21.	Reserved..
Section 7.22.	Statutory Mortgage Lien.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01.	Investments.
Section 8.02.	Covenants as to Use of Proceeds.

ARTICLE IX

DEFAULT AND REMEDIES

- Section 9.01. Events of Default.
- Section 9.02. Remedies.
- Section 9.03. Appointment of Receiver.

ARTICLE X

PAYMENT OF BONDS

- Section 10.01. Payment of Bonds.

ARTICLE XI

MISCELLANEOUS

- Section 11.01. Amendment or Modification of Bond Legislation.
- Section 11.02. Bond Legislation Constitutes Contract.
- Section 11.03. Severability of Invalid Provisions.
- Section 11.04. Headings, Etc.
- Section 11.05. Conflicting Provisions Repealed; Prior Ordinances.
- Section 11.06. Covenant of Due Procedure, Etc.
- Section 11.07. Appointment.
- Section 11.08. Statutory Notice and Public Hearing.
- Section 11.09. Effective Date.

SIGNATURES
CERTIFICATION

ACQUISITION AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2013, by the MORGANTOWN UTILITY BOARD, a municipal corporation of the CITY OF MORGANTOWN, which Board is duly appointed by the City and organized and existing pursuant to the provisions of Chapter 8 of the West Virginia Code (the "Board"); SCOTT'S RUN PUBLIC SERVICE DISTRICT, a public service district and a public corporation existing pursuant to the provision of Chapter 16, Article 13A of the West Virginia Code (the "District"); and, the CITY OF MORGANTOWN (the "City"), a political subdivision of the State of West Virginia (together, the "Parties").

WITNESSETH:

WHEREAS, the Board currently provides sewerage collection and treatment services to approximately 19,063 sewerage customers and 6 resale customers within the corporate limits of the City and its environs in the surrounding unincorporated area pursuant to certificates of convenience and necessity issued by the Public Service Commission of West Virginia ("Commission"); and,

WHEREAS, the District currently provides sewerage collection services under the direction and supervision of its Public Service Board (the "District's Public Service Board") to approximately 970 sewerage customers within Monongalia County pursuant to a certificate of convenience and necessity issued by the Commission; and,

WHEREAS, the sewerage facilities of the District consists of a sewerage collection system, including associated pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment used and useful in providing sewerage services to customers of the District (the "Sewerage System");and,

WHEREAS, the Board and the District are parties to a System Operation and Maintenance Agreement, whereby the Board operates and maintains the District's Sewerage System and provides all ancillary business support services (the "O&M Agreement"); and,

WHEREAS, the Board is willing to acquire, operate and maintain the Sewerage System as provided herein in order to provide sewerage collection and treatment service to the current customers of the Sewerage System as well as further growth in the need for sewerage collection and treatment service in the area; and,

WHEREAS, the District has determined that it is in the best interests of the District to convey the Sewerage System to the Board on the terms, conditions and limitations set forth in this Acquisition Agreement ("Agreement"); and

WHEREAS, the City, by ordinance, approves of and authorizes the acquisition, operation, and maintenance of the Sewerage System by the Board upon the terms and conditions provided in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants as contained herein, the Parties agree as follows:

1. **PURCHASE AGREEMENT.** The Board hereby agrees to acquire from the District and the District hereby agrees to convey to the Board, for the consideration and upon the terms and conditions hereinafter set forth, the Sewerage System, including any and all sewerage collection systems, including associated pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment of the District used or useful in the rendition of sewerage service to the customers of the District, including all extensions of the Sewerage System made after the date hereof and prior to the Closing (hereinafter defined), together with all lands, easements, rights of way, permits, rights, certificates of convenience and necessity, and, all other tangible and intangible assets owned or held by the District and used or useful in providing sewerage services to the customers of the District, such property and facilities to be conveyed by the District to the Board being more specifically described in the following exhibits attached to and incorporated herein by reference:

Exhibit 1 – General Description of Sewerage System

Exhibit 2 – Tangible and Intangible Personal Property Associated with Sewerage System

Exhibit 3 – Real Property, Including Leaseholds, Rights of Way, Easements and Other Interests in Real Property Associated with Sewerage System

Exhibit 4 – Schedule of Pending Claims, Actions, Etc. Pursuant to Section 10.A.(iv)

Exhibit 5 – Disclosure Pursuant to Section 11.A.(vii) Regarding Knowledge of or Grounds to Know Basis for Assertion of Claims

Exhibit 6 - List of Debt Obligations

2. **CONSIDERATION FOR CONVEYANCE OF THE DISTRICT SEWERAGE SYSTEM.** As consideration for the conveyance of the Sewerage System to the Board (subject to the exceptions and reservations provided for herein), the Board and the District agree as follows:

A. **Fair Market Value.** The Board and the District agree and each hereby acknowledge and represent that the consideration for the conveyance of the Sewerage System to the Board, as set forth in this Agreement, was reached through arms-length negotiations and represents the fair market value of the assets conveyed by the terms of this Agreement.

B. **Payment, Assumption or Defeasance of Indebtedness.** At Closing, the Board shall pay, assume or defease the following long term indebtedness relating to the Sewerage System: said debts are tabulated at Exhibit 6. Notwithstanding the foregoing, the District will continue to make all payments of principal, interest and administrative fees, if any, on the Bonds until Closing, at which time the City and the Board will assume, pay or defease the Bonds.

C. Review of Facilities. In addition to the other consideration described herein, the Board shall undertake a review (the "Review") of the Sewerage System's current facilities and lines to determine how to assist in providing quality sewerage service to the Sewerage System's customers, subject to review and approval of the West Virginia Department of Environmental Protection ("WVDEP"). Other than the Review, the customers of the sewerage system post-Closing shall remain solely responsible for any further capital and operations costs associated with the Sewerage System, including any costs incurred in complying with the NPDES permit (as modified, to the extent applicable) and any relevant Consent Order issued by the WVDEP.

D. Conveyance of Sewerage Systems. At Closing, the District shall convey to the Board the Sewerage System, by executing and delivering to the Board and/or the City deeds, assignments and/or bills of sale, as appropriate, in form and substance acceptable to the Board, for all of the real and personal property and rights associated with the Sewerage System, including, but not limited to, all property and rights identified and described in Exhibit 1, Exhibit 2, and Exhibit 3 to this Agreement.

3. OPERATION OF SEWERAGE SYSTEM; RATES.

A. Operation of System. Unless otherwise agreed by the Board and the District in writing, until Closing, day-to-day operation of the Sewerage System shall continue to be the responsibility of the District. From and after Closing, the Board shall own and operate the Sewerage System, and all sewerage customers currently served by the District shall thereafter for all purposes be customers of the Board.

B. Rates to be Charged. After Closing, the sewer rates charged to the former sewer customers of the District shall be the District's current sewer rates on file with the Commission at the time of Closing. This rate structure shall remain in effect until otherwise changed by the Board and the City pursuant to municipal ordinance.

4. CUSTOMER ACCOUNTS AND BILLING. Upon request of the Board, the District will provide the Board, in a data format acceptable to the Board, a complete and current list of the District's Sewerage System customers, including the name, telephone number (if known), mailing address, service address (if different from mailing address), type of service (residential, commercial, wholesale, etc.) and any service deposit held for each customer. Upon closing, the District will transfer all customer accounts to the Board, and the Board will assume all responsibilities for customer accounts and the billing customers of the Sewerage System. Customer deposits shall be transferred to the Board and credited to the customer accounts of the Board. The Board will be entitled to all revenue from sewerage services provided by the Board on and after Closing.

5. ASSUMPTION OF LIABILITIES AND UNDERTAKINGS OF THE DISTRICT. Upon closing, the Board shall, subject to approval of third parties in interest and relevant state and federal agencies, if any, assume any and all liabilities or debts of the District, including but not limited to, any liabilities or debts owed to investors, vendors, consultants, attorneys, engineers, accountants, suppliers, governmental entities, repairmen and/or contractors.

While the Board shall assume these responsibilities as the successor entity to the District, the costs associated with these responsibilities shall remain a financial obligation underwritten solely of the customers of the District's former service area.

6. POST CLOSING DISPOSITION OF CONTRIBUTIONS IN AID OF CONSTRUCTION. Any balance at closing held by the District as contributions in aid of construction will be conveyed to the Board and thereafter be distributed according to the requirements of West Virginia Code § 16-13A-18a within thirty (30) days of final approval of this transaction by final order of the Public Service Commission of West Virginia.

7. REQUIRED CONSENTS AND APPROVALS.

A. Statutory. The Parties agree to obtain the following consents and approvals:

(i) District Requirements. Pursuant to the provisions of W. VA. CODE § 16-13A-18a, the District will cause a resolution in proper form to be introduced to the District's Public Service Board which, if duly adopted, will (i) deem the sale of the Sewerage System to the City pursuant to this Agreement to be in the best interests of the District, (ii) approve the Agreement and authorize it to be executed in the name and on behalf of the District, and (iii) approve all other documents and matters in connection with this Agreement.

(ii) City Requirement. Pursuant to the provisions of W. VA. CODE § 8-11-4, the City will cause an ordinance in proper form to be introduced to the Council of the City which, if duly adopted, will approve the Agreement and authorize it to be executed in the name and on behalf of the City. In accordance with the provisions of W. VA. CODE § 8-20-3, the City will cause an ordinance in proper form to be introduced to the Council of the City which, if duly adopted, will authorize the issuance of revenue bonds in connection with the acquisition of the Sewerage System as described in this Agreement.

(iii) County Commission Requirements. Pursuant to the provision of W. VA. CODE § 16-13A-18a, the District will cause an order in proper form to be introduced to the County Commission of Monongalia County which, if duly entered, will approve the City's acquisition of the District's Sewerage System.

(iv) Public Service Commission Requirements. Pursuant to the provisions of W. VA. CODE §§ 16-13A-18a and 24-2-12, and no later than ten (10) days after entry of the County Commission order described above, the Board and the District shall file and diligently pursue a joint petition to the Commission for consent and approval of the proposed sale of the Sewerage System and the material provisions of this Agreement. The joint petition will also seek Commission approval for any and all other related matters that may require such approval.

B. Bond Holders. Pursuant to the covenants contained in the financing documents associated with the Bonds, and no later than ten (10) days after the execution of this Agreement, the District shall seek the written consent of the holders of the District's Bonds to the conveyance of the Sewerage System to the Board.

8. COOPERATION OF PARTIES. The Parties agree to cooperate fully with one another and with third parties to ensure that all required filings are made, notices given, consents granted or obtained and in taking all such actions as may be necessary to timely seek and obtain any and all approvals or waivers required for the conveyance by the District and acquisition by the Board of the Sewerage System under this Agreement.

9. CLOSING. Closing of the transaction contemplated by this Agreement, including delivery of all duly executed documents necessary to effect the conveyance of legal title to the Sewerage System from the District to the Board ("Closing"), shall take place within sixty (60) days after the latest of (i) the issuance by the Commission of a final, non-appealable, Order approving this Agreement and the proposed sale of the Sewerage System to the Board on the terms set forth herein; and, (ii) the receipt of any other required waivers, consents or approvals to the transfer of the Sewerage System. Upon mutual agreement of the Board and the District, the time of Closing may be extended.

10. CONVEYANCE AND TRANSFER. At Closing, the District shall deliver to the Board an apt and proper deed, bill of sale, lease, assignment and other necessary or appropriate instruments, each duly executed and in a form acceptable to the Board, transferring and conveying to the City and/or the Board, and their successors and assigns forever, good title to the real and personal property that comprise the Sewerage System as described in Section 2.D of this Agreement, free and clear of liens and encumbrances, together with all files, plats, maps, plans, records, ledgers, and similar property, or copies thereof, in any way connected with the rendition of sewerage service by the District.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE DISTRICT.

A. General Representations and Warranties of District. The District represents and warrants to and covenants with the Board that as of the date of this Agreement and as of the date of the Closing:

(i) The District is a public service district, public corporation and political subdivision of the State of West Virginia.

(ii) The District, upon receipt of the prior consent and approval of the County Commission of Monongalia County, the Public Service Commission of West Virginia, and the holders of Bonds, has the lawful right, power and authority and capacity to sell the assets to be conveyed pursuant to this Agreement in accordance with the terms, provisions and conditions of this Agreement.

(iii) The District is the owner of good and marketable fee simple title to the assets to be conveyed pursuant to this Agreement, free and clear of all liens, encumbrances or claims other than as provided herein.

(iv) Except as otherwise disclosed in Exhibit 4 hereto and made a part hereof, there are no claims, actions, judgments, bankruptcies, liens, executions, suits, decrees, proceedings or orders presently pending or threatened against, by or affecting the District

relating to either of the Sewerage System or the assets to be conveyed pursuant to this Agreement, nor is there any litigation nor any other proceedings (including condemnation or similar proceedings) before any court or government or administrative department, commission, bureau, board or agency, domestic or foreign, which threaten or affect the assets to be conveyed pursuant to this Agreement or which may, in any one case or in the aggregate, result in any material decrease in the value of, or constitute a lien or claim against, the Sewerage System.

(v) No party, person or entity is in possession of any of the assets to be conveyed pursuant to this Agreement or any portion thereof, and no party, person or entity has any interest in such assets or any portion thereof, except the District. The District shall take every precaution to ensure that all public property is secured and available for transfer.

(vi) This Agreement has been duly authorized, executed and delivered by the District and is a valid and legal obligation of the District.

(vii) Except as otherwise disclosed on Exhibit 5 attached hereto and made a part hereof, the District does not know or have reasonable grounds to know of any basis for the assertion against the District of any claims or liabilities which could materially adversely affect the value of the assets to be conveyed pursuant to this Agreement.

(viii) The books and records of the District relating to the Sewerage System (the "Financial Information") are correct and complete in all material respects, present fairly the results of operations included in such Financial Information and do not omit any information necessary to make such Financial Information not misleading.

(ix) Since the date of such Financial Information, there has been no material adverse change in the financial condition or operations of the Sewerage System that would make such Financial Information incorrect or misleading.

(x) The Sewerage System is not constructed, and is not occupied, used or operated in violation of, or is otherwise in violation of, and the District has received no notice of any violations or potential violation of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state, federal or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the Sewerage System; and all certificates, licenses, permits, authorizations, consents and approvals required by any such governmental authority for the continued use, occupancy and operation of either of the Sewerage System have been obtained, are paid for and are free of restrictions.

(xi) From the date of this Agreement until Closing, the District will not sell, convey, lease or in any other way dispose of any of the assets to be conveyed pursuant to this Agreement.

(xii) All improvements, machinery, equipment, tools, furniture and other fixed tangible assets of the Sewerage System are in good operating condition and repair, reasonable wear and tear excepted, and are necessary to the continued operation of the Sewerage System by the Board substantially in the manner as it was conducted prior to the date of this Agreement and the date of the Closing.

(xiii) All information and data furnished by the District to the Board with respect to the Sewerage System and the assets to be conveyed pursuant to this Agreement are true, correct, complete and not misleading.

(xiv) The District will not cause or permit any action to be taken which will cause any of the foregoing representations, warranties and covenants to be untrue or unperformed on the date of the Closing.

(xv) The District will deliver at Closing all documents and instruments required by this Agreement and perform all acts necessary or appropriate for the consummation of the purchase and sale of the Sewerage System as contemplated by and provided for in this Agreement.

(xvi) The District shall deliver at Closing a certificate updating its representations, warranties and covenants herein as true and correct, in the same manner and with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

(xvii) The District acknowledges and agrees that, except as specifically provided herein, the Board, in entering into this Agreement, is not obligated to use, employ or hire any of the District's officers, agents or employees and that, except as otherwise provided in this Agreement, the Board does not accept any responsibility for any contractual or legal obligations that the District might have to any other officers, agents or employees.

(xviii) The District acknowledges and agrees that, except as otherwise provided in this Agreement, the City does not accept any responsibility for any contractual or legal obligations that the District might have to any officers, agents, employees, or other third parties.

B. Environmental Representations, Warranties and Covenants of District.

(i) The District represents and warrants that the Sewerage System has never been operated in a manner as to be in violation of any Environmental Laws, as hereinafter defined. For the purposes of this Section, the term "Environmental Laws" shall mean any "Superfund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, as may now or at any time hereafter be in effect, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substance or the release or threatened release of a Hazardous Substance. For the purposes of this Section 10.B.(i), the term "Hazardous Substance" shall mean and include a "hazardous substance", "pollutant", "contaminant" or "hazardous waste", as such terms are defined as such in (or for the purposes of) the Environmental Laws, petroleum products, asbestos and/or any hazardous, toxic or dangerous waste, substance or material.

(ii) The District agrees that it will not take any action or omit to take any action with respect to the Sewerage System prior to the date of the Closing that would be a violation of any Environmental Law or would result in the Sewerage System being in violation of any Environmental Law.

(iii) The District covenants that to the fullest extent permitted by law, it will indemnify, hold harmless, and defend the City and/or the Board from any and all claims, loss, damage, judgments, response costs, and expenses arising out of or in any way relating to a breach of these environmental representations, warranties and covenants contained herein, including, but not limited to: (a) costs of remediation or removal; (b) claims or judgments of third parties (including governmental agencies), for damages, penalties, response costs, injunctive or other relief; (c) expenses, including fees of attorneys and experts, for reporting the existence of hazardous substances or hazardous wastes to any governmental agency; and (d) any and all expenses or obligations, including attorneys' fees, incurred at, before and after any trial or appeal therefrom or administrative proceeding or appeal therefrom, whether or not taxable as costs, including, without limitation, attorneys' fees, paralegals' fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by the District when accrued.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS BY THE CITY AND BOARD.

A. The City and the Board represent and warrant to and covenant with the District that as of the date of this Agreement and as of the date of the Closing:

(i) The City is a municipality and political subdivision of the State of West Virginia, and the Board is a public utility and political subdivision of the State of West Virginia. The Board was duly created pursuant to an ordinance of the City to operate and maintain the City's sewerage system.

(ii) The Board has the lawful right, power and authority and capacity to acquire the Sewerage System pursuant to this Agreement in accordance with the terms, provisions and conditions of this Agreement. Once acquired pursuant to the terms of this Agreement, the Board has the lawful right, power and authority and capacity to operate and maintain the Sewerage System.

(iii) This Agreement has been duly authorized, executed and delivered by the Board and the City, and it is a valid and legal obligation of the Board and of the City.

13. ACCESS TO BOOKS, RECORDS, AND FACILITIES; CUSTOMER LISTS TO BE PROVIDED BY DISTRICT. Between the date hereof and Closing, the Board shall have the right to examine, and to obtain copies of, all books and records of the District relating to the Sewerage System operations of the District and the Sewerage System being conveyed under this Agreement and to inspect and inventory the utility assets, including the physical plants and all materials, supplies, spare parts, and the like, of the District used in the utility operation of the District at such reasonably convenient times as the Board may require. In the event the transactions contemplated by this Agreement are not consummated, all of such copies and inventories shall be returned to the District.

The Board shall have the right, at its sole cost and discretion, to perform a Phase I Environmental study, and further environmental studies if necessary, of any and all real property used or relevant to the operation of the Sewerage System, regardless of whether such real property is conveyed to the District under this Agreement.

If, prior to the Closing, (i) any material discrepancies are discovered in the books and records of the District, (ii) any claims, liabilities, liens, encumbrances or defects in title which would materially affect the value of the assets conveyed by this Agreement are discovered by, or disclosed to, the District, or (iii) any of the representations and warranties set forth in Section 11 of this Agreement are determined by the Board to be untrue or incorrect, then, in that event, the Board may, at its sole option, terminate this Agreement, and neither the Board, the City, nor the District shall be further obligated hereunder or incur or be liable for any claim, loss, damages or expenses to the other as a result of such termination.

Between the date hereof and Closing, the District will provide the Board with a complete list of the customers served by the Sewerage System, including the name, telephone number (if known), mailing address and service address (if different from the mailing address) for each customer, any deposit or other credit to any customer account, and the type of service (residential, commercial, wholesale, etc.) being provided. The District further agrees to provide the customer list and related data in an electronic format acceptable to the Board.

14. **BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assigns.

15. **NOTICES.** Any notice to be given hereunder to the Parties shall be sent by registered mail to the following:

A. **District.** Scott's Run Public Service District, P.O. Box 517, Granville, WV 26534, or to such other person and address as District may in writing direct.

B. **Board.** Morgantown Utility Board, c/o General Manager, 278 Greenbag Road, Morgantown, West Virginia 26501, or at such other person and address as the Board may in writing direct.

C. **City.** City of Morgantown, c/o Steve Fanok, City Attorney, 389 Spruce Street, Morgantown, WV 26505, or to such other person and address as the City may in writing direct.

16. **AMENDMENTS.** No amendments to this Agreement shall be effective until reduced to writing and executed by all of the Parties hereto.

17. **FORCE MAJEURE.** If the performance by any of the Parties of the covenants or agreements contained herein is delayed or prevented for reasons beyond the control of that, such as an act of God, act of war, strike, lockout, restraint of labor from whatever cause, either partial or general, riot or civil commotion, order of court or administrative tribunal having jurisdiction over either party hereto, then and in any of those events, that party shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event and the time for such performance shall be extended commensurate with such delays, provided, however, that party claiming an excuse from performance under this Section shall notify the other party in writing of the occurrence of any such event of force majeure within a reasonable time after it becomes known.

18. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

19. **CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT.** The Parties hereto understand and agree that this Agreement, and the obligations of the Parties hereunder, are expressly conditioned upon the following, each of which is a condition precedent to the validity and enforceability of this Agreement:

A. This Agreement and the proposed acquisition by the City and/or the Board of the Sewerage System shall be approved by the District's Public Service Board at a properly noticed meeting and by resolution enacted at a properly noticed meeting of said Board.

B. The District shall obtain written approval from the County Commission of Monongalia County approving the Board's acquisition of the Sewerage System.

C. This Agreement and the proposed acquisition by the City and/or the Board of the Sewerage System and assumption of the Bonds shall be approved by the Board at a properly noticed meeting of the Board and by resolution properly adopted.

D. This Agreement and the proposed acquisition by the City and/or the Board of the Sewerage System and assumption of the Bonds shall be approved by the Council of the City at properly noticed meetings of said Council by ordinance and/or supplemental resolution properly enacted and/or adopted.

E. The Public Service Commission shall have entered a final, non-appealable, Order that approves (i) a Petition to be filed by the Board; and, (ii) this Agreement and the specific terms and conditions related to any ratemaking and regulatory treatments contained in this Agreement or in any Joint Stipulation among the Parties approving this Agreement.

F. The Order of the Public Service Commission shall not contain nor have attached to or otherwise incorporate into it any terms, conditions, or limitations that, in the sole opinion of either the District or the Board, shall adversely affect the economic feasibility of the Agreement.

G. The District shall obtain written approval from the holders of the District's Bonds to the Board's acquisition of the Sewerage System.

H. The Parties shall have received all required consents or waivers to the sale and transfer of the Sewerage System to the Board. If any required consent or waiver cannot be timely obtained, the Parties may elect to waive this condition precedent and proceed to close the sale on such further or additional written terms as may be mutually agreed to.

I. Satisfactory results from such Environmental Studies as the Board deems appropriate, such satisfaction to be determined at the Board's sole discretion.

20. BOARD AGREEMENT TERMINATION RIGHTS. The Parties agree and understand that, notwithstanding any provision of this Agreement to the contrary, the Board reserves the right to terminate this Agreement at any time prior to the acquisition of the Sewerage System if the Board shall determine, in its sole discretion, that the transaction is not longer beneficial to the Board and the City, for any reason. In the event the Board shall terminate this Agreement as provided in this paragraph, the District, and its agents and professionals, shall have no claim against the Board for expenses or cost incurred in relation to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Board has caused this Agreement to be executed by its duly authorized Chairman, and the District has caused this Agreement to be executed by the Chairman of the District's Public Service Board, also duly authorized, and the City has caused this Agreement to be executed by its City Manager, duly authorized to act on the City's behalf, all as of the day and year first above written.

MORGANTOWN UTILITY BOARD

By: _____
J.T. Straface, Chairman

SCOTT'S RUN PUBLIC SERVICE DISTRICT

By: _____
John Morris, Chairman

CITY OF MORGANTOWN

By: _____
Jeff Mikorski, City Manager

EXHIBIT 1

GENERAL DESCRIPTION OF DISTRICT SEWERAGE SYSTEM

The Sewerage System consists of all sewerage utility assets owned by the District situate in Monongalia County, West Virginia, used or useful in serving the District and its environs, including all real estate, rights-of-way, easements, and all other interests in said real estate, together with the improvements thereon and all appurtenances thereunto belonging, as well as all permits, franchises, treatment plant structures, equipment, and related facilities, transmission and collection lines and mains of every kind and description, any meters and services, and sewerage storage and pumping facilities, used or useful in providing sewerage service to the District's customers or otherwise used or useful in collecting, carrying away and treating domestic or industrial wastes and disposing of the effluents, as well as any and all other assets that are necessary, needed or incidental to the operation of the Sewerage System, including the tangible and intangible personal property as described in Exhibit 2.

EXHIBIT 2

TANGIBLE AND INTANGIBLE PERSONAL PROPERTY
ASSOCIATED WITH SEWERAGE SYSTEM

All tangible and intangible personal property necessary or incidental to the operation of the Sewerage System (as described in Exhibit 1) or used or useful for providing sewerage services to customers of the District that can be conveyed, assigned or otherwise transferred to the Board at the Closing, including any and all contracts, licenses, franchises, permits, agreements, certificates of convenience and necessity, customer lists and all other tangible and intangible personal property of like kind and nature, including but not limited to all pipelines, pumps, mains, equipment and supplies.

EXHIBIT 3

**REAL PROPERTY, INCLUDING LEASEHOLDS, RIGHTS-OF-WAY,
EASEMENTS AND OTHER INTERESTS IN REAL
PROPERTY ASSOCIATED WITH SEWERAGE SYSTEM**

All of the real property used or useful in connection with the operation of the Sewerage System, and all land associated with treatment sites, pump stations and lift stations, together with the rights, easements, rights-of-way, leases and other licenses, permits or agreements, held by the District under which any and all of said sewerage utility property of the District is held and operated.

EXHIBIT 4

**SCHEDULE OF PENDING CLAIMS, ACTIONS, ETC.
PURSUANT TO SECTION 10.A.(iv)**

[District to provide]

EXHIBIT 5

DISCLOSURE PURSUANT TO SECTION 10.A.(vii)
REGARDING KNOWLEDGE OF OR GROUNDS TO
KNOW BASIS FOR ASSERTION OF CLAIMS

[District to provide]

EXHIBIT 6

**LISTING OF DEBT OBLIGATIONS
PURSUANT TO SECTION 2.B.**

Scotts Run PSD
Existing Sewer Debt

Series	Lender	Issue Date	Original Amount	Interest Rate	Admin Fee	Maturity	Balance (3/31/2013)	Reserve Requirement	Amount in Reserve (3/31/2013)	Notes
1991 A	WDA	12/20/1991	\$137,568	7.75%	NA	2031	110,256.00	11,276.00	11,301.00	reserve fully funded
1991 B	WDA	12/20/1991	\$4,586	0%	NA	2031	2,234.00	118.00	138.72	reserve fully funded
2003 A	SRF	11/25/2003	\$8,111,813	0%	0.50%	9/1/2043	6,510,774.00	213,468.00	192,404.59	reserve being funded over 10 yrs
2009 A	SRF	12/18/2009	\$1,688,394	0%	0.25%	12/1/2049	1,622,178.00	44,144.00	6,994.07	reserve being funded over 10 yrs
2009 B	SRF/ARRA	12/18/2009	\$3,939,585	0%	NA	9/1/2021	\$0 - forgivable	NA	NA	no reserve

CITY OF MORGANTOWN

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

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

925.03 SCHEDULE OF RATES

SCHEDULE NO. 1

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

- (1) Availability of service. Available for sanitary sewer service.
- (2) Rate. Based upon the metered amount of water supplied.

Gallons Used

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

- (3) Minimum Charge.

Per month	\$ 4.66
Bi-monthly	\$ 9.32

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

proceeding before the Commission for each new tap system.

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

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

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

SCHEDULE NO. 2

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

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

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

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

(3) Minimum Charge.

A. Per month	\$ 17.50
B. Bimonthly	\$ 35.00

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

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

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

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

SCHEDULE NO. 3

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

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

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

SCHEDULE NO. 4

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

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

(2) Rates. (Customers with metered water supply)
Service Charge \$8.50 per month
Usage Charge \$8.67 per 1,000 gallons

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

Meter Size	Minimum Charge
5/8"	\$25.46 per month
1 1/2"	\$125.78 per month
2"	\$201.02 per month

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

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

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

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

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

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

SCHEDULE NO. 5

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

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

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

<u>Service Charge</u>	<u>\$8.50 per month</u>
<u>Usage Charge</u>	<u>\$8.53 per 1,000 gallons</u>

(3) Flat Rate Charge. (Customer with non-metered water supply)
Equivalent to 3,832 gallons water usage, \$41.47.

(4) Delayed payment penalty. The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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

(6) Disconnect/Reconnect/Administrative Fees. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with Pleasant Valley Public Service District, a disconnection fee of \$20.00 shall be charged or in the event the delinquent sewer bill is collected by Pleasant Valley Public Service District, an administrative fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Pleasant Valley Public Service District, is reconnected, a reconnection fee of \$20.00 shall be charged.

(7) Returned Check Charge. A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(8) Leak adjustment. \$0.61 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on customer's side of meter. This rate shall be applied to all consumption above the customer's historical average usage.

This Ordinance shall become effective forty-five (45) days after enactment or as otherwise provided herein, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia.

First Reading: June 4, 2013

MAYOR

Second Reading
and Public Hearing: June 18, 2013

CITY CLERK

Filed: _____

Recorded: _____

MORGANTOWN UTILITY BOARD

RESOLUTION RECOMMENDING THE ACQUISITION OF
THE SEWERAGE COLLECTION AND TRANSPORTATION
SYSTEM OF SCOTT'S RUN PUBLIC SERVICE DISTRICT
AND RECOMMENDING APPROVAL OF AN ACQUISITION
AGREEMENT BY AND AMONG SCOTT'S RUN PUBLIC
SERVICE DISTRICT, THE CITY OF MORGANTOWN AND
MORGANTOWN UTILITY BOARD

WHEREAS, in accordance with Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Code"), and pursuant to an ordinance duly enacted by the City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the "City") on September 1, 1987, as amended on May 1, 2007, the City created the Morgantown Utility Board (the "Board") and vested in the Board the responsibility for the supervision, management, control and operation of the combined waterworks, sewerage and stormwater system of the City (the "System");

WHEREAS, the City, acting by and through the Board, currently provides sewerage collection and treatment services to approximately 19,063 sewerage customers and six resale customers within the corporate limits of the City and in the surrounding unincorporated area pursuant to certificates of convenience and necessity issued by the Public Service Commission of West Virginia ("Commission");

WHEREAS, Scott's Run Public Service District (the "District") is a public service district and public corporation created by order of The County Commission of Monongalia County (the "County Commission") pursuant to the provisions of Chapter 16, Article 13A of the Code;

WHEREAS, the District currently provides sewerage collection and transportation service to approximately 970 customers in Monongalia County, West Virginia;

WHEREAS, by prior orders of the Commission, the District was granted certificates of convenience and necessity to construct and operate a sewerage collection and transportation system serving areas around the City;

WHEREAS, the District's public sewerage system consists of a collection and transportation system, including associated mains, pumps, filters, basins, tanks, lift stations, laterals, valves, connections, and all other equipment and personal property used and useful in providing sewerage services to customers of the District, together with all real property, lands, easements, rights-of-way, permits, certificates of convenience and necessity, deposit accounts,

savings accounts, investments, security deposits, accounts receivable, bond sinking funds, bond reserve accounts and all other tangible and intangible assets owned or held by the District and used or useful in providing sewerage collection and transportation service to the District's customers (collectively, the "Sewerage System");

WHEREAS, the District currently has outstanding the following indebtedness secured by the Sewerage System: (i) Sewerage System Revenue Bonds, Series 1991 A (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$137,568; (ii) Sewerage System Revenue Bonds, Series 1991 B (West Virginia Water Development Authority), dated December 20, 1991, issued in the original aggregate principal amount of \$4,586; (iii) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated November 25, 2003, issued in the original aggregate principal amount of \$8,111,813; (iv) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated December 18, 2009, issued in the original aggregate principal amount of \$1,688,394; and (v) Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), dated December 18, 2009, issued in the original aggregate principal amount of \$3,939,585 (collectively, the "Bonds");

WHEREAS, the District faces considerable cost and expense to continue to own, operate and maintain, and upgrade the Sewerage System in a manner that will ensure continued reliable and adequate sewerage service;

WHEREAS, the Board and the District are parties to a Sewer Service Agreement, whereby the Board provides sewerage treatment services for wastewater from the District's Sewerage System;

WHEREAS, the Board has determined that it is in the best interests of the City to acquire the Sewerage System;

WHEREAS, as the entity vested by the City with responsibility for the supervision, management, control and operation of the City's System, pursuant to its adoption of this Resolution, the Board recommends to the City that it acquire the Sewerage System in order to provide sewerage collection and treatment service to the current customers of the Sewerage System (the "Acquisition"), all on the terms, conditions, and limitations substantially as set forth in the form of an agreement attached hereto as Exhibit A and incorporated herein by reference (the "Acquisition Agreement"); and

WHEREAS, the City will pay a purchase price for the Sewerage System that is equal to the aggregate outstanding principal amount of the Bonds which shall be assumed by the City on the date of the Acquisition.

NOW, THEREFORE, BE IT RESOLVED BY THE MORGANTOWN UTILITY BOARD:

Section 1. The Board hereby recommends that the City acquire the Sewerage System in order to provide sewerage collection and treatment service to the current customers of the Sewerage System.

Section 2. The Board hereby recommends that the City approve the Acquisition Agreement substantially in the form attached hereto and made a part hereof as Exhibit A, in connection with the Acquisition.

Section 3. The Board hereby recommends that the City promptly request, or join with the Board and/or the District in requesting, the written consent of the holders of the District's Bonds to the City's assumption of the current outstanding balances associated with the Bonds.

Section 4. The Board hereby recommends that the City be authorized to approve the final forms of and execute, all documents necessary and appropriate to facilitate the Acquisition, specifically including, but not limited to, the Acquisition Agreement.

Section 5. Each member of the Board voting on this Resolution deems it to be in the best interests of the City to acquire the Sewerage System from the District.

Section 6. The Acquisition is in the public interest, serves a public purpose of the City and will promote the health, welfare and safety of the District's customers.

Section 7. This Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 22nd day of May, 2013.

MORGANTOWN UTILITY BOARD

By: _____
Its: Chairman

627490.00053

EXHIBIT A

Form of Acquisition Agreement

DRAFT

RESOLUTION

WHEREAS, City Administration has presented to Morgantown City Council a 2013-2014 budget for the Morgantown Municipal Airport Fund and Airport Improvement Fund and has requested that City Council review and approve the same;

WHEREAS, the budget in question, a copy of which is hereto attached, appears to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;

WHEREAS, City Council is of the opinion that it should approve said budget.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this _____ day of _____, 2013, that the 2013-2014 Morgantown Municipal Airport Fund and Airport Improvement Fund Budget hereto attached is approved.

Mayor

City Clerk

**MORGANTOWN MUNICIPAL AIRPORT
2014 PROPOSED OPERATING BUDGET**

	ACTUAL FY2009	ACTUAL FY2010	ACTUAL FY2011	ACTUAL FY2012	Adopted BUDGET FY2013	Adopted BUDGET FY2014
REVENUE:						
560 AIRPORT OPERATIONS						
<u>Rents</u>						
346.04 Office Rent	170,714	172,212	196,341	206,182	206,991	212,425
346.06 Restaurant Rent	6,000	10,672	13,100	16,800	17,400	18,000
385.02 Car Rental	32,816	36,697	36,328	35,859	38,180	38,180
346.02 Hangar Rent	84,330	103,185	96,622	94,086	110,531	118,377
346.03 Byers Hangar Rent	900	900	1,065	1,305	900	900
	294,759	323,666	343,456	354,232	374,003	387,882
<u>Parking</u>						
342.14 Meters	-	-	-	-	-	-
342.15 Car Rental Parking	3,680	4,000	3,840	5,399	3,840	4,440
	3,680	4,000	3,840	5,399	3,840	4,440
<u>Other</u>						
369.13 AIP Support	583,909	1,392,751	878,937	586,650	-	-
346.11 Arpt. Advertising	9,296	9,296	7,505	3,514	6,296	6,243
346.05 Airline Landing	33,984	30,705	22,484	20,771	30,000	30,607
342.16 Vending Machines	4,300	7,923	5,428	7,717	6,000	6,500
366.03 Marketing Grant	10,000	10,000	15,000	15,000	15,000	15,000
380.00 Interest	363	67	48	30	50	50
399.04 Miscellaneous	6,146	6,539	12,935	9,426	10,000	10,000
399.07 Grant administration	5,438	7,073	1,885	-	-	-
	653,435	1,464,354	944,222	643,108	67,346	68,400
TOTAL AIRPORT OPERATIONS	951,875	1,792,020	1,291,518	1,002,739	445,189	460,722
562 FBO OPERATIONS						
345.10 Fuel Sales - Jet A	1,175,440	968,179	1,277,723	1,590,160	1,755,000	1,494,000
345.13 Fuel Sales - Military	696,393	155,003	144,273	235,213	143,000	291,000
345.14 Fuel Sales - Avgas	325,276	346,539	332,119	332,758	392,000	315,000
345.15 Fuel Sales Adjustment	(10,948)	-	-	-	-	-
345.18 Sales - Oil & Prist	854	1,285	732	787	1,000	1,000
345.20 Catering	320	28	92	66	200	200
345.21 Pilot Supplies	930	1,525	1,073	1,075	1,300	1,300
346.05 Landing & Parking Fees	43,298	44,116	54,840	54,151	50,000	46,000
346.09 De-Icing	7,990	34,029	30,065	24,384	36,000	37,500
399.04 Misc (callouts, fbo fees, etc)	5,706	7,913	7,085	8,313	7,500	7,500
380.00 Interest	28	20	26	31	50	50
	2,245,287	1,558,637	1,848,028	2,246,938	2,386,050	2,193,550
369.00 Contrib from Other Funds	-	-	-	-	-	-
TOTAL REVENUE	3,197,161	3,350,658	3,139,546	3,249,677	2,831,239	2,654,272

		ACTUAL FY2009	ACTUAL FY2010	ACTUAL FY2011	ACTUAL FY2012	Adopted BUDGET FY2013	Adopted BUDGET FY2014
EXPENDITURES:							
561	AIRPORT OPERATIONS						
	<u>Personnel Services:</u>						
03.00	Salaries and Wages	217,553	222,489	225,333	217,546	270,737	205,765
04.00	Social Security	13,731	14,463	14,477	13,574	17,406	13,377
05.00	Health and Life Insurance	70,955	79,769	89,008	88,515	97,536	61,260
07.00	Retirement	16,631	18,209	23,856	26,242	33,155	28,740
08.00	Medicare	3,229	3,382	3,386	3,174	4,071	3,129
10.00	Overtime	5,946	11,784	9,814	4,571	10,000	10,000
10.03	Vac & SL Adj	8,166	(9,164)	1,089	3,067	-	-
		336,211	340,932	366,963	356,689	432,905	322,271
	<u>Contracted Services:</u>						
11.00	Telephone	10,978	7,855	9,461	8,697	8,000	8,000
13.01	Utilities/Electric	77,035	86,731	78,547	80,599	80,000	80,000
13.02	Utilities/Gas	50,219	24,206	28,030	30,702	25,000	25,000
13.03	Utilities/Water	3,184	4,561	3,029	5,035	4,500	4,500
13.09	Utilities/Storm Sewer	6,155	7,712	8,951	10,679	9,000	9,000
14.00	Travel & Training	2,285	1,574	3,063	9,093	4,000	1,500
15.00	Building Maintenance	24,454	22,614	9,786	15,759	25,000	20,000
15.03	Hangar Maintenance	635	-	74	-	5,000	10,000
15.20	Airfield Maintenance	18,742	13,791	43,240	59,257	15,000	15,000
16.00	Equipment Maintenance	16,537	22,337	33,392	12,914	20,000	14,000
17.00	Vehicle Maintenance	10,387	9,754	17,381	12,714	5,000	9,000
18.00	Postage	-	-	194	267	300	300
20.00	Advertising	19,743	19,678	29,915	32,710	25,000	20,000
22.00	Dues & Subscriptions	702	745	415	667	1,000	1,000
23.00	Professional Services	-	130	-	-	-	-
24.00	Audit Costs	2,000	2,000	2,200	2,300	2,250	2,300
26.00	Workers Compensation	6,324	3,874	6,315	5,712	5,410	5,302
26.01	Property & Liability Insurance	38,048	37,883	41,688	31,537	39,000	38,832
26.02	Unemployment Compensation	-	1,355	-	-	-	-
30.00	Contracted Services	82,075	28,233	21,769	28,441	24,000	24,000
31.00	Fire Service Fees	5,711	5,711	3,526	5,711	5,711	6,283
32.00	Bank Charges	-	-	-	-	-	-
48.00	Administrative Fee	10,000	10,000	10,000	10,000	10,000	10,000
		385,212	310,744	350,976	362,794	313,171	304,017
	<u>Commodities:</u>						
40.12	Hand Tools	299	410	113	-	500	500
41.01	Office Supplies	4,131	2,502	4,145	2,299	3,000	3,000
41.05	Janitorial Supplies	5,097	3,972	4,415	3,658	5,000	9,000
41.20	Concession Supplies	7,839	4,689	3,742	3,593	4,000	4,000
43.00	Vehicle Supplies	8,679	10,460	4,377	(167)	5,000	5,000
45.00	Uniforms	2,863	2,505	2,702	90	1,500	5,200
		28,909	24,538	19,494	9,473	19,000	26,700

	ACTUAL FY2009	ACTUAL FY2010	ACTUAL FY2011	ACTUAL FY2012	Adopted BUDGET FY2013	Adopted BUDGET FY2014
<u>Capital Outlay:</u>						
56.00	-	-	-	-	-	-
59.02	1,112	6,545	-	-	3,000	-
65.00	1,007,670	1,048,289	1,074,795	1,092,626	-	-
58.00	-	-	-	-	-	-
72.00	-	-	18,428	17,908	17,328	16,674
	1,008,782	1,054,834	1,093,223	1,110,534	20,328	16,674
<u>Contributions:</u>						
00.00	-	-	-	-	464	8
	-	-	-	-	464	8
TOTAL AIRPORT OPERATIONS	1,759,114	1,731,048	1,830,656	1,839,490	785,868	669,670
563	FBO OPERATIONS					
<u>Personnel Services:</u>						
03.00	174,990	183,803	188,578	153,979	193,038	212,254
04.00	11,531	12,208	12,597	10,398	12,588	13,780
05.00	85,698	94,308	100,263	106,218	97,536	91,890
07.00	15,121	16,501	20,366	18,659	23,979	29,604
08.00	2,679	2,855	2,946	2,432	2,944	3,223
10.00	11,927	15,214	18,132	13,306	10,000	10,000
	301,946	324,889	342,882	304,992	340,085	360,751
<u>Contracted Services:</u>						
11.00	7,678	7,546	7,997	7,094	8,000	8,000
14.00	909	2,710	542	1,292	3,000	3,000
16.00	4,565	4,433	6,932	4,799	2,500	5,000
17.00	-	-	-	-	-	-
18.00	-	-	-	32	-	-
19.02	18,000	16,500	9,750	-	-	38,855
26.00	4,193	5,355	6,953	7,252	7,357	10,381
26.01	11,306	12,020	18,030	21,147	21,200	19,089
26.02	6,500	4,118	6,509	-	-	-
30.00	2,538	2,238	2,469	2,388	2,400	2,400
32.00	48,176	42,474	41,834	40,984	44,000	35,000
	103,864	97,393	101,016	84,988	88,457	121,725
<u>Commodities:</u>						
41.01	1,919	1,221	2,231	1,598	2,000	1,750
41.05	-	-	-	224	-	-
41.21	992	1,268	42	172	-	-
46.10	1,305,680	695,576	1,014,614	1,357,023	1,300,000	1,222,000
46.12	252,623	260,005	301,854	232,686	280,000	239,000
46.15	9,749	21,801	14,092	23,369	15,000	17,000
46.20	1,642	971	882	894	1,000	1,000
46.21	2,123	987	543	774	1,000	1,000
	1,574,728	981,828	1,334,258	1,616,740	1,599,000	1,481,750
<u>Capital Outlay:</u>						
59.02	-	-	-	-	-	-

	ACTUAL FY2009	ACTUAL FY2010	ACTUAL FY2011	ACTUAL FY2012	Adopted BUDGET FY2013	Adopted BUDGET FY2014
<u>Contributions:</u>						
65.00 Depreciation	3,724	-	-	-	-	-
65.10 Amortization	5,825	5,825	(1,843)	5,825	-	-
66.00 Contributions to AIP	-	-	-	-	-	-
	9,549	5,825	(1,843)	5,825	-	-
TOTAL FBO OPERATIONS	1,990,087	1,409,935	1,776,313	2,012,545	2,027,542	1,964,226
Non Expense Line Budget Items -						
Contingency Net to Contingency						
CLT Capital Lease Principal	-	-	-	-	17,829	20,376
TOTAL EXPENDITURES	3,749,201	3,140,983	3,606,969	3,852,035	2,831,239	2,654,272
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(552,039)	209,675	(467,423)	(602,358)	(0)	0

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 365.01, AND REPEALING AND REENACTING SECTION 365.12 OF ITS TRAFFIC CODE AS THE SAME APPLY TO DEFINITIONS AND GATE AND PULL TICKET VIOLATIONS.

The City of Morgantown hereby ordains that Section 365.01 of its Traffic Code is amended, and Section 365.12 of its Traffic Code is repealed and reenacted as follows (new matter underlined, deleted matter struck through):

365.01 DEFINITIONS.

For the purposes of this article, unless the context clearly otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Off-street facilities” means the areas of land in the City which are now, or which may hereafter, be improved, paved, lighted and marked off in individual parking spaces, and equipped with parking meters for use in parking vehicles.

“Off-street gated parking facility” means any parking lot or multi-level parking garage with an installed access gate system for the purpose of regulating ingress and egress to the facility and requiring payment for time parked prior to exiting that facility.

“Parking” means the standing of a vehicle upon any off-street facility provided therefor, whether such vehicle is occupied or not, by an operator or otherwise, for a period in excess of one minute.

“Parking authority” means the Morgantown Parking Authority, established by Council.

“Parking meter” means a device which shall indicate thereon the length of time during which a vehicle may be parked in the particular individual parking space and which shall have as a part thereof a receptacle or chamber for receiving and storing coins representing currency of the United States of America, or tokens approved by the Parking Authority, and a slot or place in which such coins or tokens may be deposited.

“Vehicle” means any device in which any person or property is or may be transported upon a public highway, except such as are motivated or propelled exclusively by human power.

~~365.12 LOT E PARKING RESTRICTIONS:~~

~~Parking of vehicles within Lot E (Bossio Lot) shall be prohibited between the hours of two a.m. and six a.m.~~

365.12. GATE AND PULL TICKET VIOLATIONS.

(a) No vehicle shall exit any off-street gated parking facility by means of a gate being physically lifted for the purpose of exiting the facility without paying for time parked.

(b) No vehicle shall exit any off street gated parking facility by means of a pull ticket which has been modified or is different than that which was issued to the vehicle upon entering the facility.

(c) No vehicle shall tailgate while exiting an off street gated parking facility. For purposes of this subsection, tailgate shall mean one vehicle following another vehicle so closely that the tailgating vehicle exits through the gated area during the gate cycle for the vehicle in

front of it without using a paid parking ticket to exit.

Violations of any of the prohibitions within Section 365.12 shall be subject to a penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Parking Authority Enforcement Officers shall have the authority to mail citations to a vehicle's registered owner who shall be responsible for violations set forth in Section 365.12

This Ordinance shall be effective upon date of adoption.

First Reading:

MAYOR

Adopted:

Filed:

CITY CLERK

Recorded:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 363.07 AND 363.08 OF ITS TRAFFIC CODE, AS THE SAME APPLY TO PARKING METER ENFORCEMENT ON SUNDAY AND HOLIDAYS, AND PARKING TIME LIMITS AND FEES.

The City of Morgantown hereby ordains that Sections 363.07 and 363.08 of its Traffic Code are amended as follows (new matter underlined, deleted matter struck through):

353.07 METERS NOT OPERATIVE ON SUNDAYS FROM 6:00 a.m. TO MIDNIGHT AND THE ENTIRE DAY ON HOLIDAYS.

Parking meters installed under the provisions of this article shall be operated twenty four hours per day in the parking meter zones on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday of each week; and shall not operate on Sundays after 6:00 a.m. and holidays; provided, however, that within the meaning of this article, "holidays" includes only the following days: January 1 (New Year's Day); January 21 (Martin Luther King, Jr. Day); ~~February 22 (Washington's Birthday);~~ the last Monday in May (Memorial Day); ~~June 20 (West Virginia Day);~~ July 4 (Independence Day); the first Monday in September (Labor Day); ~~October 12 (Columbus Day);~~ ~~November 11 (Veteran's Day);~~ the fourth Thursday in November (Thanksgiving Day); the day after Thanksgiving; December 24 from twelve o'clock noon to midnight; December 25 (Christmas Day); December 31 from twelve o'clock noon to midnight (New Year's Eve) and election days held within the City as follows: (national, state ~~municipal and other primary,~~ general, and Morgantown City Council elections.

363.08 PARKING TIME LIMITS AND FEES.

The hereinafter designated parking fees, regulations and fines shall become effective upon entry and recordation in the journal of the City, pursuant to Section 363.09:

- (a) Rate - \$0.50/hour - Two hour limit.
Court Street - High to Chestnut
Walnut Street - High to University
Foundary Street - High to University
Chestnut Street - Foundry to Willey
Brockway Avenue - Walnut to Kingwood
High Street - Willey to Foundry
Fayette Street - High to Spruce
Walnut Street - Spruce to Chestnut
Donley Street - Don Knotts Blvd. To Clay Street
- (b) Rate - \$0.75/hour - Ten hour limit.
North Spruce Street - Willey to Fife
North High Street - Willey to Fife
Prospect Street - Willey to University
University Avenue - Willey to Fayette
Reid Street - Chestnut to University
Fife Street - North High to Price

- (c) Off-Street Parking.
- “J” Lot (Wesley Methodist Church)
Rate: \$0.75/hr.
- “G” Lot (Trinity Episcopal Church)
Rate: \$0.75/hr.
- “K” Lot (University Avenue Garage)
Rate: \$0.75/hr. 6:00 a.m. to 6:00 p.m.
\$1.00/hr. 6:00 p.m. to 6:00 a.m.
- “A” Lot (Spruce Street Pavilion)
Rate: \$1.25/hr. 6:00 p.m. to 6:00 a.m.
Permit Lot Only 6:00 a.m. - 6:00 p.m.
- “B” Lot (Behind Daniels)
Rate: \$0.75/hr. 6:00 a.m. - 6:00 p.m.
\$1.25/hr. 6:00 p.m. to 6:00 a.m.
- “E” Lot Across from Bent Willeys)
Rate: \$0.75/hr. 6:00 a.m. - 6:00 p.m.
\$1.25/hr. 6:00 p.m. - 6:00 a.m.
- All remaining off-street parking lots and garages of the City
Rate: \$0.50/hr.

- (d) Overtime.
- (1) Long term Spaces (10 hr.) and short term spaces (2 hr.) at the following locations:
 Foundry Street - High to University
 Brockway Avenue - Walnut to Kingwood
 North Spruce Street - Willey to Fife
 North High Street - Willey to Fife
 Prospect Street - Willey to University
 University Avenue - Willey to Fayette
 Reid Street - Chestnut to University
 Fife Street - North High to Price
- First violation - \$5.00
 Each subsequent violation - \$5.00
 If any of the above fines are not paid within ten days from date of issue, then in such an event the fines will be increased to \$10.00, plus municipal court costs, if any.
- (2) Short-term spaces (2 hr.) at the following locations between the hours of 11:00 p.m. through 6:00 p.m.:
 Court Street - High to Chestnut
 Walnut Street - High to University
 Chestnut Street - Foundry to Willey
 High Street - Willey to Foundry
 Fayette Street - High to Spruce

Walnut Street - Spruce to Chestnut

First violation: \$5.00

Second violation for same incident for which first violation was issued - \$10.00.

Third violation for same incident for which first and second violations were issued - \$25.00.

If any of the above fines are not paid within ten (10) days from date of issue, then in such an event the fines will be increased by \$5.00, plus municipal court costs, if any.

There shall not be a 2 hour parking time limit upon the streets listed in this subparagraph (d) (2) between the hours of 6:00 p.m. through 11:00 p.m.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:



MORGANTOWN PLANNING COMMISSION

April 25, 2013
6:30 PM
City Council Chambers

STAFF REPORT

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Wyant, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

Jennifer Selin, City Council

CASE NO: TX13-01 / Administrative / "Lodging or Rooming House" Uses

REQUEST:

Administratively requested text amendment to Table 1331.05.01 "Permitted Land Uses" of the City's Planning and Zoning Code as it relates to "Lodging or Rooming House" uses in the B-4 District.

BACKGROUND:

Table 1331.05.01 "Permitted Land Uses" of the City's Planning and Zoning Code permits "Lodging or Rooming House" uses in the B-4 District with conditional use approval by the Board of Zoning Appeals.

During the Boards' February 20, 2013 hearing, a conditional "Lodging or Rooming House" use petition was granted for 206 Spruce Street. In response to the considerable opposition expressed publicly surrounding this case, City Administration seeks to respond by submitting a zoning ordinance text amendment to the Planning Commission that would remove "Lodging or Rooming House" uses as permitted in the B-4 District.

ANALYSIS:

The objective of mixed-use development and land use patterns is to contribute to the creation of places that enliven urban centers while meeting the everyday needs of the community. Mixed-use development offers many advantages over single-use development in fostering better urban environments including:

- **Sense of Community** – Mixed-use development provides opportunities for community interaction by catering to a diversity of people and uses in one place.
- **Vitality** – Diversified, mixed-use urban centers become community destinations.
- **Convenient Access** – The mixing of diverse uses within proximity of public spaces, services, and amenities makes it possible to reduce vehicle trips and encourage shared parking and transit ridership.
- **Pedestrian-Friendly Environment** – Mixed-use development provides more opportunities for convenient and safe pedestrian access.
- **Longer Hours of Active Street Life** – A range of uses are generally active at different times of the day or on different days of the week, which activates the space for longer hours than is possible for any one single-use type.
- **Safety** – Mixing residential, commercial, and professional activities within a compact area ensures activity throughout the day and evening, creating a sense of safety.

The preservation of existing and continued development of at-grade commercial leasable space is paramount to ensuring desired mixed land use patterns within urban centers. The City's B-4 District represents Greater Morgantown's urban center.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

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The July 2010 Downtown Strategic Plan Update provides the following guidance relating to planned land uses and preferred development patterns within the City's central business district (emphasis added).

Section 4.8 Housing (Page 51):

"The opportunities to create a variety of housing types and price levels in the downtown are vast, as downtown Morgantown has many historic buildings whose upper floors could be redevelopment for use as apartments and/or condominiums. In addition, there are a number of empty lots that could be developed with new **mixed-use buildings**."

Section 6.0 Downtown Strategies (Page 64):

"Housing and Redevelopment: Redevelop vacant and underperforming properties throughout the downtown and promote a variety of **mixed-use housing** in order to diversify the demographics of downtown residents."

Section 6.1 Downtown Framework Plan (Page 65):

"Downtown's traditional core already reflects the new paradigm for American downtowns: walkable gridded streets, public gathering places, **mixed-uses**, and mixed demographics. These qualities should be extended throughout the study area to promote a strong sense of community and **attract new residents, merchants, entrepreneurs, and investors**."

Section 6.3.1.4 Character Area C4 – Forest Avenue (Page 86):

"Opportunities – Additional **mixed-use** infill at the **north end of Spruce Street**."

Section 6.3.1.4 Character Area C4 – Forest Avenue (Page 87):

"Reinforce the urban quality by increasing the mass, density, and **mixed-use** quality buildings that front on well-designed pedestrian streets."

Section 6.6 Housing and Redevelopment (Page 122):

"6.6.2 Encourage the reuse and conversion of underutilized **upper floors for new residential uses**."

As noted above, the goals, objectives and strategies provided in the 2010 Downtown Strategic Plan Update emphasize mixed-use housing. Additionally, the preservation and growth of street level commercial retail storefronts is emphasized by focusing, in part, on the conversion of upper floors as additional residential opportunities.

Moreover, "mixed-use" and "over-store" dwelling uses are permitted by-right in the B-4 District, which supports the Plan's preferred residential use pattern of maintaining and preserving a non-residential presence at street level.

However, "lodging or rooming house" uses are currently permitted in the B-4 District as a conditional use.

Development Services

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MORGANTOWN PLANNING COMMISSION

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Article 1329.02 of the Planning and Zoning Code defines "conditional use" as:

"A use which because of special requirements or characteristics may be permitted in a particularly zoning district only after review by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this Ordinance."

Requiring a particular land use to obtain conditional use approval affords the Board of Zoning Appeals and the community through a public hearing the opportunity to review the merits of the conditional use request on a case-by-case basis

Consideration is given to the characteristics peculiar to the proposed conditional use and its location with reference to its surroundings (e.g., built environment, neighboring uses, streets, existing improvements, demand upon public facilities, etc.). The approval of a conditional use along with specific conditions, if warranted, are intended to ensure that the particular conditional use at the particular site on which such use is proposed to be located is compatible with other existing or permitted uses surrounding the site.

Given the recent public discussion surrounding conditional "Lodging or Rooming House" uses in the B-4 District, it appears that the Planning and Zoning Code can and should be strengthened to better reflect the related goals, objectives and strategies provided in the 2010 Downtown Strategic Plan Update.

STAFF RECOMMENDATION:

The Planning Division respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code as presented below thereby removing "Lodging or Rooming House" uses as a permitted conditional use within the B-4, General Business District.

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1
Lodging or Rooming House			C	P			P	C			

Development Services

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 Director

Planning Division

389 Spruce Street
 Morgantown, WV 26505
 304.284.7431

ORDINANCE NO. _____

AN ORDINANCE AMENDING TABLE 1331.05.01 "PERMITTED LAND USES" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "LODGING OR ROOMING HOUSE" USES.

The Morgantown City Council hereby ordains that Table 1331.05.01 "Permitted Land Uses" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through):

Table 1331.05.01: Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Lodging or Rooming House			C	P			P	C				

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk



MORGANTOWN PLANNING COMMISSION

April 25, 2013
6:30 PM
City Council Chambers

STAFF REPORT

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Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

Jennifer Selin, City Council

CASE NO: TX13-02 / Administrative / Parking Development Standards

REQUEST:

Administratively requested text amendments to Article 1365.09 "Parking Development Standards" of the City's Planning and Zoning Code.

BACKGROUND and ANALYSIS:

The 2006 major amendment of the City's Zoning Ordinance expanded standards for parking lot designs. Attached hereto are the parking lot design requirements in place prior to the enactment of the 2006 major amendment.

After seven years of implementation, it is the opinion of the Planning Division that the following *two* elements require additional regulatory direction and design flexibility.

Parking Stall Dimensions

Prior to 2006, standard parking stalls were permitted with a minimum dimension of nine (9) feet by nineteen (19) feet and compact parking stalls were permitted with a minimum dimension of nine (9) feet by sixteen (16) feet. There was also a ratio establishing a maximum number of compact cars within a parking lot.

Currently, standard parking stalls were permitted with a minimum dimension of nine (9) feet by eighteen (18) feet and compact parking stalls were permitted with minimum a dimension of seven (7) feet by sixteen (16) feet. There is no proportion establishing a maximum number of compact cars within a parking lot.

Staff proposes to modify the size of both standard and compact parking stalls and reestablish a maximum proportion for compact stalls. Additionally, by changing the geometry of the parking stall dimensions, related refinement to angled parking and aisle dimensions becomes necessary (see Addendum A).

The critical elements of parking space dimensions are the width of the parking stall relative to the width of the vehicle and the ease of maneuvering the vehicle into and out of the parking stall.

In many cases, it is difficult to enforce whether vehicles are parked in standard or compact designed stalls. Compact cars can park in full size standard stalls. However, larger vehicles like pickup trucks and SUVs cannot readily fit into compact parking stalls. In most cases, there is a lack of enforcement in how the stalls are used resulting in the encroachment of vehicles into adjacent stalls and aisles.

Compact stalls tend to be the last stalls used and when compact vehicle drivers park their vehicles in standard size stalls, it forces later arriving standard size vehicle drivers into inadequate and inconvenient compact parking stalls. From a practical standpoint, property owners, managers, and the City do have the resources to enforce the proper use of compact parking stalls.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

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Ken Martis, Admin.

Jennifer Selin, City Council

Standard parking stalls should be 8.5 feet in width instead of 9 feet in width while the length of the standard parking stall depth of 18 feet should not change. The following points are submitted to illustrate this recommended change:

- The 8-foot width is a commonly used dimension for standard parking stalls in zoning ordinances.
- A six-inch reduction in the standard size parking stall would still accommodate full size vehicles including pickup trucks and SUVs.
- A standard passenger vehicle would occupy 66% of an 8.5' x 18' parking stall.
- The average SUV would occupy approximately 72% of an 8.5' x 18' parking stall.

Compact parking stalls should be at least 8 feet in width instead of 7 feet in width. Additionally, the depth of a compact parking stall should be 15 feet rather than 16 feet. The following points are submitted to illustrate this recommended change:

- This minimum design specification will provide more space for compact parking stalls.
- The overall efficiency of a parking lot or parking garage will improve in terms of circulation, comfort of drivers, and a smaller risk factor for accidents and minor incidents.
- With a stall depth of 15 feet, a standard size passenger vehicle would occupy 84% of the proposed 8 foot-wide compact stall versus 96% of the current 7 foot-wide stall.

Additionally, compact parking stalls should not be used for high-turnover parking stalls. Unlike parking areas for office and residential uses which typically have assigned parking stalls and much less turnover, high-turnover stalls mean more vehicles entering and exiting spaces which in turn means a higher probability for door dings, accidents, etc. Furthermore, people with packages, groceries, shopping carts, etc. need more space to enter vehicles.

Buffer Distance between Vehicles and Buildings

Article 1365.09(B)(4)(d) provides that,

"All paved portions of all parking spaces and maneuvering aisles shall be set back a minimum of five (5) feet from any wall of a building."

Prior to the 2006 major zoning ordinance amendment, the following related provision (see attachment) was provided:

"Along any highways, major or minor arterial street, each building or group of buildings, together with its parking or service areas, shall be physically separated by a vertical curb, maintained planting strip, or other suitable barrier to channel and direct vehicular ingress and egress, except for necessary accessways."

Development Services

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Director

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It appears that prior to 2006, a design standard establishing a minimum proximity of parking spaces and aisles to buildings was not provided. In fact, "accessways" were exempt from the physical vertical separation provisions and parking stalls were not mentioned. However, the intent to protect property and vehicles is evident under the previous and current provisions.

It has recently been brought to the attention of City Administration that Article 1365.09(B)(4)(d) has not been uniformly applied during plans review and permitting by the Planning Division since the standard's enactment in 2006.

In response, Staff reviewed this standard and determined the following.

- The current standard does not accommodate developments that include facilities like drive-through windows and stacking lanes. As such, a strict application of the standard would require such developments to obtain variance relief from this five-foot proximity standard.
- The distance of five feet from a building without a vertical barrier does not ensure that the legislative intent to protect property and vehicles will be achieved.

Given the unnecessary hardship this standard places on developments with facilities like drive-through windows, the need to strengthen design solutions to achieve desired protections, return in spirit to the standard in place prior to 2006, and the Planning Division's oversight of applying the current standard uniformly, Staff recommends amending this standard as presented in Addendum A of this report.

STAFF RECOMMENDATION:

The Planning Division respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend 1365.09 "Parking Development Standards" as presented in Addendum A of this report (deleted matter struck through; new matter underlined) based on the following findings and conclusions.

The recommended revisions to the parking development standards in the City's Planning and Zoning Code:

- Will promote the health, safety and general welfare of the public;
- Will reduce or prevent vehicular congestion;
- Are supported by public necessity, convenience and general welfare; and,
- Are supported by sound zoning purpose and best site design practices.

Development Services

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Planning Division

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STAFF REPORT ADDENDUM A

TX13-02 / Administrative / Parking Development Standards

Staff recommends the following revisions to Article 1365.09 "Parking Development Standards" of the Planning and Zoning Code (deleted matter struck through; new matter underlined).

1365.09 PARKING DEVELOPMENT STANDARDS.

All off-street parking areas for four or more automobiles shall be developed in accordance with the standards of this section, except in the case of one and two-family dwellings, agricultural and rural uses, and storage of vehicular merchandise not counting toward the minimum requirements as set forth in this Code.

(A) Dimensions.

- (1) Each required off-street standard parking space shall be at least ~~nine (9)~~ eight and one half (8.5) feet in width and at least eighteen (18) feet in length depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance. ~~For compact stalls, the size may be reduced to seven (7) feet by sixteen (16) feet. Angled parking lots shall conform to the design standards illustrated in Graphic 1365.09.01.~~
- (2) Up to ten (10) percent of the total number of required parking spaces may be designed for compact cars; provided, compact spaces are limited to employees or residents only and the property owner/manager assigns and enforces such spaces accordingly. Compact spaces shall be grouped together and identified as "compact cars only" with pavement stenciling and/or signage. Compact spaces should be located furthest from building entrances to discourage use by non-compact vehicles. Each compact space shall be at least eight (8) feet in width and at least fifteen (15) feet in depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance.
- (23) Except on lots occupied by one and two-family dwellings, each off-street parking space shall open directly upon an aisle or driveway at least twelve (12) feet wide or such additional width and design in accordance with Table 1365.09.01, so as to provide safe and efficient means of vehicular access to such parking space. Such aisle or driveway shall be unobstructed and allow for the passage of emergency vehicles at all times. This requirement may be waived by the Planning Director where such waiver will not cause a hazard.
- (34) All required parking spaces and aisles shall be provided wholly within the property lines and shall not extend into any public right-of-way.

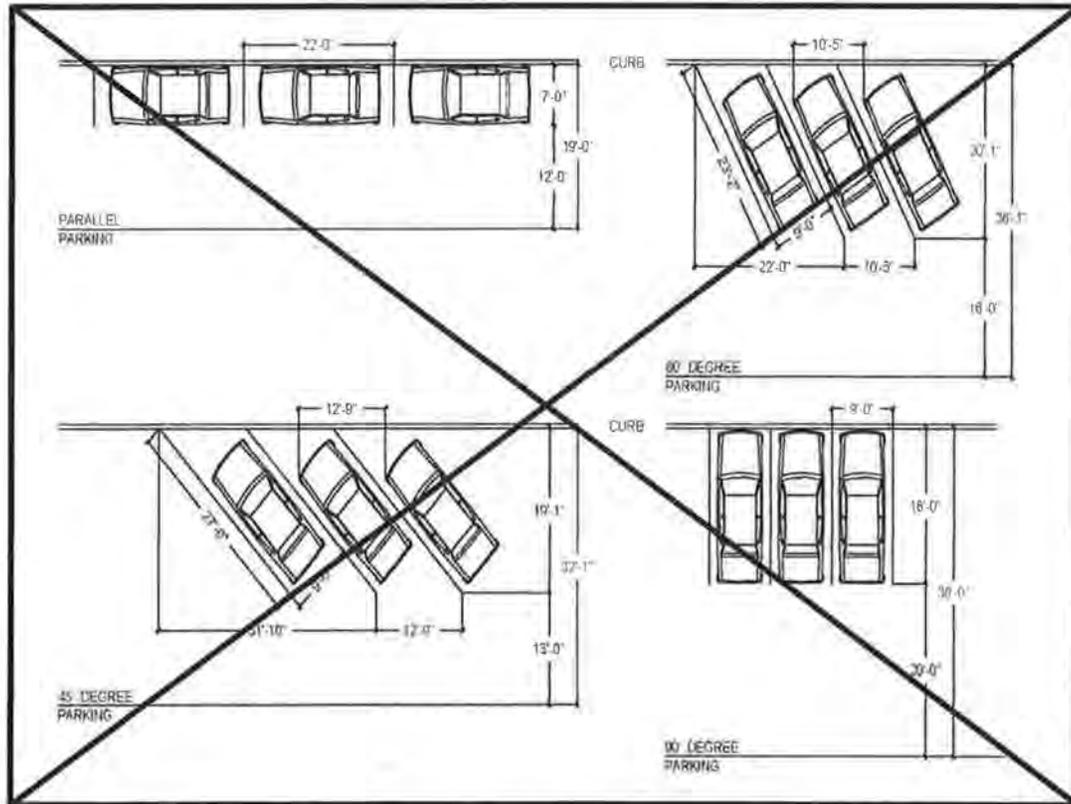
Table 1365.09.01: Dimensions of Parking Stalls, Angles and Aisles and Angles of Parking Spaces

<u>Parking Angle</u>	<u>Stall Type</u>	<u>Width of Stall (feet)</u>	<u>Depth of Stall Perpendicular to Aisle (feet)</u>	<u>One-Way Aisle Width (feet)</u>	<u>Two-Way Aisle Width (feet)</u>
45°	<u>Standard</u>	<u>8.5</u>	<u>17.5</u>	<u>12.0</u>	<u>20.0</u>
	<u>Compact</u>	<u>8</u>	<u>16.0</u>	<u>12.0</u>	<u>20.0</u>
60°	<u>Standard</u>	<u>8.5</u>	<u>19.0</u>	<u>16.0</u>	<u>20.0</u>
	<u>Compact</u>	<u>8</u>	<u>17.0</u>	<u>15.0</u>	<u>20.0</u>
90°	<u>Standard</u>	<u>8.5</u>	<u>18.0</u>	<u>20.0</u>	<u>20.0</u>
	<u>Compact</u>	<u>8</u>	<u>15.0</u>	<u>20.0</u>	<u>20.0</u>
<u>Parallel</u>	<u>Standard</u>	<u>22.0</u>	<u>7.5</u>	<u>12.0</u>	<u>20.0</u>
	<u>Compact</u>	<u>19.0</u>	<u>7.5</u>	<u>10.0</u>	<u>20.0</u>

<u>Parking Angle* (in degrees)</u>	<u>Aisle Width (in feet)</u>	<u>Aisle Traffic Flow</u>
45°	13'	One-way
60°	16'	One-way
90° or angled parking opening onto two-way aisles	20'	Two-way
Parallel	12'	One-way

*Angle shall be measured between centerline of parking space and centerline of aisle.

Graphic 1365.09.04: "Parking Angles"



(B) Layout and Design.

- (1) All off-street parking or loading facilities shall be designed with appropriate means of vehicular access to a street or an alley in a manner which will least interfere with traffic movement.
- (2) Driveway entrances or exits shall be no closer than 15 feet to an adjoining residential property line or 5 feet to an adjoining non-residential property line or designed in such a manner as to least interfere with traffic movement. No driveway across public property at the right-of-way line of the street shall exceed a width of 22 feet, unless a greater width is specifically approved by the City Engineer. No driveway shall be located closer than 30 feet of the nearest point of the intersection of two streets.
- (3) Connections between parking lots or reservations of land for future such connections may be required at the discretion of the Planning Director.
- (4) Required off-street parking spaces shall be so designed, arranged and regulated so that:
 - (a) Such parking areas are lined or designated to insure the most efficient use of the parking spaces.

- (b) Individual spaces on lots with 5 percent average slope or greater are provided with anchored bumper guards or wheel guards. Under no circumstances shall parking spaces be provided on lots in excess of 10 percent slope.
 - (c) Parking spaces are unobstructed and have access to an aisle or driveway so that any automobile may be moved without moving another, and so that no maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or walkway, unless otherwise permitted at the direction of the Planning Director.
 - (d) With the exception of drive-through windows and related stacking lanes, All paved portions of all parking spaces and maneuvering aisles shall be physically separated from any wall of a building by a vertical curb, maintained planting strip, and/or other suitable barrier set back a minimum of five (5) feet from any wall of a building.
- (5) Off-street parking spaces may be open to the sky or enclosed in a building. In any instance when a building is constructed or used for parking facilities on the lot, said building shall be treated as any major structure and subject to all requirements thereof.
 - (6) All parking lots abutting residential uses or districts, and all parking lots in any district containing more than four (4) spaces shall be subject to the landscaping and screening requirements for such parking lots as set forth in Article 1367, Landscaping and Screening.
 - (7) Any lighting facilities used to illuminate off-street parking areas shall be so located, shielded and directed upon the parking area in such a manner that they do not reflect or cause glare onto adjacent properties or interfere with street traffic. In no instance shall bare, unshaded bulbs be used for such illumination.
- (C) Surfacing and Drainage.
- (1) All open off-street parking areas shall be surfaced with an all-weather, dust-free concrete or asphalt material, and shall be maintained in good condition and free of weeds, dirt, trash and debris; except that, a gravel surface may be used for a period not exceeding six months after the date of granting the Certificate of Occupancy where ground conditions are not immediately suitable for permanent surfacing as specified above.
 - (2) A gravel surface in the area of storage or handling may be used permanently in association with industries that handle liquids or chemicals which create a potential hazard if containment should be lost and where absorption into the ground through a loose surface material would eliminate or alleviate such hazard.

- (3) Such parking areas shall be graded and properly drained in such a manner that there will be no free flow of water onto either adjacent property or public sidewalks. Further, any run-off generated by such improved areas shall be disposed of in accordance with the stormwater management ordinance and other City regulations.
- (4) Other surface materials and designs may be utilized when specifically approved by the City Engineer, for purposes of reducing storm water runoff or other environmental and aesthetic considerations.

- c. **Gross and Net Floor Area:**
See Section 5-24.1, 24.2

C. **PARKING LOT DESIGN REQUIREMENTS:**

A site plan for any proposed lot for four (4) or more spaces shall be submitted to the Planning Department for review and approval at the time of application for a building permit for the building to which the parking is accessory, or at such time any land is to be used for said parking lot. ¹⁸

1. **Minimum Space Standards:**

All parking lots shall conform to the following minimum parking lot dimensions.

- a. The minimum stall size shall be 9 feet by 19 feet, except that compact car spaces, as allowed, may be nine (9) feet by sixteen (16) feet.
- b. In parking lots with more than twenty (20) spaces, up to thirty (30) percent of the spaces in excess of 20 spaces may be designed for compact cars; with a minimum stall size of 9 feet by 16 feet. Compact car spaces must be clearly signed "Compact Car Only."
- c. Up to two feet of the required stall's length may project over a landscaped portion of the site.
- d. The minimum access aisle width shall conform to the standards in the following table, depending on the type of parking arrangement.
- e. Where parking is for employees only, or for residents use, where daily turnover of spaces is low, the space width may be reduced to eight and one-half feet. [8.5 ft.]

2. **Vehicular Access:**

- a. Each required off-street parking space shall open directly upon an aisle of such width and design as to provide safe and efficient means of vehicular access to said space. Each parking lot shall be designed with appropriate means of vehicular access to an improved public or private street on which the lot or building site has frontage. If a secondary means of permanent vehicular access is provided, such as a paved alley or service road, such means of access shall be improved to City standards.
- b. All vehicular accessways shall be located as far as feasible from the ultimate curb line of intersecting streets, in accordance with Engineering Departments standards.
- c. Along any highways, major or minor arterial street, each building or group of buildings, together with its parking or service areas, shall be physically separated by a vertical curb, maintained planting strip, or other suitable barrier to channel and direct vehicular ingress and egress, except for necessary accessways.
- d. Separate entrances and exit driveways shall be so located as to minimize traffic congestion on the site and in the public street. Said entrances and exits may be combined in a single driveway where adequate safeguards are provided to minimize congestion and to protect pedestrian and vehicular traffic upon the approval of traffic flow plans on the site and in the public street.

¹⁸See Section 5-42, Definitions

- c. All required parking spaces, with the exception of spaces for one (1) and two (2) family dwellings, shall be so arranged as not to require the moving of any vehicle on the premises in order to enter or leave any other stall, or to require the backing of any vehicle across any sidewalk or onto any street when exiting the stall. (Unless City Engineer approves alternative)

AN ORDINANCE AMENDING ARTICLE 1365.09 OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO PARKING DEVELOPMENT STANDARDS.

The Morgantown City Council hereby ordains that Article 1365.09 "Parking Development Standards" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1365.09 PARKING DEVELOPMENT STANDARDS.

All off-street parking areas for four or more automobiles shall be developed in accordance with the standards of this section, except in the case of one and two-family dwellings, agricultural and rural uses, and storage of vehicular merchandise not counting toward the minimum requirements as set forth in this Code.

(A) Dimensions.

- (1) Each required off-street standard parking space shall be at least ~~nine (9)~~ eight and one half (8.5) feet in width and at least eighteen (18) feet in ~~length~~ depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance. ~~For compact stalls, the size may be reduced to seven (7) feet by sixteen (16) feet. Angled parking lots shall conform to the design standards illustrated in Graphic 1365.09.01.~~
- (2) Up to ten (10) percent of the total number of required parking spaces may be designed for compact cars; provided, compact spaces are limited to employees or residents only and the property owner/manager assigns and enforces such spaces accordingly. Compact spaces shall be grouped together and identified as "compact cars only" with pavement stenciling and/or signage. Compact spaces should be located furthest from building entrances to discourage use by non-compact vehicles. Each compact space shall be at least eight (8) feet in width and at least fifteen (15) feet in depth, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have adequate vertical clearance.
- (23) Except on lots occupied by one and two-family dwellings, each off-street parking space shall open directly upon an aisle or driveway at least twelve (12) feet wide or such additional width and design in accordance with Table 1365.09.01, so as to provide safe and efficient means of vehicular access to such parking space. Such aisle or driveway shall be unobstructed and allow for the passage of emergency vehicles at all times. This requirement may be waived by the Planning Director where such waiver will not cause a hazard.
- (34) All required parking spaces and aisles shall be provided wholly within the property lines and shall not extend into any public right-of-way.

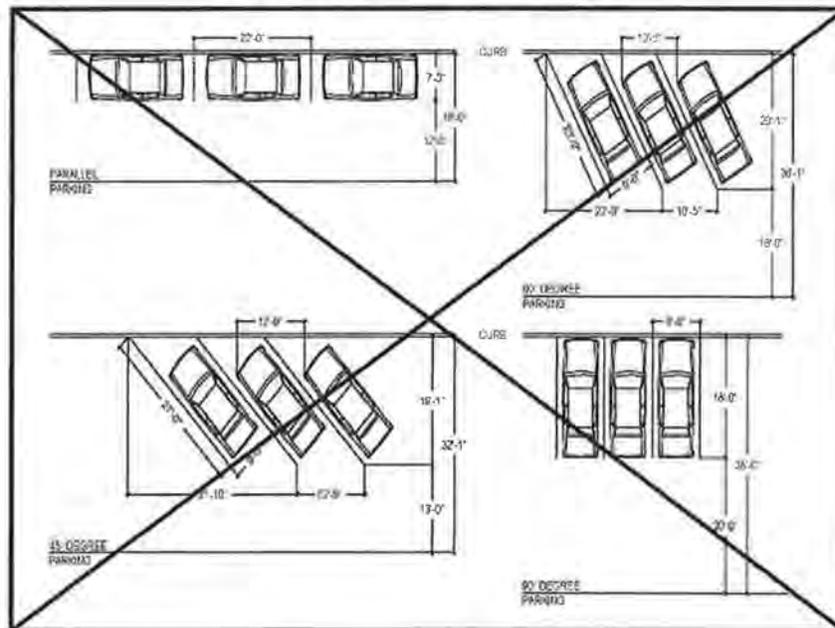
Table 1365.09.01: Dimensions of Parking Stalls, Angles and Aisles and Angles of Parking Spaces

Parking Angle* (in-degrees)	Aisle Width (in-feet)	Aisle Traffic Flow
45°	13'	One-way
60°	16'	One-way
90° or angled parking opening onto two-way aisles	20'	Two-way
Parallel	12'	One-way

*Angle shall be measured between centerline of parking space and centerline of aisle.

Parking Angle	Stall Type	Width of Stall (feet)	Depth of Stall Perpendicular to Aisle (feet)	One-Way Aisle Width (feet)	Two-Way Aisle Width (feet)
45°	Standard	8.5	17.5	12.0	20.0
	Compact	8	16.0	12.0	20.0
60°	Standard	8.5	19.0	16.0	20.0
	Compact	8	17.0	15.0	20.0
90°	Standard	8.5	18.0	20.0	20.0
	Compact	8	15.0	20.0	20.0
Parallel	Standard	22.0	7.5	12.0	20.0
	Compact	19.0	7.5	10.0	20.0

Graphic 1365.09.01: "Parking Angles"



(B) Layout and Design.

- (1) All off-street parking or loading facilities shall be designed with appropriate means of vehicular access to a street or an alley in a manner which will least interfere with traffic movement.
- (2) Driveway entrances or exits shall be no closer than 15 feet to an adjoining residential property line or 5 feet to an adjoining non-residential property line or designed in such a manner as to least interfere with traffic movement. No driveway across public property at the right-of-way line of the street shall exceed a width of 22 feet, unless a greater width is specifically approved by the City Engineer. No driveway shall be located closer than 30 feet of the nearest point of the intersection of two streets.
- (3) Connections between parking lots or reservations of land for future such connections may be required at the discretion of the Planning Director.
- (4) Required off-street parking spaces shall be so designed, arranged and regulated so that:
 - (a) Such parking areas are lined or designated to insure the most efficient use of the parking spaces.
 - (b) Individual spaces on lots with 5 percent average slope or greater are provided with anchored bumper guards or wheel guards. Under no circumstances shall parking spaces be provided on lots in excess of 10 percent slope.
 - (c) Parking spaces are unobstructed and have access to an aisle or driveway so that any automobile may be moved without moving another, and so that no maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or walkway, unless otherwise permitted at the direction of the Planning Director.
 - (d) With the exception of drive-through windows and related stacking lanes, All paved portions of all parking spaces and maneuvering aisles shall be physically separated from any wall of a building by a vertical curb, maintained planting strip, and/or other suitable barrier set back a minimum of five (5) feet from any wall of a building.
- (5) Off-street parking spaces may be open to the sky or enclosed in a building. In any instance when a building is constructed or used for parking facilities on the lot, said building shall be treated as any major structure and subject to all requirements thereof.
- (6) All parking lots abutting residential uses or districts, and all parking lots in any district containing more than four (4) spaces shall be subject to the landscaping and screening requirements for such parking lots as set forth in Article 1367, Landscaping and Screening.

- (7) Any lighting facilities used to illuminate off-street parking areas shall be so located, shielded and directed upon the parking area in such a manner that they do not reflect or cause glare onto adjacent properties or interfere with street traffic. In no instance shall bare, unshaded bulbs be used for such illumination.

(C) Surfacing and Drainage.

- (1) All open off-street parking areas shall be surfaced with an all-weather, dust-free concrete or asphalt material, and shall be maintained in good condition and free of weeds, dirt, trash and debris; except that, a gravel surface may be used for a period not exceeding six months after the date of granting the Certificate of Occupancy where ground conditions are not immediately suitable for permanent surfacing as specified above.
- (2) A gravel surface in the area of storage or handling may be used permanently in association with industries that handle liquids or chemicals which create a potential hazard if containment should be lost and where absorption into the ground through a loose surface material would eliminate or alleviate such hazard.
- (3) Such parking areas shall be graded and properly drained in such a manner that there will be no free flow of water onto either adjacent property or public sidewalks. Further, any run-off generated by such improved areas shall be disposed of in accordance with the stormwater management ordinance and other City regulations.
- (4) Other surface materials and designs may be utilized when specifically approved by the City Engineer, for purposes of reducing storm water runoff or other environmental and aesthetic considerations.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk



MORGANTOWN PLANNING COMMISSION

April 25, 2013
6:30 PM
City Council Chambers

STAFF REPORT

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Wyant, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

Jennifer Selin, City Council

CASE NO: TX13-03 / Administrative / Principal Structures on a Parcel

REQUEST:

Administratively requested text amendments to Article 1363.04 of the Planning and Zoning Code as it relates to the number of principal structures permitted on a parcel.

BACKGROUND and ANALYSIS:

Article 1363.04(A) provides that:

"Structures on a Lot. Only one principal building and its accessory structures may be located on a lot unless development is approved as a planned unit development, or as a shopping center, office park, or research and development center as permitted in the O-1, B-5, and I-1 districts."

The recent development of townhouses and apartment buildings in the City has resulted in the resubdividing of existing parcels to fit residential development site layouts that include multiple buildings.

It appears that excluding townhouse and multi-family developments from the no-more-than one principal structure per lot or parcel provision as afforded to similar land uses and development patterns is prudent. In so doing, site designers will be able to focus on the highest and best development pattern given existing parcel geometry, site characteristics, and topographical challenges rather than how a larger site must be subdivided to achieve one principal building per lot or parcel and related internal building setback requirements.

Additionally, the current provision identifies specific zoning districts within which specific land uses are exempted from the restriction of no-more-than one principal building per lot or parcel. Where land uses can be developed is currently controlled by Table 1331.05.01 "Permitted Land Uses." Restating where land uses are permitted in Article 1363.04(A) is both not necessary and may inadvertently conflict with Table 1331.05.01 as it is amended over time.

STAFF RECOMMENDATION:

The Planning Division respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend 1365.09 "Parking Development Standards" as presented below (deleted matter struck through; new matter underlined).

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

April 25, 2013
6:30 PM
City Council Chambers

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Wyant, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

Jennifer Selin, City Council

1363.04 SPECIAL REQUIREMENTS.

The following special requirements are established to clarify certain conditions pertaining to the use of lots and access points:

- (A) Structures on a Lot. Only one principal building and its accessory structures may be located on a lot unless development is approved as a planned unit development, ~~or as a shopping center, office park, or research and development center,~~ townhouse dwellings, or multi-family dwellings as permitted in the ~~O-1, B-5, and T-1~~ districts Table 1331.05.01 "Permitted Land Uses.
- (B) Lot of Record. Any lot recorded or in single ownership at the time of adoption of these regulations shall be permitted to exist in its present dimension.
- (C) Permanent Outdoor Display of Goods. For nonresidential uses in nonresidential zones, a permanent outdoor display of goods shall conform to the required building setback. No display shall be permitted in any public right-of-way.
- (D) Temporary Outdoor Display of Goods. Temporary outdoor display of merchandise may encroach ten (10) feet on the required building setback. No display shall be permitted in any public right-of-way.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

AN ORDINANCE AMENDING ARTICLE 1363.04 "SPECIAL REQUIREMENTS" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO THE NUMBER OF PRINCIPAL STRUCTURES PERMITTED ON A LOT.

The Morgantown City Council hereby ordains that Article 1363.04 "Special Requirements" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1363.04 SPECIAL REQUIREMENTS.

The following special requirements are established to clarify certain conditions pertaining to the use of lots and access points:

- (A) Structures on a Lot. Only one principal building and its accessory structures may be located on a lot unless development is approved as a planned unit development, ~~or as a shopping center, office park, or research and development center,~~ townhouse dwellings, or multi-family dwellings as permitted in the ~~O-1, B-5, and I-1 districts~~ Table 1331.05.01 "Permitted Land Uses."
- (B) Lot of Record. Any lot recorded or in single ownership at the time of adoption of these regulations shall be permitted to exist in its present dimension.
- (C) Permanent Outdoor Display of Goods. For nonresidential uses in nonresidential zones, a permanent outdoor display of goods shall conform to the required building setback. No display shall be permitted in any public right-of-way.
- (D) Temporary Outdoor Display of Goods. Temporary outdoor display of merchandise may encroach ten (10) feet on the required building setback. No display shall be permitted in any public right-of-way.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 747.02(a) OF ITS FIRE PROTECTION SERVICE CHARGES CODE, AS THE SAME APPLIES TO THE LEVY AND IMPOSITION OF FIRE PROTECTION SERVICE.

747.02 LEVY AND IMPOSITION OF FEE.

(a) There is hereby levied and imposed upon all users of the fire protection service provided by the City, a fee for the continuation, maintenance and improvement of such service. The fee shall be ~~5.80~~ 6.38 cents per square foot of space within each structure, per annum. Structures exceeding three floors shall be charged an additional ~~3.66~~ 4.03 cents per square foot of space above the third floor.

The gross square footage of each structure shall be determined by the duly authorized and designated agents of the City in accordance with the definition of terms in Section 747.01 and the gross square footage measurements for each structure shall then be multiplied by the rates shown above to determine the amount of the fee to be charged against the use of the fire protection service.

This Ordinance shall be effective on July 1, 2013.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE VACATING, ABANDONING AND ANNULING AN APPROXIMATE 50' RIGHT-OF-WAY EXTENDING ALONG A PORTION OF SIXTH STREET AND RUNNING A DISTANCE OF APPROXIMATELY ONE HUNDRED AND NINE FEET IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, NOT USED NOR USEFUL FOR STREET PURPOSES.

WHEREAS, It appears to the Common Council of the City of Morgantown, West Virginia, that a portion of Sixth Street being an approximate 50' wide right-of-way and running a distance of approximately one hundred and nine feet in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, and as laid down, designated and dedicated to public use as a street on a map or plat, as shown on the exhibit hereto attached, is not useful for street purposes, is not needed for street purposes, nor for any other public uses and purposes except to reserve and retain sewer and utility rights-of-way and it further appearing that it is in the interests of the City of Morgantown and of the public generally that a portion of Sixth Street being an approximate 50' right-of-way and running a distance of approximately one hundred and nine feet, be vacated, abandoned, and annulled as a public street within said City, and it further appearing that the property of no person, firm or corporation will be injured or damaged thereby, and that the owners of property abutting on said portion of Sixth Street have petitioned the Common Council to vacate, abandon and annul said street.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MORGANTOWN, WEST VIRGINIA, IN REGULAR SESSION ASSEMBLED AS FOLLOWS:

Section 1. That for the reasons hereinbefore set forth that a portion of Sixth Street being an approximate 50' wide right-of-way running a distance of approximately one hundred and nine feet, reserving, however, rights-of-way over the entire width thereof, as shown on the exhibit hereto attached, for storm, sanitary sewers and all other utilities, in the City of Morgantown, West Virginia, is hereby vacated, abandoned, and annulled and from and after the date of the adoption of this ordinance the same shall cease to be a public way or public street within the City of Morgantown, and the easement of the City of Morgantown therein, thereon, and thereover for street purposes is hereby vacated, abandoned and annulled, and all right, titles and interests of the City of Morgantown therein as an easement for street purposes are hereby expressly released.

Section 2. That as set forth in Section 1 of this ordinance the easement and right-of-way of the City of Morgantown for street purposes on and over a portion of Sixth Street being an approximate 50' wide right-of-way and running a distance of approximately one hundred and nine feet, as shown on the exhibit hereto attached, is hereby vacated, abandoned and annulled.

Section 3. That upon the adoption of this Ordinance the City Clerk of the City of Morgantown shall cause a duly certified copy thereof to be recorded in the appropriate deed book in the office of the Clerk of the County Commission of Monongalia County, West Virginia, as evidence of the vacating, abandoning and annulling of said portion of Sixth Street being an approximate 50' wide right-of-way and running a distance of approximately one hundred and nine feet for public uses and public purposes as a public street or public way within the City of Morgantown, and said Clerk shall also file with said certified copy of said ordinance an exhibit showing the location of said street so vacated, abandoned and annulled.

Section 4. Prior to adoption of this ordinance the adjacent land owners shall pay to the City Clerk the cost of this proceeding.

Section 5. This ordinance shall be effective from the date of its adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, to-wit:

I, _____, a Notary Public of said County do hereby certify that Linda L. Little and _____, whose names are signed to the foregoing document, bearing the _____ day of _____, 2013, has this day acknowledged the same before me in my said County.

Given under my hand this _____ day of _____, 2013.

My Commission expires _____

Notary Public

This document was prepared by:

Stephen R. Fanok, Esquire
389 Spruce Street
Morgantown, WV 26505

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTER-GOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY AND THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA, OUTLINING THE TERMS AND CONDITIONS OF THE CITY'S PURCHASE OF PROPERTY KNOWN AS THE WOODBURN ELEMENTARY SCHOOL.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Intergovernmental Agreement hereto attached and to proceed with the acquisition of the Woodburn Elementary School property on behalf of the City of Morgantown, as set forth in the Intergovernmental Agreement.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, dated this ___ day of May, 2013, by and between THE CITY OF MORGANTOWN (CITY) and THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA (BOARD).

WHEREAS, W. Va. Code § 8-23-3 authorizes public agencies to enter into written agreements with one another for joint or cooperative action; and

WHEREAS, in the sound judgment of the BOARD, the needs of the community require the use of the property known as Woodburn Elementary School, which is not needed for school purposes, located at 918 Fortney Street, Morgantown, West Virginia 26505, for charitable, economic development and/or community use; and

WHEREAS, the BOARD has determined that the CITY is an organization well suited to meet charitable, economic development and community needs, and that CITY's mission to meet charitable, economic development and community needs will be enhanced through the use and acquisition of the hereinafter-described property.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE: The purpose of this Agreement is to facilitate the charitable, economic development and community use through the transfer of the real property known as Woodburn Elementary School (the Property") from the BOARD to the CITY. BOARD hereby agrees to sell to CITY and CITY hereby agrees to purchase from BOARD, for the Purchase Price and upon the terms and conditions specified herein all of those certain lots or parcels of real estate which are located, situate and being in Fifth Ward, Morgan District, City of Morgantown, Monongalia County, West Virginia, collectively known and identified as the "Woodburn Elementary School", being all of Tax Map 25, Parcels 525 and 362, together with all buildings, structures, fixtures, and other improvements thereon and all appurtenances pertaining thereto (the "Property"), as more particularly bound and described in the following deeds of record in the Office of the Clerk of the County Commission of Monongalia County:

(i) **Deed Book 104, Page 180**, dated July 14, 1909, recorded August 12, 1909, from Warren G. Smith and Sarah J. Smith, husband and wife, to The Board of Education of Morgantown School District, conveying a small part dedicated as and for public streets;

(ii) **Deed Book 184, page 346**, dated November 22, 1922, recoded November 29, 1922, from William A. Tucker and Rebecca P. Tucker, husband and wife, Ulysses J. Courtney and Mary J. Courtney, husband and wife, to the Board of Education of Morgantown School District, conveying Lots Nos. 3, 4, 5, 6 and 7 in Block No. 1 and Lots Nos. 2, 3 and 4 in Block No. 2 in the Smith, Courtney, Tucker Addition.

(iii) **Deed Book 185, page 237**, dated October 17, 1922, recorded January 11, 1923, from Walter W. Hammond, Leah Ruth Hammond, and Isa May Reeder and W. P. Reeder, husband and wife, to the Board of Education of Morgantown School District, conveying their undivided one-fourth interests in Lots Nos. 1, 5, 6, and 7 in Block No. 2 in the Smith, Courtney and Tucker Addition;

(iv) **Deed Book 185, page 240**, dated January 11, 1923, recorded 11, 1923, from William S. John, Special Commissioner for Mary Alice Hammond, to the Board of Education, Morgantown School District, conveying an undivided one-fourth interest of Mary Alice Hammond, infant, in Lots Nos. 1, 5, 6, and 7 in Block No. 2 in the Smith, Courtney and Tucker Addition;

(v) **Deed Book 187, page 364**, dated March 24, 1923, recorded April 11, 1923, from James M. Shanks and M. Belle Shanks, husband and wife, to the Board of Education of Morgantown School District, conveying all of Lots Nos. 1, 2, 3, 4, and 5 in the Woodburn Addition;

(vi) **Deed Book 188, page 199**, dated December 26, 1922, recorded May 4, 1923, from B. T. Gibson and May Gibson, husband and wife, and J. C. Gibson and Lula Gibson, husband and wife, (the said B. T. Gibson and J. C. Gibson partners doing business as the Gibson Lumber Company), to the Board of Education of Morgantown School District, conveying all of Lots 1 and 2 in Block No. 1 of the Smith, Courtney and Tucker addition to East Morgantown.

2. DURATION: The term of this agreement shall be from July 1, 2013, to July 1, 2014, unless terminated on an earlier date, as hereinafter provided. This agreement shall be automatically renewed for succeeding fiscal years until the manner of financing is complete, unless a party hereto provides written notice prior to June 30 of the then current fiscal year to the remaining party of an intent not to renew for any additional period.

3. ADMINISTRATION: The CITY shall be responsible for the overall coordination and administration of the project.

4. MANNER OF FINANCING: The cost of the project is estimated to be the total purchase price (the "Purchase Price") for the Property of Four Hundred Ninety Thousand Dollars (\$490,000.00), payable in cash or other immediately available funds, as follows:

(i) Beginning on July 1, 2014, and on or before July 1 of each calendar year thereafter for six (6) successive calendar years, CITY shall pay BOARD seven (7) installments of Seventy Thousand Dollars and No Cents (\$70,000.00) each. Said installments shall be applied to the unpaid balance of the Purchase Price only.

(ii) CITY will add the BOARD as an additional insured for liability purposes for claims incurred during the Financing Period.

(iii) In the event CITY fails to make a payment as described above, or shall otherwise default in any way as described in this agreement, BOARD shall notify CITY, in writing at the address listed below in NOTICE, of such default. CITY shall have 10 days to cure any default. In the event CITY fails to cure its default, the Property shall automatically revert to BOARD and CITY shall execute a deed for the PROPERTY to BOARD. All monies paid to BOARD shall remain the sole property of the BOARD.

5. FREE OF ENCUMBRANCES: BOARD hereby warrants, represents and covenants that BOARD is and will be at the time of the Closing, the lawful owner of full marketable fee simple title to the Property and that the Property will be conveyed to CITY at the Closing free and clear of any and all liens and leases, but subject to all easements, rights of way, building restriction lines, covenants, conditions and restrictions of record.

6. SUBSEQUENT SALE OF ALL OR PART OF PROPERTY: (a) CITY acknowledges that the conveyance of the Property to CITY is made pursuant to W. Va. Code Section 18-5-7b. As such, if the CITY or its assigns ceases to use the Property for charitable, economic development or other community use within 5 years of the Closing, as defined below, the Property shall revert to the BOARD. The BOARD acknowledges that all or a portion of the Property may be transferred or sold in connection with the development of housing for low and reduced income purchasers, through such entities qualified to provide services under the provisions of the Internal Revenue Service under the provisions of 26 United State Code section 501(c)(3) through (8) inclusive, (19) or (23). To the extent all or a portion of the property is sold for such purposes, the BOARD agrees that such transfer will not trigger a reverter of the property.

(b) After the 5 year period stated in Paragraph 6(a) above, during the following period of 5 years, CITY hereby warrants and agrees that if CITY sells all of the Property or any portion thereof to an entity that does not possess non-profit, tax-exempt status, such tax status having been granted by the Internal Revenue Service under the provisions of 26 United State Code section 501(c)(3) through (8) inclusive, (19) or (23), CITY shall pay to BOARD fifty percent (50%) of all gross proceeds generated from said sales in excess of the Purchase Price of \$490,000.00. This paragraph shall be binding on the CITY's successors and assigns, and shall be considered a covenant running with the land.

The provisions of this Paragraph 6 shall survive the Closing.

7. CLOSING: The Closing shall occur on or before July 1, 2013, (the "Closing Date") unless CITY and BOARD otherwise agree. At the Closing, BOARD shall deliver to CITY the following items, which items shall be in form and substance reasonably satisfactory to CITY: (i) a properly executed and acknowledged special warranty deed in recordable form conveying marketable title to the Property to CITY subject to all easements, rights of way, building restriction lines, covenants, conditions and restrictions of record; (ii) an owner's affidavit as to mechanic's liens in ALTA standard form; and (iii) such other documents as are required to be

delivered by BOARD to CITY on or before the Closing pursuant to the terms of this Agreement or as are reasonably necessary or appropriate to the consummation of this transaction.

In the event the Closing occurs prior to July 1, 2013, CITY agrees that BOARD may need until June 30, 2013, to remove all of its personal property from the Property. BOARD shall have the right to enter the Property at such times as necessary after the Closing and on or before June 30, 2013, to remove said property.

8. CLOSING COSTS:

(i) BOARD shall pay (a) for the preparation of the deed of conveyance and any other documents necessary to convey the Property to CITY, and (b) for BOARD's legal fees.

(ii) CITY shall pay (a) for examination of title, environmental inspection reports, soil tests, structural inspections, due diligence and feasibility inspections and studies, and any other inspections or tests CITY desires, (b) for the cost of recording all documents, except for releases of liens, and (c) for CITY's legal fees.

9. INSPECTION PERIOD: Commencing on the execution date of this Agreement, CITY shall have thirty (30) days (the "Inspection Period") to perform due diligence and to determine the sufficiency of BOARD's title to the Property.

10. TITLE REVIEW:

(i) CITY shall have until the expiration of the Inspection Period to examine title to the Property and obtain, examine and review a commitment from a title insurance company to issue an owner's title insurance policy, in the amount of the Purchase Price, showing title to the Property as being good, record, and marketable and indefeasibly vested in BOARD, subject only to permitted title exceptions (the "Commitment").

(ii) In the event CITY fails to notify BOARD of any adverse title exceptions prior to the expiration of the Inspection Period, CITY shall be conclusively deemed to have approved the title to the Property as set forth in the Commitment, any and all exceptions, items and matters referenced in the Commitment shall be conclusively deemed to be Permitted Title Exceptions.

(iii) In the event CITY notifies BOARD of an adverse title exception prior to the expiration of the Inspection Period, BOARD shall have ten (10) days to cure any such adverse title exception. In the event BOARD notifies CITY that BOARD is unable to cure, or declines to cure any such adverse title exception, CITY shall have five (5) days from the receipt of said notice to notify BOARD of its intent to: (a) proceed with the transaction contemplated hereby without a reduction in Purchase Price; or (b) terminate this Agreement. Upon such a termination, CITY shall (a) return to BOARD all due diligence and feasibility reports; and (b) correct and repair any and all damage to the Property caused by CITY's due diligence and feasibility inspections and studies.

(iv) By the written mutual consent of the Parties, the Inspection Period may be extended to cure any adverse title exceptions raised under this Section.

11. AS-IS PURCHASE AND SALE: CITY shall accept the Property in its current and present condition, AS-IS, with all defects and faults and without warranty or representation except as is otherwise set forth herein. CITY acknowledges that all liability for hazards associated with the Property, known or unknown, are assumed by the CITY. BOARD shall inform CITY upon executing of this agreement of all known or suspected hazards associated with the Property.

12. POSSESSION: CITY shall be entitled to exclusive possession of the Property at Closing. In the event of a Closing prior to July 1, 2013, CITY acknowledges that BOARD may need until June 30, 2013, to remove all of its personal property from the Property. BOARD shall have the right to enter the Property at such times as necessary after the Closing and on or before June 30, 2013, to remove said property.

13. ADJUSTMENTS: Ad valorem real estate and personal property taxes on the Property for the current calendar year and any other charges related to the Property shall be paid and prorated at the Closing, effective as of the Closing Date.

14. COMMISSIONS: CITY and BOARD represent that they have dealt with no real estate broker or agent in connection with this transaction, and that there is no such broker or agent involved in this transaction who would be entitled to any commission or fee. CITY hereby agrees to indemnify and hold harmless BOARD from any and all claims for brokerage commissions or fees due any broker or agent allegedly representing the CITY or BOARD or claiming to be entitled to any such commission or fee arising out of this transaction.

15. CITY'S DEFAULT: If CITY defaults in performing any of CITY's obligations under this Agreement for any reason other than BOARD's default or a permitted termination hereof by CITY, then the contract shall be ruled void.

16. BOARD'S DEFAULT: If BOARD defaults in performing any of BOARD's obligations under this Agreement for any reason other than CITY's default or a permitted termination hereof, then CITY may terminate this Agreement, subject to CITY's fulfillment of its obligations to: (a) return to BOARD all due diligence reports; and (b) correct and repair any and all damage to the Property caused by CITY's due diligence and feasibility inspections and studies.

17. ENTIRE AGREEMENT/GOVERNING LAW: This Agreement, together with all Exhibits hereto, constitutes the entire agreement of the parties hereto and cannot be amended or varied without the express written agreement of the parties, provided, that Paragraph 4 and Paragraph 6 shall survive the closing and be binding upon all parties hereto, their successors and assigns. This Agreement shall be governed and construed according to the laws of the State of West Virginia.

18. SUCCESSORS: This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns wherever the context so requires or admits.

one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. SURVIVAL: Each and every representation, warranty and covenant of CITY and BOARD set forth in this Agreement, to the extent the same has not been nor cannot be fully satisfied or performed at or before the date of Closing, shall survive Closing and continue in full force and effect, and bind CITY or BOARD, as applicable.

26. ASSIGNMENT: At any time prior to Closing, BOARD may assign all its rights, title and interest in this Agreement. CITY shall not have the right to assign this Agreement.

27. RULE OF CONSTRUCTION: The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

28. HEADINGS: The captions or headings used in this Agreement are for convenience of reference only and shall not be considered in interpreting this Agreement.

29. AMENDMENTS: This agreement may be amended or modified by written addendum thereto, executed by each party.

THE BOARD OF EDUCATION OF THE COUNTY OF
MONONGALIA,
a West Virginia statutory corporation

By: _____
Barbara Parsons, its President

THE CITY OF MORGANTOWN,
a West Virginia political subdivision

By: _____
Its: _____

STATE OF WEST VIRGINIA,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, the President of **THE BOARD OF EDUCATION OF COUNTY OF MONONGALIA**, a West Virginia statutory corporation, on behalf of said statutory corporation under authority duly granted.

My Commission Expires: _____

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, as _____ for **THE CITY OF MORGANTOWN**, a West Virginia political subdivision, on behalf of said political subdivision under authority duly granted.

My Commission Expires: _____

Notary Public

APPROVED AS TO FORM BY
THE ATTORNEY GENERAL

By _____

Date: _____