# CITY OF BECKLEY

## Stormwater Revenue Bonds, Series 2010 A

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# CITY OF BECKLEY
# STORMWATER REVENUE BONDS, SERIES 2010 A

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CITY OF BECKLEY
(WEST VIRGINIA)

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC STORMWATER SYSTEM OF THE CITY OF BECKLEY AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF STORMWATER REVENUE BONDS, SERIES 2010 A OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $2,000,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND AUTHORIZING THE SALE 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 BECKLEY:

## 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 16, Article 13 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 Beckley (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Raleigh County of said State.

B. The Issuer presently owns and operates a public stormwater system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer, and for the improvement of the water environment of the project area, that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing stormwater system of the Issuer, consisting of box culvert installation on Sisson Street, storm pipe installation to alleviate home flooding in Brookwood/Sandalwood area, relocate public drainage near Little Valley Flea Market, bioswale and pipe installation in Birdhaven Lane area, replace some existing storm pipes and add bioswales and rain gardens in Pine Hills Subdivision, replace storm pipe in Dry Hill Road area, and install storm pipes &

bioswales in Front Street area including all necessary appurtenances, together with all necessary appurtenances (collectively, the "Project") (the existing stormwater system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer;

C. It is deemed necessary for the Issuer to issue its Stormwater Revenue Bonds, Series 2010 A, in the total aggregate principal amount of not more than $2,000,000 (the "Series 2010 A Bonds"), initially to be represented by a single bond, to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2010 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2010 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

D. The period of usefulness of the System after completion of the Project is not less than 20 years.

E. It is in the best interests of the Issuer that its Series 2010 A Bonds be sold to the Purchaser (as hereinafter defined) pursuant to this Bond Legislation.

F. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2010 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Stormwater Revenue Bonds, Series 2009 B-2, dated September 18, 2009, issued in the aggregate principal amount of $296,952 (the "Series 2009 B-2 Bonds" or the "Prior Bonds").

The Series 2010 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2010 A Bonds, the Issuer will obtain (i) a 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 Prior Bonds to the issuance of the Series 2010 A Bonds on a parity with the Prior Bonds. Prior to issuance of the Series 2010 A Bonds, the Issuer shall comply with the provisions of the Prior Ordinance for issuance of the Series 2010 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinance.

G. The Issuer derives revenues from the System and intends to issue the Series 2010 A Bonds and to pledge for payment thereof, the Net Revenues of the System. Upon issuance of the Series 2010 A Bonds, the Series 2010 A Bonds will be secured by a first lien on the Net Revenues of the System.

H. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, to provide for repair, maintenance and operation of the System, the payment of interest on the Series 2010 A Bonds, and to create sinking funds, as hereinafter provided,

to pay the principal on the Series 2010 A Bonds as and when it becomes due, and to make all other payments provided for in this Ordinance.

I. It is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Series 2010 A Bonds, and secure the Series 2010 A Bonds by a pledge and assignment of the Net Revenues derived from the operation of the System, unexpended proceeds of the Series 2010 A Bonds and as further set forth herein.

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

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2010 A Bonds by those who shall be 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 legal Registered Owners of any and all of such Series 2010 A Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Series 2010 A Bond and any other Series 2010 A Bond, 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 Chapter 16, Article 13 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"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 2010 A Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"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.

"Closing Date" means the date upon which there is an exchange of the Series 2010 A Bonds for all or a portion of the proceeds of the Series 2010 A Bonds.

"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 MSES Consultants, Clarksburg, West Virginia, or 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.

"Costs" or "Costs of the Project" means those costs described in Section 1.03E hereof to be a part of the cost of acquisition and construction of the Project.

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

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

"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" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

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

"Independent Certified Public Accountants" 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.

"Investment Property" means

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means the City of Beckley, a municipal corporation and political subdivision of the State of West Virginia, in Raleigh County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2010 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2010 A Bonds, without regard to whether or not such investment is made in tax exempt obligations.

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

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation 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 Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, 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 from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar or the registrar for Prior Bonds at or prior to said date; (ii) any Bond for the payment of which monies, 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 in accordance with the resolution authorizing the issuance thereof; and (v) for purposes of consents or other action by a specified percentage of Bondholders, any 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 or authority designated as such for the Series 2010 A Bonds in the Supplemental Resolution.

"Prior Bonds" means, the Series 2009 B-2 Bonds.

"Prior Ordinance" means, the ordinance of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the Project as described in Section 1.02B hereof.

"Purchaser" means the purchaser or purchasers of the Series 2010 A Bonds directly from the Issuer, designated as such in the Supplemental Resolution and its successors and assigns.

"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 or Federal Savings and Loan Insurance Corporation, 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 excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"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.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinance and continued hereby.

"Reserve Accounts" means, the reserve accounts established for the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds.

"Revenue Fund" means the Revenue Fund created by the Section 5.01 hereof.

"Series 2009 B-2 Bonds" means the Issuer's Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA GREEN), dated September 18, 2009, issued in the original aggregate principal amount of $296,952.

"Series 2009 B-2 Bonds Reserve Account" means the Series 2009 B-2 Bonds Reserve Account established by the Prior Ordinance and continued hereby.

"Series 2009 B-2 Bonds Sinking Fund" means the Series 2009 B-2 Bonds Sinking Fund established by the Prior Ordinance and continued hereby.

"Series 2010 A Bonds" means Stormwater Revenue Bonds, Series 2010 A of the Issuer, authorized by this Bond Legislation.

"Series 2010 A Bonds Construction Trust Fund" means the Series 2010 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2010 A Bonds Sinking Fund" means the Series 2010 a Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, the sinking funds established for the Series 2010 A Bonds.

"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 2010 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2010 A 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 Bonds or any other obligation of the Issuer, including, without limitation, the Sinking Fund.

"System" means the complete public stormwater system of the Issuer, presently existing in its entirety or any integral part thereof, and any further additions, extensions and improvements thereto hereafter constructed or acquired for the System from any sources whatsoever.

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 AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $2,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2010 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project.

The cost of the Project is estimated not to exceed $2,000,000, which will be obtained from proceeds of the Series 2010 A Bonds.

## ARTICLE III
## AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. For the purposes of paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2010 A Bonds of the Issuer. The Series 2010 A Bonds shall be issued as a single bond, designated "Stormwater Revenue Bond, Series 2010 A", in the principal amount of not more than $2,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010 A Bonds shall be deposited in or credited to the Series 2010 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2010 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Series 2010 A 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 on the Series 2010 A 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 Purchaser is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2010 A Bonds shall initially be issued in the form of a single bond, fully registered to the Purchaser, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2010 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2010 A 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 Purchaser shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2010 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2010 A Bonds shall cease to be such officer of the Issuer before the Series 2010 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2010 A 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 the authorization 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 2010 A Bond 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 2010 A Bond 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 2010 A 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 2010 A 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 2010 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2010 A Bonds.

The registered Series 2010 A 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 Series 2010 A Bonds or transferring the registered Series 2010 A Bonds are exercised, all Series 2010 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2010 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2010 A 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 2010 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2010 A Bonds or, in the case of any proposed redemption of Series 2010 A 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 2010 A Bond 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 cancelled 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 2010 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2010 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2010 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2010 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2010 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2010 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Purchaser, a list of the names in which the Series 2010 A 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 2010 A Bonds to the Purchaser;

C. An executed and certified copy of the Bond Legislation; and

D. The unqualified approving opinion of bond counsel on the Series 2010 A Bonds.

Section 3.10. Sale of Bonds. The Series 2010 A Bonds shall be sold to the Purchaser, pursuant to this Bond Legislation.

Section 3.11. Form of Bonds. The text of the Series 2010 A 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 issuance thereof:

[Remainder of Page Intentionally Blank]

(FORM OF SERIES 2010 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
STORMWATER REVENUE BONDS, SERIES 2010 A

No. AR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: This ____ day of_____, 2010, that the City of Beckley, a municipal corporation and political subdivision of the State of West Virginia in Raleigh County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner hereinafter set forth, to the order of:

(Purchaser)

or registered assigns (the "Registered Owner"), the principal sum of_____ DOLLARS ($_____) or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference together with and principal and interest payments of $_____ payable monthly beginning _____, 20___ to and including _____, 20___ at the rates per annum set forth as follows:

A. Interest on this Bond shall be payable at the rate of _____% per annum (hereinafter sometimes called the "Tax-Exempt Rate").

B. Notwithstanding any other provision herein, in the event the interest on this Bond is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on this Bond shall be payable at the rate of ____% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Bond is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and interest on this Bond are paid, notwithstanding that the entire principal amount of this Bond may have been paid in full prior to the Determination of Taxability. Any interest being past due on this Bond by reason of such increase shall become immediately due and payable.

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia as Paying Agent.

Redemption in whole or in party may be made on any date prior to final maturity with thirty (30) days written notice to Bank. Optional redemption is prohibited during the initial sixty (60) months following closing on December 15, 2010.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the stormwater system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public stormwater system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on_____, 2010, and a Supplemental Resolution duly adopted by the Issuer on_____ _____, 2010 (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 ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S STORMWATER REVENU BONDS, SERIES 2009 B-2 (WEST VIRGINIA SRF PROGRAM/ARRA GREEN), DATED SEPTEMBER 18, 2009, ISSUED IN THE ORIGINAL AGRREGATE PRINCIPAL AMOUNT OF $296,952 (THE "SERIES 2009 B-2 BONDS" OR THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and unexpended proceeds of the Bonds. Such Net 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 a corporate 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, if any, hereon, except from said special fund provided from the Net Revenues, and unexpended proceeds of the Bonds. 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, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds so long as the Series 2009 B-2 Bonds are outstanding, and thereafter, 110%; provided however, that so long as there exists in the Series 2009 B-2 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Series 2009 B-2 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 or junior to the Bonds, including 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") (as defined in the Bond Legislation), 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.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

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

This Bond is, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, except inheritance, estate and transfer taxes.

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 issuance 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 Net 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 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.

IN WITNESS WHEREOF, the CITY OF BECKLEY has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above

[SEAL]

_____

Mayor

ATTEST:

_____

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A 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: _____, 2010.

_____
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $ | | (19) | |
| (2) | | (20) | |
| (3) | | (21) | |
| (4) | | (22) | |
| (5) | | (23) | |
| (6) | | (24) | |
| (7) | | (25) | |
| (8) | | (26) | |
| (9) | | (27) | |
| (10) | | (28) | |
| (11) | | (29) | |
| (12) | | (30) | |
| (13) | | (31) | |
| (14) | | (32) | |
| (15) | | (33) | |
| (16) | | (34) | |
| (17) | | (35) | |
| (18) | | (36) | |

TOTAL $_____

(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:

_____

## 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 Ordinance) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

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

(2) Renewal and Replacement Fund (established by the Prior Ordinance);

(3) Rebate Fund; and

(4) Series 2010 A Bonds Construction Trust Fund.

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 Ordinance) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Series 2009 B-2 Bonds Sinking Fund (established by the Prior Ordinance);

(2) Series 2009 B-2 Bonds Reserve Account (established by the Prior Ordinance); and

(3) Series 2010 A Bonds Sinking Fund.

Section 5.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance 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 this Bond Legislation and the Prior Ordinance. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amounts required by the Prior Ordinance to pay interest on the Prior Bonds; and (ii), commencing the first date of payment of interest on the Series 2010 A Bonds the required amount of interest 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) the amounts required by the Prior Ordinance to pay the principal of the Prior Bonds; and (ii) commencing the first date of payment of principal of the Series 2010 A Bonds, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission the amount required by the Prior Ordinance for deposit in the Reserve Accounts of the Prior Bonds.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 ½% of the Gross Revenues each month (as previously set forth in the Prior Ordinance and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (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 monies from the Renewal and Replacement Fund.

Monies in the Series 2010 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2010 A Bonds as the same shall come due and for no other purpose.

All investment earnings on monies in the Series 2010 A Bonds Sinking Fund shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2010 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2010 A Bonds and then to the next ensuing principal payment due thereon.

As and when additional Bonds ranking on a parity with the Series 2010 A 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, if any, in an amount equal to the requirement therefor.

Monies in the Series 2010 A Bonds Sinking Fund shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2010 A Bonds Sinking Fund, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2010 A Bonds under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore 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 law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. 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.

D. The monies in excess of the sum insured by the maximum amounts insured by FDIC in all 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.

E. 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 relevant provisions of the Prior Ordinance, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

## ARTICLE VI
## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2010 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. The entire principal amount of the Series 2010 A Bonds shall be deposited in the Series 2010 A Bonds Construction Trust Fund.

B. As the Issuer receives advances from the Series 2010 A Bonds Construction Fund such monies shall be applied solely to payment of Costs of the Project as directed by the Issuer in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2010 A Bonds.

Section 6.02. Disbursements From the Series 2010 A Bonds Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2010 A Bonds Construction Trust Fund shall be made only after submission to the Purchaser of written approval from the Issuer.

Pending such application, monies in the Series 2010 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## 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 2010 A 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 2010 A 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 2010 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2010 A 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 any Series 2010 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of the Series 2010 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Prior Bonds and the Series 2010 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

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. Such rates and charges shall be sufficient to comply with the requirements of the Bond Legislation. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the stormwater rate ordinance of the Issuer enacted February 24, 2009, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2010 A 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 Bond Legislation. In the event the schedule of rates and charges initially established

for the System in connection with the Series 2010 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, 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 and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation.

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 Ordinance. So long as the Series 2010 A Bonds are outstanding, the Issuer shall not sell or dispose of all, or substantially all, of the System without either defeasing, or paying in full, the Series 2010 A Bonds.

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 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 2010 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2010 A 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 2010 A 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 2010 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2010 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

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 Ordinance shall be applicable. All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2010 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or improvements to the System, refunding any or all outstanding Bonds to pay claims which may exist against the revenues or facilities of the System, or all such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder 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, so long as any of the Series 2009 B-2 Bonds are outstanding, not be less than 115%, and thereafter, shall not be less than 110% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, 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 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 additional customers to be connected to the System as a result of additions, extensions and improvements thereto, or from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder 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, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has 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 subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System and their source of and security for payment from said Net Revenues, without preference of any Bond of one series over any other Bond of the same series. 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 2010 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the 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 2010 A 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, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

No additional bonds, notes, certificates, contracts or any other obligations shall be issued by the City unless no Event of Default shall have occurred and be continuing with respect to the Bonds.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project.

The Issuer 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 and the Act. Separate control accounting records shall be maintained by the Issuer. 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 Issuer. The Governing Body 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 Issuer shall be reported to such agent of the Issuer as the Issuer shall direct.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto), and shall mail and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2010 A Bonds.

Subject to the terms, conditions and provisions of Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

Section 7.09. Rates. Prior to the issuance of the Series 2010 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule or schedules 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 or schedules 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 or schedules 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 payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds so long as the Series 2009 B-2 Bonds are outstanding, and thereafter, 110%; provided however, that so long as there exists in the Series 2009 B-2 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Series 2009 B-2 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 or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%.

All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

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 Issuer that 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 Issuer 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.

Section 7.11. Reserved.

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 Issuer 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 30 days after the same shall become due and payable, the property and the owner thereof, as well as 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 System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the 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 water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer 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 any department, agency, instrumentality, officer or employee of the Issuer 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 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 and Construction Bonds.

A. The Issuer hereby covenants and agrees that so long as the Series 2010 A Bonds remain Outstanding, the Issuer 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 Issuer 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 Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the prime contractor and all subcontractors as their respective interests may appear, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer 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 from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, 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 the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. The Issuer shall verify such insurance prior to commencement of construction. Such insurance shall be made payable to the order of the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Reserved.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and 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 Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project.

Section 7.18. Compliance with Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Act.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System. The Issuer will provide the Purchaser, 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).

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (I) not in excess of 10% of the Net Proceeds of the Series 2010 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2010 A Bonds during the term thereof is, under the terms of the Series 2010 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to

be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2010 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2010 A Bonds during the term thereof is, under the terms of the Series 2010 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2010 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2010 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2010 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2010 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2010 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it so that the interest on the Series 2010 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions the result of which would adversely affect such exclusion.

Section 7.20. Reserved.

Section 7.21. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2010 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2010 A 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 2010 A 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; NON ARBITRAGE

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 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 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 if 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 2010 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2010 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2010 A Bonds which would cause the Series 2010 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2010 A Bonds) so that the interest on the Series 2010 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Designation of Series 2010 A Bonds as "Qualified Tax-Exempt Obligations." The Issuer hereby designates the Series 2010 A Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2010 A Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than $30,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Series 2010 A Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2010, all as determined in accordance with the Code

If the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Purchaser, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and shall be used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Purchaser in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Purchaser at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2010 A Bonds from gross income for federal income tax purposes.

The Issuer shall furnish to the Purchaser, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Purchaser.

## 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 2010 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2010 A 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 2010 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2010 A 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 Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

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

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

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 that, all rights and remedies of the Holders of the Series 2010 A Bonds shall be on a parity with 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, including, the completion of the Project 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 or to complete the acquisition and construction of the Project 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 exercise.

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 completion of the Project and 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 2010 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010 A 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 2010 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI
## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2010 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010 A 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 2010 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2010 A 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, if any, 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 respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2010 A 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 exclusion of interest, if any, on the Series 2010 A 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 Series 2010 A 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 2010 A 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. Except for the Prior Ordinance, 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 Ordinance, the Prior Ordinance 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 Recorder and members of the Governing Body 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. 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 Register-Herald*, a qualified newspaper of general circulation in the City of Beckley, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2010 A 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 upon enactment.

First Reading: October 12, 2010

Second Reading: October 26, 2010

Passed on Final Reading Following Public Hearing: November 9, 2010

[SEAL]

Mayor

ATTEST:

Recorder

CERTIFICATION

Certified a true copy of a Conformed Ordinance duly enacted by the Council of the City of Beckley on the 9th day of November, 2010, as supplemented on December 14, 2010.

Dated this 15th day of December, 2010.

[SEAL]

Recorder

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE STORMWATER REVENUE BONDS, SERIES 2010 A OF THE CITY OF BECKLEY; AND THE SALE AND DELIVERY OF SUCH BONDS TO JP MORGAN CHASE BANK, N.A.; APPROVING A CONFORMED ORDINANCE; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; GRANTING AUTHORITY TO THE SANITARY BOARD TO APPROVE REMAINING DRAWS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Beckley (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective November 9, 2010 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC STORMWATER SYSTEM OF THE CITY OF BECKLEY AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF STORMWATER REVENUE BONDS, SERIES 2010 A OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $2,000,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Conformed Bond Ordinance attached as Exhibit A when used herein;

WHEREAS, the Issuer desires to amend the Bond Ordinance though this Supplemental Resolution and Conformed Ordinance (collectively, the "Bond Legislation");

WHEREAS, the Bond Ordinance provides for the issuance of Stormwater Revenue Bonds, Series 2010 A, of the Issuer (the "Bonds" or the "Series 2010 A Bonds"), in an aggregate principal amount not to exceed $2,000,000, all in accordance with Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and in the Bond Ordinance it is provided that the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, it is deemed necessary for the Issuer to issue its Stormwater Revenue Bonds, Series 2010 A (the "Bonds") in an aggregate principal amount of not more than $2,000,000, to finance the costs of acquisition and construction of the Project and costs of issuance of the Bonds and related costs;

WHEREAS, the Bonds are proposed to be purchased by JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Purchaser"); and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BECKLEY:

Section 1. The Issuer hereby approves the Conformed Bond Ordinance attached hereto as Exhibit A.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Stormwater Revenue Bonds, Series 2010 A, of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $2,000,000. The Series 2010 A Bonds shall be dated the date of delivery thereof, shall finally mature January 1, 2031, and shall bear interest at the rate of 3.87% per annum. Principal and interest payments of $12,003.59 on the Series 2010 A Bonds shall be payable monthly commencing February 1, 2011, to and including January 1, 2031. Redemption in whole or in party may be made on any date prior

to final maturity with thirty (30) days written notice to Bank. Optional redemption is prohibited during the initial sixty (60) months following closing on December 15, 2010.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Bonds shall be sold to JP Morgan Chase Bank, N.A., Beckley, West Virginia, and shall be registered in the name of such bank. The price of the Bonds shall be 100% of par value, there being no accrued interest accrued thereon.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate JP Morgan Chase Bank, N.A., Beckley, West Virginia, to serve as Registrar and Depository Bank for the Bonds under the Bond Ordinance.

Section 7. Series 2010 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2010 A Bonds Sinking Fund as capitalized interest.

Section 8. The balance of the proceeds of the Series 2010 A Bonds shall be deposited in or credited to the Series 2010 A Bond Construction Trust Fund and advanced to the Issuer from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 9. The Mayor and the Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about December 15, 2010, to the Purchaser.

Section 10. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 11. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 12. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer.

Section 13. The Issuer hereby appoints and designates the Sanitary Board, and the Authorized Officers thereof, as its agent (i) for the review and approval of all invoices for the Project to be paid from the proceeds of the Series 2010 A Bonds; and (ii) to

act on and execute documents on behalf of the Issuer for any and all federal and state actions as they relate to the planning, design and/or construction of the Project.

Section 14. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson, Charleston, West Virginia, as bond counsel to the Issuer in connection with the issuance by the Issuer of the Series 2010 A Bonds.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

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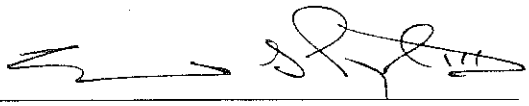
Adopted this 14th day of December, 2010.

CITY OF BECKLEY

By: 

Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Beckley on the 14th day of December, 2010.

Dated: December 15, 2010.

[SEAL]

Recorder

12.06.10
059320.00007



5635421

Exhibit A

Conformed Bond Ordinance
(See Tab 1 of Transcript)

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned authorized representative of JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Purchaser"), and the undersigned Mayor of the City of Beckley (the "Issuer"), hereby certify this 15th day of December, 2010 as follows:

1. On December 15, 2010, at Beckley, West Virginia, the Purchaser received the City of Beckley Stormwater Revenue Bonds, Series 2010 A, No. AR-1 (the "Bonds"), issued as a single Bond in the principal amount of $2,000,000, dated December 15, 2010. The Bonds represent the entire above-captioned Bond issue.

2. At the time of such receipt, the Bonds had been executed and sealed by the designated officials of the Issuer.

3. The Issuer has received and hereby acknowledges receipt from the Purchaser of the sum of $2,000,000, being the entire advance of principal amount of the Bonds.

4. This document 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.

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WITNESS our respective signatures dated the day and year first written above.

JP MORGAN CHASE BANK, N.A.

By: _____
Its: Authorized Officer

CITY OF BECKLEY

By: _____
Its: Mayor

12.06.10
059320.00007

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

JP Morgan Chase Bank, N.A.
as Registrar
Beckley, West Virginia

Ladies and Gentlemen:

As of the 15th day of December, 2010, there are delivered to you herewith as Registrar for the above-captioned Bonds:

1. Bond No. AR-1, constituting the entire original issue of the City of Beckley Stormwater Revenue Bonds, Series 2010 A, dated December 15, 2010 in the principal amount of $2,000,000 (the "Bonds"), executed by the Mayor and the Recorder of the City of Beckley (the "Issuer") and bearing the official seal of the Issuer. The Bonds are authorized to be issued under and pursuant to a Bonds Ordinance enacted by the Issuer on November 9, 2010, and a Supplemental Resolution adopted by the Issuer on December 14, 2010 (collectively, the "Ordinance").

2. A copy of the Ordinance duly certified by the Recorder.

3. A signed, unqualified approving opinion of nationally recognized bond counsel designated by the Issuer and acceptable to the Purchaser.

4. A list of the names in which the Bonds are to be registered upon original issuance, together with taxpayer identification and other information as requested by you.

You are hereby requested and authorized to authenticate, register and deliver the Bonds to JP Morgan Chase Bank, N.A., Beckley, West Virginia, as the Purchaser thereof.

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Dated as of the day and year first written above.

CITY OF BECKLEY

By:_____
Its: Mayor

12.06.10
059320.00007

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
STORMWATER REVENUE BONDS, SERIES 2010 A

No. AR-1 $2,000,000

KNOW ALL MEN BY THESE PRESENTS: This 15th day of December, 2010, that the City of Beckley, a municipal corporation and political subdivision of the State of West Virginia in Raleigh County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner hereinafter set forth, to the order of:

JP MORGAN CHASE BANK, N.A.

or registered assigns (the "Registered Owner"), the principal sum of TWO MILLION DOLLARS ($2,000,000) or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference together with and principal and interest payments of $12,003.59 payable monthly beginning February 1, 2011 to and including January 1, 2031 at the rates per annum set forth as follows:

A. Interest on this Bond shall be payable at the rate of 3.87% per annum (hereinafter sometimes called the "Tax-Exempt Rate").

B. Notwithstanding any other provision herein, in the event the interest on this Bond is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on this Bond shall be payable at the rate of 6.180% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Bond is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and interest on this Bond are paid, notwithstanding that the entire principal amount of this Bond may have been paid in full prior to the Determination of Taxability. Any interest being past due on this Bond by reason of such increase shall become immediately due and payable.

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia as Paying Agent.

Redemption in whole or in party may be made on any date prior to final maturity with thirty (30) days written notice to Bank. Optional redemption is prohibited during the initial sixty (60) months following closing on December 15, 2010.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the stormwater system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public stormwater system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on November 9, 2010, and a Supplemental Resolution duly adopted by the Issuer on December 14, 2010 (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 ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S STORMWATER REVENU BONDS, SERIES 2009 B-2 (WEST VIRGINIA SRF PROGRAM/ARRA GREEN), DATED SEPTEMBER 18, 2009, ISSUED IN THE ORIGINAL AGRREGATE PRINCIPAL AMOUNT OF $296,952 (THE "SERIES 2009 B-2 BONDS" OR THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and unexpended proceeds of the Bonds. Such Net 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 a corporate 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, if any, hereon, except from said special fund provided from the Net Revenues, and unexpended proceeds of the Bonds. 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, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds so long as the Series 2009 B-2 Bonds are outstanding, and thereafter, 110%; provided however, that so long as there exists in the Series 2009 B-2 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Series 2009 B-2 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 or junior to the Bonds, including 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 JP Morgan Chase Bank, N.A., (the "Registrar") (as defined in the Bond Legislation), 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.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

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

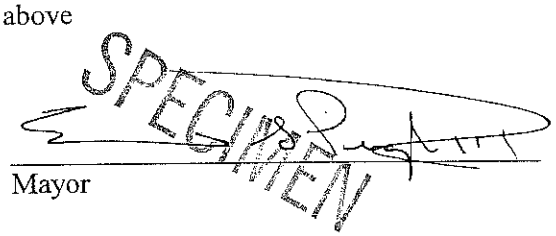
This Bond is, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, except inheritance, estate and transfer taxes.

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 issuance 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 Net 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 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.

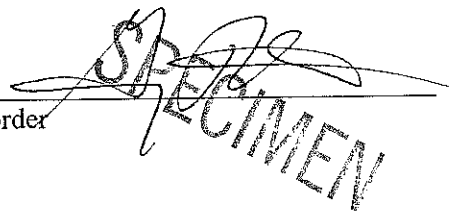
IN WITNESS WHEREOF, the CITY OF BECKLEY has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above

[SEAL]




Mayor

ATTEST:




Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A 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: December 15, 2010.

JP MORGAN CHASE BANK, N.A.
as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $2,000,000 | 12/15/2010 | (19) | |
| (2) | | (20) | |
| (3) | | (21) | |
| (4) | | (22) | |
| (5) | | (23) | |
| (6) | | (24) | |
| (7) | | (25) | |
| (8) | | (26) | |
| (9) | | (27) | |
| (10) | | (28) | |
| (11) | | (29) | |
| (12) | | (30) | |
| (13) | | (31) | |
| (14) | | (32) | |
| (15) | | (33) | |
| (16) | | (34) | |
| (17) | | (35) | |
| (18) | | (36) | |

TOTAL $_____

AMORTIZATION SCHEDULE
---- Aggregate Of Lending Loans ----

Parameter filename ..... City of Beckley - amort template
Parameter path ..... h:\recent pricing & occassional proposals\

$2,000,000 City of Beckley Stormwater Revenue Bonds Series 2010 3.87%

| date | starting balance | takedowns | debt service | interest | principal |
|---|---|---|---|---|---|
| 12/15/2010 | $ - | $ 2,000,000.00 | $ - | $ - | $ - |
| 2/1/2011 | $ 2,000,000.00 | $ - | $ 12,003.59 | $ 9,890.00 | $ 2,113.59 |
| 3/1/2011 | $ 1,997,886.41 | $ - | $ 12,003.59 | $ 6,443.18 | $ 5,560.40 |
| 4/1/2011 | $ 1,992,326.01 | $ - | $ 12,003.59 | $ 6,425.25 | $ 5,578.34 |
| 5/1/2011 | $ 1,986,747.67 | $ - | $ 12,003.59 | $ 6,407.26 | $ 5,596.33 |
| 6/1/2011 | $ 1,981,151.34 | $ - | $ 12,003.59 | $ 6,389.21 | $ 5,614.37 |
| 7/1/2011 | $ 1,975,536.97 | $ - | $ 12,003.59 | $ 6,371.11 | $ 5,632.48 |
| 8/1/2011 | $ 1,969,904.49 | $ - | $ 12,003.59 | $ 6,352.94 | $ 5,650.65 |
| 9/1/2011 | $ 1,964,253.84 | $ - | $ 12,003.59 | $ 6,334.72 | $ 5,668.87 |
| 10/1/2011 | $ 1,958,584.97 | $ - | $ 12,003.59 | $ 6,316.44 | $ 5,687.15 |
| 11/1/2011 | $ 1,952,897.82 | $ - | $ 12,003.59 | $ 6,298.10 | $ 5,705.49 |
| 12/1/2011 | $ 1,947,192.33 | $ - | $ 12,003.59 | $ 6,279.70 | $ 5,723.89 |
| 1/1/2012 | $ 1,941,468.44 | $ - | $ 12,003.59 | $ 6,261.24 | $ 5,742.35 |
| 2/1/2012 | $ 1,935,726.09 | $ - | $ 12,003.59 | $ 6,242.72 | $ 5,760.87 |
| 3/1/2012 | $ 1,929,965.21 | $ - | $ 12,003.59 | $ 6,224.14 | $ 5,779.45 |
| 4/1/2012 | $ 1,924,185.76 | $ - | $ 12,003.59 | $ 6,205.50 | $ 5,798.09 |
| 5/1/2012 | $ 1,918,387.67 | $ - | $ 12,003.59 | $ 6,186.80 | $ 5,816.79 |
| 6/1/2012 | $ 1,912,570.89 | $ - | $ 12,003.59 | $ 6,168.04 | $ 5,835.55 |
| 7/1/2012 | $ 1,906,735.34 | $ - | $ 12,003.59 | $ 6,149.22 | $ 5,854.37 |
| 8/1/2012 | $ 1,900,880.97 | $ - | $ 12,003.59 | $ 6,130.34 | $ 5,873.25 |
| 9/1/2012 | $ 1,895,007.73 | $ - | $ 12,003.59 | $ 6,111.40 | $ 5,892.19 |
| 10/1/2012 | $ 1,889,115.54 | $ - | $ 12,003.59 | $ 6,092.40 | $ 5,911.19 |
| 11/1/2012 | $ 1,883,204.35 | $ - | $ 12,003.59 | $ 6,073.33 | $ 5,930.25 |
| 12/1/2012 | $ 1,877,274.10 | $ - | $ 12,003.59 | $ 6,054.21 | $ 5,949.38 |
| 1/1/2013 | $ 1,871,324.72 | $ - | $ 12,003.59 | $ 6,035.02 | $ 5,968.57 |
| 2/1/2013 | $ 1,865,356.15 | $ - | $ 12,003.59 | $ 6,015.77 | $ 5,987.81 |
| 3/1/2013 | $ 1,859,368.34 | $ - | $ 12,003.59 | $ 5,996.46 | $ 6,007.12 |
| 4/1/2013 | $ 1,853,361.21 | $ - | $ 12,003.59 | $ 5,977.09 | $ 6,026.50 |
| 5/1/2013 | $ 1,847,334.71 | $ - | $ 12,003.59 | $ 5,957.65 | $ 6,045.93 |
| 6/1/2013 | $ 1,841,288.78 | $ - | $ 12,003.59 | $ 5,938.16 | $ 6,065.43 |
| 7/1/2013 | $ 1,835,223.35 | $ - | $ 12,003.59 | $ 5,918.60 | $ 6,084.99 |
| 8/1/2013 | $ 1,829,138.36 | $ - | $ 12,003.59 | $ 5,898.97 | $ 6,104.62 |
| 9/1/2013 | $ 1,823,033.74 | $ - | $ 12,003.59 | $ 5,879.28 | $ 6,124.30 |
| 10/1/2013 | $ 1,816,909.44 | $ - | $ 12,003.59 | $ 5,859.53 | $ 6,144.05 |
| 11/1/2013 | $ 1,810,765.38 | $ - | $ 12,003.59 | $ 5,839.72 | $ 6,163.87 |
| 12/1/2013 | $ 1,804,601.51 | $ - | $ 12,003.59 | $ 5,819.84 | $ 6,183.75 |
| 1/1/2014 | $ 1,798,417.76 | $ - | $ 12,003.59 | $ 5,799.90 | $ 6,203.69 |
| 2/1/2014 | $ 1,792,214.07 | $ - | $ 12,003.59 | $ 5,779.89 | $ 6,223.70 |
| 3/1/2014 | $ 1,785,990.37 | $ - | $ 12,003.59 | $ 5,759.82 | $ 6,243.77 |
| 4/1/2014 | $ 1,779,746.61 | $ - | $ 12,003.59 | $ 5,739.68 | $ 6,263.91 |
| 5/1/2014 | $ 1,773,482.70 | $ - | $ 12,003.59 | $ 5,719.48 | $ 6,284.11 |
| 6/1/2014 | $ 1,767,198.59 | $ - | $ 12,003.59 | $ 5,699.22 | $ 6,304.37 |
| 7/1/2014 | $ 1,760,894.22 | $ - | $ 12,003.59 | $ 5,678.88 | $ 6,324.70 |
| 8/1/2014 | $ 1,754,569.52 | $ - | $ 12,003.59 | $ 5,658.49 | $ 6,345.10 |
| 9/1/2014 | $ 1,748,224.42 | $ - | $ 12,003.59 | $ 5,638.02 | $ 6,365.56 |
| 10/1/2014 | $ 1,741,858.85 | $ - | $ 12,003.59 | $ 5,617.49 | $ 6,386.09 |

| | | | | | |
|---|---|---|---|---|---|
| 11/1/2014 | $ 1,735,472.76 | $ - | $ 12,003.59 | $ 5,596.90 | $ 6,406.69 |
| 12/1/2014 | $ 1,729,066.07 | $ - | $ 12,003.59 | $ 5,576.24 | $ 6,427.35 |
| 1/1/2015 | $ 1,722,638.72 | $ - | $ 12,003.59 | $ 5,555.51 | $ 6,448.08 |
| 2/1/2015 | $ 1,716,190.64 | $ - | $ 12,003.59 | $ 5,534.71 | $ 6,468.87 |
| 3/1/2015 | $ 1,709,721.77 | $ - | $ 12,003.59 | $ 5,513.85 | $ 6,489.74 |
| 4/1/2015 | $ 1,703,232.04 | $ - | $ 12,003.59 | $ 5,492.92 | $ 6,510.66 |
| 5/1/2015 | $ 1,696,721.37 | $ - | $ 12,003.59 | $ 5,471.93 | $ 6,531.66 |
| 6/1/2015 | $ 1,690,189.71 | $ - | $ 12,003.59 | $ 5,450.86 | $ 6,552.73 |
| 7/1/2015 | $ 1,683,636.98 | $ - | $ 12,003.59 | $ 5,429.73 | $ 6,573.86 |
| 8/1/2015 | $ 1,677,063.12 | $ - | $ 12,003.59 | $ 5,408.53 | $ 6,595.06 |
| 9/1/2015 | $ 1,670,468.07 | $ - | $ 12,003.59 | $ 5,387.26 | $ 6,616.33 |
| 10/1/2015 | $ 1,663,851.74 | $ - | $ 12,003.59 | $ 5,365.92 | $ 6,637.67 |
| 11/1/2015 | $ 1,657,214.07 | $ - | $ 12,003.59 | $ 5,344.52 | $ 6,659.07 |
| 12/1/2015 | $ 1,650,555.00 | $ - | $ 12,003.59 | $ 5,323.04 | $ 6,680.55 |
| 1/1/2016 | $ 1,643,874.45 | $ - | $ 12,003.59 | $ 5,301.50 | $ 6,702.09 |
| 2/1/2016 | $ 1,637,172.36 | $ - | $ 12,003.59 | $ 5,279.88 | $ 6,723.71 |
| 3/1/2016 | $ 1,630,448.65 | $ - | $ 12,003.59 | $ 5,258.20 | $ 6,745.39 |
| 4/1/2016 | $ 1,623,703.26 | $ - | $ 12,003.59 | $ 5,236.44 | $ 6,767.14 |
| 5/1/2016 | $ 1,616,936.11 | $ - | $ 12,003.59 | $ 5,214.62 | $ 6,788.97 |
| 6/1/2016 | $ 1,610,147.15 | $ - | $ 12,003.59 | $ 5,192.72 | $ 6,810.86 |
| 7/1/2016 | $ 1,603,336.28 | $ - | $ 12,003.59 | $ 5,170.76 | $ 6,832.83 |
| 8/1/2016 | $ 1,596,503.45 | $ - | $ 12,003.59 | $ 5,148.72 | $ 6,854.86 |
| 9/1/2016 | $ 1,589,648.59 | $ - | $ 12,003.59 | $ 5,126.62 | $ 6,876.97 |
| 10/1/2016 | $ 1,582,771.62 | $ - | $ 12,003.59 | $ 5,104.44 | $ 6,899.15 |
| 11/1/2016 | $ 1,575,872.47 | $ - | $ 12,003.59 | $ 5,082.19 | $ 6,921.40 |
| 12/1/2016 | $ 1,568,951.07 | $ - | $ 12,003.59 | $ 5,059.87 | $ 6,943.72 |
| 1/1/2017 | $ 1,562,007.35 | $ - | $ 12,003.59 | $ 5,037.47 | $ 6,966.11 |
| 2/1/2017 | $ 1,555,041.24 | $ - | $ 12,003.59 | $ 5,015.01 | $ 6,988.58 |
| 3/1/2017 | $ 1,548,052.66 | $ - | $ 12,003.59 | $ 4,992.47 | $ 7,011.12 |
| 4/1/2017 | $ 1,541,041.54 | $ - | $ 12,003.59 | $ 4,969.86 | $ 7,033.73 |
| 5/1/2017 | $ 1,534,007.81 | $ - | $ 12,003.59 | $ 4,947.18 | $ 7,056.41 |
| 6/1/2017 | $ 1,526,951.40 | $ - | $ 12,003.59 | $ 4,924.42 | $ 7,079.17 |
| 7/1/2017 | $ 1,519,872.23 | $ - | $ 12,003.59 | $ 4,901.59 | $ 7,102.00 |
| 8/1/2017 | $ 1,512,770.23 | $ - | $ 12,003.59 | $ 4,878.68 | $ 7,124.90 |
| 9/1/2017 | $ 1,505,645.32 | $ - | $ 12,003.59 | $ 4,855.71 | $ 7,147.88 |
| 10/1/2017 | $ 1,498,497.44 | $ - | $ 12,003.59 | $ 4,832.65 | $ 7,170.93 |
| 11/1/2017 | $ 1,491,326.51 | $ - | $ 12,003.59 | $ 4,809.53 | $ 7,194.06 |
| 12/1/2017 | $ 1,484,132.45 | $ - | $ 12,003.59 | $ 4,786.33 | $ 7,217.26 |
| 1/1/2018 | $ 1,476,915.19 | $ - | $ 12,003.59 | $ 4,763.05 | $ 7,240.54 |
| 2/1/2018 | $ 1,469,674.65 | $ - | $ 12,003.59 | $ 4,739.70 | $ 7,263.89 |
| 3/1/2018 | $ 1,462,410.76 | $ - | $ 12,003.59 | $ 4,716.27 | $ 7,287.31 |
| 4/1/2018 | $ 1,455,123.45 | $ - | $ 12,003.59 | $ 4,692.77 | $ 7,310.81 |
| 5/1/2018 | $ 1,447,812.63 | $ - | $ 12,003.59 | $ 4,669.20 | $ 7,334.39 |
| 6/1/2018 | $ 1,440,478.24 | $ - | $ 12,003.59 | $ 4,645.54 | $ 7,358.05 |
| 7/1/2018 | $ 1,433,120.20 | $ - | $ 12,003.59 | $ 4,621.81 | $ 7,381.78 |
| 8/1/2018 | $ 1,425,738.42 | $ - | $ 12,003.59 | $ 4,598.01 | $ 7,405.58 |
| 9/1/2018 | $ 1,418,332.84 | $ - | $ 12,003.59 | $ 4,574.12 | $ 7,429.46 |
| 10/1/2018 | $ 1,410,903.38 | $ - | $ 12,003.59 | $ 4,550.16 | $ 7,453.42 |
| 11/1/2018 | $ 1,403,449.95 | $ - | $ 12,003.59 | $ 4,526.13 | $ 7,477.46 |
| 12/1/2018 | $ 1,395,972.49 | $ - | $ 12,003.59 | $ 4,502.01 | $ 7,501.58 |
| 1/1/2019 | $ 1,388,470.91 | $ - | $ 12,003.59 | $ 4,477.82 | $ 7,525.77 |
| 2/1/2019 | $ 1,380,945.14 | $ - | $ 12,003.59 | $ 4,453.55 | $ 7,550.04 |
| 3/1/2019 | $ 1,373,395.10 | $ - | $ 12,003.59 | $ 4,429.20 | $ 7,574.39 |
| 4/1/2019 | $ 1,365,820.72 | $ - | $ 12,003.59 | $ 4,404.77 | $ 7,598.82 |
| 5/1/2019 | $ 1,358,221.90 | $ - | $ 12,003.59 | $ 4,380.27 | $ 7,623.32 |

| | | | | | |
|---|---|---|---|---|---|
| 6/1/2019 | $ 1,350,598.58 | $ - | $ 12,003.59 | $ 4,355.68 | $ 7,647.91 |
| 7/1/2019 | $ 1,342,950.67 | $ - | $ 12,003.59 | $ 4,331.02 | $ 7,672.57 |
| 8/1/2019 | $ 1,335,278.10 | $ - | $ 12,003.59 | $ 4,306.27 | $ 7,697.32 |
| 9/1/2019 | $ 1,327,580.78 | $ - | $ 12,003.59 | $ 4,281.45 | $ 7,722.14 |
| 10/1/2019 | $ 1,319,858.64 | $ - | $ 12,003.59 | $ 4,256.54 | $ 7,747.04 |
| 11/1/2019 | $ 1,312,111.60 | $ - | $ 12,003.59 | $ 4,231.56 | $ 7,772.03 |
| 12/1/2019 | $ 1,304,339.57 | $ - | $ 12,003.59 | $ 4,206.50 | $ 7,797.09 |
| 1/1/2020 | $ 1,296,542.48 | $ - | $ 12,003.59 | $ 4,181.35 | $ 7,822.24 |
| 2/1/2020 | $ 1,288,720.24 | $ - | $ 12,003.59 | $ 4,156.12 | $ 7,847.47 |
| 3/1/2020 | $ 1,280,872.77 | $ - | $ 12,003.59 | $ 4,130.81 | $ 7,872.77 |
| 4/1/2020 | $ 1,273,000.00 | $ - | $ 12,003.59 | $ 4,105.43 | $ 7,898.16 |
| 5/1/2020 | $ 1,265,101.84 | $ - | $ 12,003.59 | $ 4,079.95 | $ 7,923.63 |
| 6/1/2020 | $ 1,257,178.20 | $ - | $ 12,003.59 | $ 4,054.40 | $ 7,949.19 |
| 7/1/2020 | $ 1,249,229.01 | $ - | $ 12,003.59 | $ 4,028.76 | $ 7,974.82 |
| 8/1/2020 | $ 1,241,254.19 | $ - | $ 12,003.59 | $ 4,003.04 | $ 8,000.54 |
| 9/1/2020 | $ 1,233,253.65 | $ - | $ 12,003.59 | $ 3,977.24 | $ 8,026.34 |
| 10/1/2020 | $ 1,225,227.30 | $ - | $ 12,003.59 | $ 3,951.36 | $ 8,052.23 |
| 11/1/2020 | $ 1,217,175.07 | $ - | $ 12,003.59 | $ 3,925.39 | $ 8,078.20 |
| 12/1/2020 | $ 1,209,096.87 | $ - | $ 12,003.59 | $ 3,899.34 | $ 8,104.25 |
| 1/1/2021 | $ 1,200,992.62 | $ - | $ 12,003.59 | $ 3,873.20 | $ 8,130.39 |
| 2/1/2021 | $ 1,192,862.24 | $ - | $ 12,003.59 | $ 3,846.98 | $ 8,156.61 |
| 3/1/2021 | $ 1,184,705.63 | $ - | $ 12,003.59 | $ 3,820.68 | $ 8,182.91 |
| 4/1/2021 | $ 1,176,522.72 | $ - | $ 12,003.59 | $ 3,794.29 | $ 8,209.30 |
| 5/1/2021 | $ 1,168,313.42 | $ - | $ 12,003.59 | $ 3,767.81 | $ 8,235.78 |
| 6/1/2021 | $ 1,160,077.64 | $ - | $ 12,003.59 | $ 3,741.25 | $ 8,262.34 |
| 7/1/2021 | $ 1,151,815.30 | $ - | $ 12,003.59 | $ 3,714.60 | $ 8,288.98 |
| 8/1/2021 | $ 1,143,526.32 | $ - | $ 12,003.59 | $ 3,687.87 | $ 8,315.72 |
| 9/1/2021 | $ 1,135,210.60 | $ - | $ 12,003.59 | $ 3,661.05 | $ 8,342.53 |
| 10/1/2021 | $ 1,126,868.07 | $ - | $ 12,003.59 | $ 3,634.15 | $ 8,369.44 |
| 11/1/2021 | $ 1,118,498.63 | $ - | $ 12,003.59 | $ 3,607.16 | $ 8,396.43 |
| 12/1/2021 | $ 1,110,102.20 | $ - | $ 12,003.59 | $ 3,580.08 | $ 8,423.51 |
| 1/1/2022 | $ 1,101,678.69 | $ - | $ 12,003.59 | $ 3,552.91 | $ 8,450.67 |
| 2/1/2022 | $ 1,093,228.02 | $ - | $ 12,003.59 | $ 3,525.66 | $ 8,477.93 |
| 3/1/2022 | $ 1,084,750.09 | $ - | $ 12,003.59 | $ 3,498.32 | $ 8,505.27 |
| 4/1/2022 | $ 1,076,244.82 | $ - | $ 12,003.59 | $ 3,470.89 | $ 8,532.70 |
| 5/1/2022 | $ 1,067,712.12 | $ - | $ 12,003.59 | $ 3,443.37 | $ 8,560.22 |
| 6/1/2022 | $ 1,059,151.91 | $ - | $ 12,003.59 | $ 3,415.76 | $ 8,587.82 |
| 7/1/2022 | $ 1,050,564.08 | $ - | $ 12,003.59 | $ 3,388.07 | $ 8,615.52 |
| 8/1/2022 | $ 1,041,948.56 | $ - | $ 12,003.59 | $ 3,360.28 | $ 8,643.30 |
| 9/1/2022 | $ 1,033,305.26 | $ - | $ 12,003.59 | $ 3,332.41 | $ 8,671.18 |
| 10/1/2022 | $ 1,024,634.08 | $ - | $ 12,003.59 | $ 3,304.44 | $ 8,699.14 |
| 11/1/2022 | $ 1,015,934.94 | $ - | $ 12,003.59 | $ 3,276.39 | $ 8,727.20 |
| 12/1/2022 | $ 1,007,207.74 | $ - | $ 12,003.59 | $ 3,248.24 | $ 8,755.34 |
| 1/1/2023 | $ 998,452.40 | $ - | $ 12,003.59 | $ 3,220.01 | $ 8,783.58 |
| 2/1/2023 | $ 989,668.82 | $ - | $ 12,003.59 | $ 3,191.68 | $ 8,811.91 |
| 3/1/2023 | $ 980,856.91 | $ - | $ 12,003.59 | $ 3,163.26 | $ 8,840.32 |
| 4/1/2023 | $ 972,016.59 | $ - | $ 12,003.59 | $ 3,134.75 | $ 8,868.83 |
| 5/1/2023 | $ 963,147.76 | $ - | $ 12,003.59 | $ 3,106.15 | $ 8,897.44 |
| 6/1/2023 | $ 954,250.32 | $ - | $ 12,003.59 | $ 3,077.46 | $ 8,926.13 |
| 7/1/2023 | $ 945,324.19 | $ - | $ 12,003.59 | $ 3,048.67 | $ 8,954.92 |
| 8/1/2023 | $ 936,369.27 | $ - | $ 12,003.59 | $ 3,019.79 | $ 8,983.80 |
| 9/1/2023 | $ 927,385.47 | $ - | $ 12,003.59 | $ 2,990.82 | $ 9,012.77 |
| 10/1/2023 | $ 918,372.70 | $ - | $ 12,003.59 | $ 2,961.75 | $ 9,041.84 |
| 11/1/2023 | $ 909,330.87 | $ - | $ 12,003.59 | $ 2,932.59 | $ 9,071.00 |
| 12/1/2023 | $ 900,259.87 | $ - | $ 12,003.59 | $ 2,903.34 | $ 9,100.25 |

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|---|---|---|---|---|---|
| 1/1/2024 | $ 891,159.62 | $ - | $ 12,003.59 | $ 2,873.99 | $ 9,129.60 |
| 2/1/2024 | $ 882,030.02 | $ - | $ 12,003.59 | $ 2,844.55 | $ 9,159.04 |
| 3/1/2024 | $ 872,870.98 | $ - | $ 12,003.59 | $ 2,815.01 | $ 9,188.58 |
| 4/1/2024 | $ 863,682.40 | $ - | $ 12,003.59 | $ 2,785.38 | $ 9,218.21 |
| 5/1/2024 | $ 854,464.19 | $ - | $ 12,003.59 | $ 2,755.65 | $ 9,247.94 |
| 6/1/2024 | $ 845,216.25 | $ - | $ 12,003.59 | $ 2,725.82 | $ 9,277.77 |
| 7/1/2024 | $ 835,938.49 | $ - | $ 12,003.59 | $ 2,695.90 | $ 9,307.69 |
| 8/1/2024 | $ 826,630.80 | $ - | $ 12,003.59 | $ 2,665.88 | $ 9,337.70 |
| 9/1/2024 | $ 817,293.10 | $ - | $ 12,003.59 | $ 2,635.77 | $ 9,367.82 |
| 10/1/2024 | $ 807,925.28 | $ - | $ 12,003.59 | $ 2,605.56 | $ 9,398.03 |
| 11/1/2024 | $ 798,527.25 | $ - | $ 12,003.59 | $ 2,575.25 | $ 9,428.34 |
| 12/1/2024 | $ 789,098.91 | $ - | $ 12,003.59 | $ 2,544.84 | $ 9,458.74 |
| 1/1/2025 | $ 779,640.17 | $ - | $ 12,003.59 | $ 2,514.34 | $ 9,489.25 |
| 2/1/2025 | $ 770,150.92 | $ - | $ 12,003.59 | $ 2,483.74 | $ 9,519.85 |
| 3/1/2025 | $ 760,631.07 | $ - | $ 12,003.59 | $ 2,453.04 | $ 9,550.55 |
| 4/1/2025 | $ 751,080.52 | $ - | $ 12,003.59 | $ 2,422.23 | $ 9,581.35 |
| 5/1/2025 | $ 741,499.16 | $ - | $ 12,003.59 | $ 2,391.33 | $ 9,612.25 |
| 6/1/2025 | $ 731,886.91 | $ - | $ 12,003.59 | $ 2,360.34 | $ 9,643.25 |
| 7/1/2025 | $ 722,243.66 | $ - | $ 12,003.59 | $ 2,329.24 | $ 9,674.35 |
| 8/1/2025 | $ 712,569.31 | $ - | $ 12,003.59 | $ 2,298.04 | $ 9,705.55 |
| 9/1/2025 | $ 702,863.75 | $ - | $ 12,003.59 | $ 2,266.74 | $ 9,736.85 |
| 10/1/2025 | $ 693,126.90 | $ - | $ 12,003.59 | $ 2,235.33 | $ 9,768.25 |
| 11/1/2025 | $ 683,358.65 | $ - | $ 12,003.59 | $ 2,203.83 | $ 9,799.76 |
| 12/1/2025 | $ 673,558.89 | $ - | $ 12,003.59 | $ 2,172.23 | $ 9,831.36 |
| 1/1/2026 | $ 663,727.53 | $ - | $ 12,003.59 | $ 2,140.52 | $ 9,863.07 |
| 2/1/2026 | $ 653,864.46 | $ - | $ 12,003.59 | $ 2,108.71 | $ 9,894.87 |
| 3/1/2026 | $ 643,969.59 | $ - | $ 12,003.59 | $ 2,076.80 | $ 9,926.79 |
| 4/1/2026 | $ 634,042.80 | $ - | $ 12,003.59 | $ 2,044.79 | $ 9,958.80 |
| 5/1/2026 | $ 624,084.00 | $ - | $ 12,003.59 | $ 2,012.67 | $ 9,990.92 |
| 6/1/2026 | $ 614,093.09 | $ - | $ 12,003.59 | $ 1,980.45 | $ 10,023.14 |
| 7/1/2026 | $ 604,069.95 | $ - | $ 12,003.59 | $ 1,948.13 | $ 10,055.46 |
| 8/1/2026 | $ 594,014.49 | $ - | $ 12,003.59 | $ 1,915.70 | $ 10,087.89 |
| 9/1/2026 | $ 583,926.60 | $ - | $ 12,003.59 | $ 1,883.16 | $ 10,120.42 |
| 10/1/2026 | $ 573,806.17 | $ - | $ 12,003.59 | $ 1,850.52 | $ 10,153.06 |
| 11/1/2026 | $ 563,653.11 | $ - | $ 12,003.59 | $ 1,817.78 | $ 10,185.81 |
| 12/1/2026 | $ 553,467.30 | $ - | $ 12,003.59 | $ 1,784.93 | $ 10,218.66 |
| 1/1/2027 | $ 543,248.65 | $ - | $ 12,003.59 | $ 1,751.98 | $ 10,251.61 |
| 2/1/2027 | $ 532,997.03 | $ - | $ 12,003.59 | $ 1,718.92 | $ 10,284.67 |
| 3/1/2027 | $ 522,712.36 | $ - | $ 12,003.59 | $ 1,685.75 | $ 10,317.84 |
| 4/1/2027 | $ 512,394.52 | $ - | $ 12,003.59 | $ 1,652.47 | $ 10,351.12 |
| 5/1/2027 | $ 502,043.41 | $ - | $ 12,003.59 | $ 1,619.09 | $ 10,384.50 |
| 6/1/2027 | $ 491,658.91 | $ - | $ 12,003.59 | $ 1,585.60 | $ 10,417.99 |
| 7/1/2027 | $ 481,240.92 | $ - | $ 12,003.59 | $ 1,552.00 | $ 10,451.59 |
| 8/1/2027 | $ 470,789.33 | $ - | $ 12,003.59 | $ 1,518.30 | $ 10,485.29 |
| 9/1/2027 | $ 460,304.04 | $ - | $ 12,003.59 | $ 1,484.48 | $ 10,519.11 |
| 10/1/2027 | $ 449,784.93 | $ - | $ 12,003.59 | $ 1,450.56 | $ 10,553.03 |
| 11/1/2027 | $ 439,231.90 | $ - | $ 12,003.59 | $ 1,416.52 | $ 10,587.06 |
| 12/1/2027 | $ 428,644.84 | $ - | $ 12,003.59 | $ 1,382.38 | $ 10,621.21 |
| 1/1/2028 | $ 418,023.63 | $ - | $ 12,003.59 | $ 1,348.13 | $ 10,655.46 |
| 2/1/2028 | $ 407,368.17 | $ - | $ 12,003.59 | $ 1,313.76 | $ 10,689.83 |
| 3/1/2028 | $ 396,678.34 | $ - | $ 12,003.59 | $ 1,279.29 | $ 10,724.30 |
| 4/1/2028 | $ 385,954.04 | $ - | $ 12,003.59 | $ 1,244.70 | $ 10,758.89 |
| 5/1/2028 | $ 375,195.16 | $ - | $ 12,003.59 | $ 1,210.00 | $ 10,793.58 |
| 6/1/2028 | $ 364,401.57 | $ - | $ 12,003.59 | $ 1,175.20 | $ 10,828.39 |
| 7/1/2028 | $ 353,573.18 | $ - | $ 12,003.59 | $ 1,140.27 | $ 10,863.31 |

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|---|---|---|---|---|---|
| 8/1/2028 | $ 342,709.87 | $ - | $ 12,003.59 | $ 1,105.24 | $ 10,898.35 |
| 9/1/2028 | $ 331,811.52 | $ - | $ 12,003.59 | $ 1,070.09 | $ 10,933.50 |
| 10/1/2028 | $ 320,878.02 | $ - | $ 12,003.59 | $ 1,034.83 | $ 10,968.76 |
| 11/1/2028 | $ 309,909.26 | $ - | $ 12,003.59 | $ 999.46 | $ 11,004.13 |
| 12/1/2028 | $ 298,905.13 | $ - | $ 12,003.59 | $ 963.97 | $ 11,039.62 |
| 1/1/2029 | $ 287,865.52 | $ - | $ 12,003.59 | $ 928.37 | $ 11,075.22 |
| 2/1/2029 | $ 276,790.29 | $ - | $ 12,003.59 | $ 892.65 | $ 11,110.94 |
| 3/1/2029 | $ 265,679.35 | $ - | $ 12,003.59 | $ 856.82 | $ 11,146.77 |
| 4/1/2029 | $ 254,532.58 | $ - | $ 12,003.59 | $ 820.87 | $ 11,182.72 |
| 5/1/2029 | $ 243,349.86 | $ - | $ 12,003.59 | $ 784.80 | $ 11,218.78 |
| 6/1/2029 | $ 232,131.08 | $ - | $ 12,003.59 | $ 748.62 | $ 11,254.97 |
| 7/1/2029 | $ 220,876.11 | $ - | $ 12,003.59 | $ 712.33 | $ 11,291.26 |
| 8/1/2029 | $ 209,584.85 | $ - | $ 12,003.59 | $ 675.91 | $ 11,327.68 |
| 9/1/2029 | $ 198,257.17 | $ - | $ 12,003.59 | $ 639.38 | $ 11,364.21 |
| 10/1/2029 | $ 186,892.97 | $ - | $ 12,003.59 | $ 602.73 | $ 11,400.86 |
| 11/1/2029 | $ 175,492.11 | $ - | $ 12,003.59 | $ 565.96 | $ 11,437.63 |
| 12/1/2029 | $ 164,054.48 | $ - | $ 12,003.59 | $ 529.08 | $ 11,474.51 |
| 1/1/2030 | $ 152,579.97 | $ - | $ 12,003.59 | $ 492.07 | $ 11,511.52 |
| 2/1/2030 | $ 141,068.45 | $ - | $ 12,003.59 | $ 454.95 | $ 11,548.64 |
| 3/1/2030 | $ 129,519.81 | $ - | $ 12,003.59 | $ 417.70 | $ 11,585.89 |
| 4/1/2030 | $ 117,933.92 | $ - | $ 12,003.59 | $ 380.34 | $ 11,623.25 |
| 5/1/2030 | $ 106,310.67 | $ - | $ 12,003.59 | $ 342.85 | $ 11,660.74 |
| 6/1/2030 | $ 94,649.94 | $ - | $ 12,003.59 | $ 305.25 | $ 11,698.34 |
| 7/1/2030 | $ 82,951.59 | $ - | $ 12,003.59 | $ 267.52 | $ 11,736.07 |
| 8/1/2030 | $ 71,215.53 | $ - | $ 12,003.59 | $ 229.67 | $ 11,773.92 |
| 9/1/2030 | $ 59,441.61 | $ - | $ 12,003.59 | $ 191.70 | $ 11,811.89 |
| 10/1/2030 | $ 47,629.72 | $ - | $ 12,003.59 | $ 153.61 | $ 11,849.98 |
| 11/1/2030 | $ 35,779.74 | $ - | $ 12,003.59 | $ 115.39 | $ 11,888.20 |
| 12/1/2030 | $ 23,891.54 | $ - | $ 12,003.59 | $ 77.05 | $ 11,926.54 |
| 1/1/2031 | $ 11,965.00 | $ - | $ 12,003.59 | $ 38.59 | $ 11,965.00 |
| TOTAL | $ 272,068,555.74 | $ 2,000,000.00 | $ 2,880,861.09 | $ 880,861.09 | $ 2,000,000.00 |

(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:

_____

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

December 15, 2010

City of Beckley
Stormwater Revenue Bonds, Series 2010 A

City of Beckley
Beckley, West Virginia

JP Morgan Chase Bank, N.A.
Beckley, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the City of Beckley (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its $2,000,000 Stormwater Revenue Bonds, Series 2010 A, dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of the Bonds, which are to be purchased by JP Morgan Chase Bank, N.A. (the "Purchaser"). The Bonds are originally issued in the form of one Bond, registered as to interest and principal to the Purchaser. The Bonds shall be dated December 15, 2010, and shall finally mature January 1, 2031, and shall bear interest at the rate of 3.87% per annum. Principal and interest payments shall be payable monthly commencing February 1, 2011, to and including January 1, 2031.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public stormwater system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on November 9, 2010, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 14, 2010 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued. The Bonds are subject to redemption prior to maturity under the conditions and subject to the limitations set forth in the Bond Legislation. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation when used herein.

Based upon the foregoing, and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Purchaser and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA GREEN), dated September 18, 2009, issued in the original aggregate principal amount of $296,952 (the "Series 2009 B-2 Bonds" or the "Prior Bonds").

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder (the "Code") and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Ordinance, and in certain certificates delivered in connection with the issuance of the Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds except as expressly set forth in paragraph 6.

5. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, and the interest on the Bonds, if any, is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

6. The Issuer has designated the Bonds as "qualified tax-exempt obligations" for purposes of the Code, and has covenanted that it does not reasonably expect to issue more than $30,000,000 of tax-exempt obligations (other than private activity bonds and obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligations) during the calendar year 2010. Therefore, the Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

STEPTOE & JOHNSON PLLC

12.10.10
059320.00007

CITY OF
BECKLEY
P. O. BOX 2514 • BECKLEY, WEST VIRGINIA 25802-2514

WILLIAM H. FILE III
City Attorney

Phone: (304) 256-1750

December 15, 2010

City of Beckley
Stormwater Revenue Bonds, Series 2010 A

City of Beckley
Beckley, West Virginia

JP Morgan Chase Bank, N.A.
Beckley, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to the City of Beckley, in Raleigh County, West Virginia (the "Issuer"), in connection with the issuance and sale of the above-captioned bonds (the "Bonds"). As such counsel, I have reviewed copies of the commitment letter dated December 1, 2010, from JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Purchaser"), the Bond Ordinance of the Issuer duly enacted November 9, 2010, as supplemented by the Supplemental Resolution of the Issuer duly adopted December 14, 2010 (collectively, the "Ordinance"), and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein.

I am of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia.

2. The Mayor and Recorder, members of the Council of the Issuer and members of the Sanitary Board have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

3. The Ordinance has been duly adopted and enacted by the Issuer, is in full force and effect as of the date hereof and constitutes a valid and binding obligation of the Issuer enforceable in accordance with its terms.

4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.

5. It is to be understood that the rights of the holders of the Bonds and the enforceability of liens, pledges, rights or remedies with respect to the Bonds and the Ordinance are subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally, and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations required by law for the operation of the System and the issuance of the Bonds.

7. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds and the Ordinance, the operation of the System, the validity of the Bonds or pledge of the funds set forth in the Ordinance.

Very truly yours,

William H. File, III
City Solicitor

059320.00007

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

GENERAL CERTIFICATE OF ISSUER:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE
10. RATES
11. SIGNATURES AND DELIVERY
12. BOND PROCEEDS
13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
14. SPECIMEN BOND
15. CONFLICT OF INTEREST
16. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR and RECORDER of the City of Beckley in Raleigh County, West Virginia (the "Issuer"), on this the 15th day of December, 2010, hereby certify in connection with the Issuer's Stormwater Revenue Bonds, Series 2010 A, dated the date hereof (the "Bonds" or the "Series 2010 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance of the Issuer duly enacted November 9, 2010, and the Supplemental Resolution duly adopted December 14, 2010, (collectively, the "Bond Legislation").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Net Revenues or any grants, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other monies or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project,

the operation of the System, the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been or will be solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. INDEBTEDNESS There are outstanding obligations of the Issuer which will rank on a parity with the Series 2010 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Stormwater Revenue Bonds, Series 2009 B-2, dated September 18, 2009, issued in the aggregate principal amount of $296,952 (the "Series 2009 B-2 Bonds" or the "Prior Bonds").

5. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

Bond Ordinance

Supplemental Resolution

Charter and Rules of Procedure

Oaths of Office of Officers and Councilmembers

Ordinance Creating Sanitary Board

Petition of Sanitary Board

Stormwater Rate Ordinance

Affidavit of Publication of Stormwater Rate Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Stormwater Rate Ordinance

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution

Closing Memorandum

IRS Form 8038- G

Consent of WDA

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "City of Beckley." The Issuer is a municipal corporation in Raleigh County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its council, consisting of a Mayor, a Recorder and 7 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

| Name | Date of Commencement of Office | Date of Termination of Office |
|---|---|---|
| Emmett S. Pugh, III, Mayor | May 1, 2007 | May 1, 2011 |
| A.K. Minter, Jr., Councilmember | May 1, 2007 | May 1, 2011 |
| Mike Atterson, Councilmember | May 1, 2007 | May 1, 2011 |
| Cedric Robertson, Councilmember | May 1, 2007 | May 1, 2011 |
| Ann Worley, Councilmember | May 1, 2007 | May 1, 2011 |
| Frank Williams, Councilmember | May 1, 2007 | May 1, 2011 |
| Lee Leftwich, Councilmember | May 1, 2007 | May 1, 2011 |
| Robert Rappold, Councilmember | May 1, 2007 | May 1, 2011 |

The duly appointed and acting members of the Sanitary Board of the Issuer are as follows:

| Name | | |
|---|---|---|
| Emmett S. Pugh, III | - | Chairman |
| John Sadowski | - | Member |
| Wayne Davis | - | Member |

The duly appointed Recorder is Gary Sutphin and the acting Counsel to the Issuer is Bill File, Beckley, West Virginia.

7. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

8. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction and financing of the Project or the operation of the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation is in full force and effect.

10. RATES: On February 24, 2009, the Issuer passed a stormwater rate ordinance establishing new rates and charges for the stormwater system.

11. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by his or her manual signature, and the undersigned Recorder did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Purchaser as the original purchaser of the Bonds. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

12. BOND PROCEEDS: On the date hereof, the Issuer received $2,000,000 from the Purchaser, being the entire principal amount of the Bonds.

13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to

contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in *The Register Herald*, a qualified newspapers published in the City of Beckley, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of Governing Body on the 9th day of November, 2010, at 7:30 p.m., in the Council Chambers at the City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

14. SPECIMEN BOND: Delivered concurrently herewith is a true and accurate specimen of the Bond.

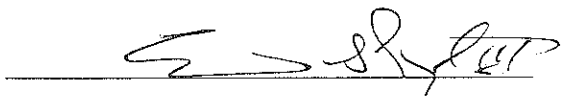
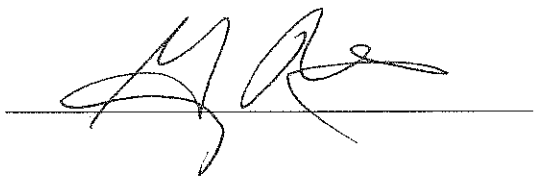
15. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the Board has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

16. EXECUTION OF COUNTERPARTS: This document 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.

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of the CITY OF BECKLEY on the day and year first written above.

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
| --- | --- |
|  | Mayor |
|  | Recorder |

12.07.10
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SCH
Smith, Cochran & Hicks, P.L.L.C.
Certified Public Accountants Oak Hill Charleston Montgomery
405 Capitol Street • Suite 908 • Charleston, WV 25301 • 304-345-1151 • Fax 304-346-6731

December 15, 2010

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

City of Beckley
Beckley, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

JPMorgan Chase Bank, N.A.
Beckley, West Virginia

Ladies and Gentlemen:

Based upon the principal and interest payments for the proposed $2,000,000 Stormwater Revenue Bonds, Series 2010 A (the "Bonds"), the stormwater rates and charges set forth in the Stormwater Rate Ordinance enacted February 24, 2009, and the projected operating expenses as furnished to me by the City of Beckley (the "Issuer"), it is my opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the stormwater system (the "System") of the Issuer, will be sufficient: (i) to pay 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 debt service on the Bonds and all other obligations secured by or payable from the revenues of the System on a parity with the Bonds, including the Issuer's Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA GREEN), dated September 18, 2009, issued in the original aggregate principal amount of $296,952 (the "Series 2009 B-2 Bonds" or the "Prior Bonds").

It is further my opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Bonds, are not less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Bonds and the Prior Bonds.

Sincerely,

Todd F. Dingess, CPA

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

CERTIFICATE AS TO ARBITRAGE

On this 15th day of December, 2010, the undersigned Mayor of the City of Beckley (the "Issuer"), being the official of the Issuer charged with the responsibility for issuing the above-referenced bonds (the "Bonds") of the Issuer, and acting for the Issuer and in its name, hereby certifies as follows with regard to the Bonds and use of the proceeds thereof, all capitalized terms used herein and not otherwise defined herein to have the same meanings set forth in the Bond Ordinance duly enacted by the Issuer on November 9, 2010 as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 14, 2010 (collectively, the "Ordinance"):

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or any predecessor thereto (collectively, the "Code"). We are officers of the Issuer duly charged with the responsibility of issuing the Bonds. We are familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its obligations or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on December 15, 2010, the date on which the Bonds are to be physically delivered in exchange for more than a de minimus amount of the principal of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted to not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

6. The Bonds were sold on December 15, 2010, to JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Purchaser"), for a purchase price of $2,000,000, being the par value thereof, there being no interest accrued thereon.

7. The entire principal of the Bonds in the amount of $2,000,000 will be paid to the Issuer on the Closing Date and deposited in the Series 2010 A Bonds Construction Trust Fund for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public stormwater system of the Issuer (the "Project"); and (ii) paying costs of issuance and related costs thereof. All of such monies are necessary for such purpose.

8. All proceeds from the sale of the Bonds, together with any investment earnings thereon, if any, will be expended for payment of such costs of the Project from the Series 2010 A Bonds Construction Trust Fund on or before June 1, 2012.

9. Sources and uses of the proceeds of the Bonds are as follows:

| | |
|---|---|
| SOURCES | |
| Gross Proceeds of the Bonds | $2,000,000 |
| Total Sources | $2,000,000 |
| USES | |
| Construction Costs | $1,987,500 |
| Costs of Issuance | $12,500 |
| Total Uses | $2,000,000 |

The costs of paying the costs of the Project and the costs of issuance of the Bonds is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds, no other funds of the Issuer will be available to meet such costs, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1(c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average expected economic life of the betterments and improvements for the System, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article IV of the Bond Ordinance, the following special funds have been created or continued:

(1) Revenue Fund (established by Prior Ordinance);

(2) Rebate Fund;

(3) Series 2010 A Bonds Sinking Fund; and

(4) Series 2010 A Bonds Construction Trust Fund.

11. Pursuant to Article IV of the Bond Ordinance, the proceeds of the Bonds will be deposited in the Series 2010 A Bonds Construction Fund and applied solely to payment of the Project,

including costs of issuance of the Bonds and related costs. The Issuer reasonably expects that (i) it will incur a binding obligation to a third party to expend at least 5% of the net sale proceeds of the Bonds within 6 months following the date of issuance of the Bonds, (ii) completion of the betterments and improvements will proceed with due diligence, and (iii) it will expend at least 85% of the net sales proceeds for such costs within 3 years of the date of issuance of the Bonds.

Amounts in the Series 2010 A Bonds Construction Fund, if invested, will be invested without yield limitation for a period necessary to pay operating and other expenses of the System, not to exceed 3 years, except as otherwise set forth herein. All of such monies are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treas. Reg. §1.150-2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Issuer for costs of operating and other expenses of the System previously incurred and paid by the Issuer with its own or other funds.

12. Monies held in the Series 2010 A Bonds Sinking Fund will be used solely to pay the principal of and interest on the Bonds and will not be available to meet costs of operating and other expenses of the System.

13. Except for the Series 2010 A Bonds Sinking Fund, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay the principal and interest on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds if the Issuer encounters financial difficulties. None of the monies received from the Bonds will be deposited in any reserve or replacement fund.

14. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

15. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Purchaser.

16. All proceeds of the Bonds will be expended from the Series 2010 A Bonds Construction Trust Fund on payment of such costs of the Project and costs of issuance within 18 months from the date of issuance thereof.

17. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

18. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

19. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by any person who is not a governmental unit. Less than 5% of the proceeds of the Bonds have been or will be used to make or finance loans to any person who is not a governmental unit. The covenants of the Issuer set forth above shall not, in any way, limit or restrict the

ability of the Issuer to pay the costs of design and other preliminary costs of the Project, specifically including, but not limited to, engineering fees, from the proceeds of the Bonds.

20. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

21. The Issuer shall use the Bonds proceeds solely for such authorized costs of Project and costs of issuance and the System is and will be operated solely for a public purpose as a local governmental activity of the Issuer.

22. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

23. The Bonds are not and will not be, in whole or in part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

24. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

25. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

26. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

27. The transactions contemplated herein do not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

28. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

29. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service.

30. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

31. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

32. Steptoe & Johnson PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

33. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

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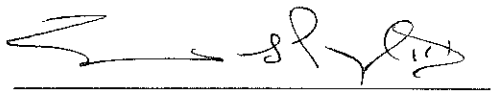
WITNESS my signature, dated as of the day and year first written above.

CITY OF BECKLEY



Mayor

12.10.10
059320.00007



5635496

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

CERTIFICATE OF REGISTRAR

JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Bank"), as Registrar for the above-captioned Bonds (the "Bonds"), hereby certifies this 15th day of December, 2010 as follows, all capitalized terms used herein to have the same meanings set forth in the Bonds Ordinance of the City of Beckley (the "Issuer") enacted November 9, 2010, as supplemented by a Supplemental Resolution adopted December 14, 2010, (collectively, the "Ordinance"):

1. The Bank is a state banking corporation duly organized and validly existing under the laws of the State of West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided under the Ordinance and to serve in the capacity of Registrar under the Ordinance.

2. The Bank has duly authorized, by all necessary action, the authentication of the Bonds and the execution and delivery of this Certificate and the acceptance of all duties of Registrar under the Ordinance, and any and all other documents and agreements as may be required to be executed, delivered and received by the Bank in order to carry out, give effect to, and consummate the transactions contemplated thereby.

3. The person indicated in paragraph 4 below was at the time of the authentication of the Bonds, and is now, a duly elected, qualified and acting incumbent in his or her office; and, pursuant to authorization from the Board of Directors of the Bank, such person, in his or her official capacity, was and is authorized to authenticate the Bonds for and on behalf of the Bank.

4. Appearing opposite the name and title of the person indicated below is a true and correct specimen of his or her signature.

| Name | Title | Signature |
|---|---|---|
| Mark Gunter | Vice President | |

5. The Bonds have been duly authenticated, registered and delivered to the Purchaser, and the first advance of principal of the Bonds has been deposited as required by the Ordinance.

IN WITNESS WHEREOF, JP Morgan Chase Bank, N.A., has caused this Certificate to be executed by its duly authorized officer, as of the day and year first written above.

JP MORGAN CHASE BANK, N.A.

By: _____
Its: Authorized Officer

12.06.10
059320.00007



5456169

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

CERTIFICATE OF PURCHASER

JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Purchaser"), as original purchaser from the City of Beckley (the "Issuer") of the above-captioned Bonds (the "Bonds"), hereby certifies this 15th day of December, 2010, that:

1. We are purchasing the Bonds for our own portfolio and none of the Bonds have been the subject of an initial offering to the public. We do not intend to divide the Bonds purchased by us nor to resell or otherwise dispose of all or any part of the Bonds purchased by us, except as permitted by law on a basis of full disclosure to any subsequent holder of the Bonds and subject to applicable securities laws and regulations thereunder.

2. The weighted average maturity of the Bonds is 11.38063 years.

3. The interest rate on the Bonds is 3.87% per annum.

4. This certificate may be relied upon by the Issuer with respect to its Certificate as to Arbitrage relating to the Bonds, and by Steptoe & Johnson PLLC in rendering their tax opinion with respect to the Bonds.

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IN WITNESS WHEREOF, JP Morgan Chase Bank, N.A., has caused this Certificate to be executed by its duly authorized officer, as of the day and year first written above.

JP MORGAN CHASE BANK, N.A.

By: _____
Its: Authorized Officer

12.06.10
059320.00007



5635653

# PART I

# THE CHARTER*

## CHAPTER 18

(House Bill No. 598—Mr. Heaberlin.)

AN ACT creating the municipal corporation of the City of Beckley, in the County of Raleigh, and annulling the charter granted to the said City of Beckley by Chapter one, Acts of Legislature of West Virginia, extra session, one thousand nine hundred and eight, passed on the fourteenth day of February, one thousand nine hundred and eight.

(Passed April 26, 1927. In effect ninety days from passage. Became a law without the approval of the Governor.)

### Sec. 1. City of Beckley to be body corporate.

That the inhabitants of that portion of Raleigh County, in the State of West Virginia, included within the boundary described in section two of this act, now a municipal corporation, existing and known as the "City of Beckley," shall continue to be a body politic and corporate under the same name, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; plead and be impleaded; contract and be contracted with; purchase, sell, lease and hold real estate and personal property, necessary to the purpose of said corporation.

### Sec. 2. Corporate limits.

The corporate limits of the City of Beckley are bounded as follows: Beginning at a corner monument set in the northern right of way boundary line of the Piney River and Paint Creek Branch of The Chesapeake and Ohio Railway Company and in the southern boundary line of Central Avenue at or near the southern end of Wilkes Avenue, the said beginning point being a common corner of the City of Beckley and the Town of Mabscott; thence following the common boundary line between the City of Beckley and the Town of Mabscott as established by survey in 1951 by Paul W. Feigley, N. 24 degrees 23 minutes E. 320.00 feet to a corner monument; thence N. 58 degrees 37 minutes W. 1848 feet to a corner monument; thence N. 76 degrees 34 minutes W. 1813.65 feet to a steel rail in Wickham Avenue of the Town of Mabscott which is the road leading from Mabscott to Mt. Tabor; thence leaving the boundary line of the Town of Mabscott and following the said road leading from Mabscott to Mt. Tabor, for a distance of approximately 900 feet to the point where said road crosses Laurel Branch; thence leaving the said road and up said Lauren Branch following the meanderings thereof approximately 3900 feet to the point where said Branch crosses the southeastern boundary line of the McLean Addition; thence leaving the middle of said Laurel Branch and following the boundary lines of the McLean Addition, S. 52 degrees 13 minutes W. 2500 feet, more or less, to a stake in a chestnut stump, the southernwest corner of the McLean Addition; thence N. 47 degrees 28 minutes W. 449.75 feet to the westernmost corner of the McLean Addition; thence following the northeast boundary line of the McLean Addition and the boundary line between Otho Hall and the John W. Ball estate approximately S. 66 degrees 00 minutes E. 1800 feet to a property corner of said Otho Hall and the John W. Ball estate on the west side of West Virginia Highway No. 3; thence crossing said highway 90

*Editor's note—The charter here set out is as contained in the book of the 1971 Code of the city; except that the term "recorder" has been changed to "recorder-treasurer", the term "county court" has been changed to "county commission", and the term "justice of the peace", has been changed to "magistrate". This charter was enacted by the state legislature on April 26, 1927; amendments are indicated by historical citations following the amended sections. Some of the section catchlines had been changed by the editor for purposes of amplification or clarification.

State law reference—For state law as to effect of the Municipal Code of West Virginia (W. Va. Code, Ch. 8) on legislative charters, see W. Va. Code, § 8-1-6.

Annotation—For a case in which the state Supreme Court of Appeals took judicial notice of the Beckley City Charter, see State v. Mills, 150 S.E. 142.

feet to a set stone, a corner of the Ewart Heights Addition and the New River Company; thence with the boundary line between the Ewart Heights Addition and the New River Company 1800 feet to northeast corner of the Ewart Heights Addition; thence with C. & O. right of way line N. 60 degrees 27 minutes E. 489.46 feet to a C. & O. concrete marker; thence N. 49 degrees 56 minutes E. 97.14 feet; N. 53 degrees 33 minutes E. 99.37 feet; N. 59 degrees 26 minutes E. 146.74 feet; N. 71 degrees 36 minutes E. 25.15 feet to the intersection of said right of way line, west line of Sprague Road; thence with said road line S. 17 degrees 32 minutes E. 92.93 feet; S. 17 degrees 12 minutes E. 54.92 feet; S. 53 degrees 19 minutes E. 68.76 feet; S. 87 degrees 45 minutes E. 219.50 feet; S. 71 degrees 36 minutes E. 54.28 feet; S. 43 degrees 50 minutes E. 28.08 feet; thence crossing Sprague Road 30 feet; thence S. 63 degrees 04 minutes E. 151.94 feet; S. 23 degrees 39 minutes E. 200 feet; thence N. 80 degrees 00 minutes E. 1066.03 feet to a set stone in western right of way line of the Piney River and Paint Creek Branch of the C. & O. Railway Company marked "City of Beckley"; thence following the said western right of way boundary line of said railway in a northeasterly direction to the point where said right of way boundary line crosses Little Whitestick; thence leaving the said right of way boundary line and down the middle of Little Whitestick Creek following the meanderings thereof to the point where Little Whitestick Creek crosses the eastern right of way boundary line of U. S. Highway No. 19-21 By-Pass; thence with the said eastern right of way boundary line of said U. S. Highway No. 19-21 By-Pass, to the intersection with the southern right of way boundary line of South Kanawha Street (Business Route 19-21); thence leaving the said eastern right of way boundary line of U.S. Highway No. 19-21 By-Pass, and following the southern right of way boundary line of South Kanawha Street, Business Route No. 19-21, in a northwesterly direction to its intersection with the southwestern boundary line of MacArthur Street; thence with the southwestern right of way boundary line of said MacArthur Street along the golf course fence in a northwesterly direction to a point in the western boundary line of the Glen Morgan Addition of the Raleigh Coal and Coke Company about 75 feet south of South Kanawha Street; thence with the said western boundary line of Glen Morgan Addition, S. 27 degrees 19 minutes W. 1100 feet, more or less, to a point of the division line between Lots 17 and 18 of Section 10 of said Glen Morgan Addition; thence S. 18 degrees 54 minutes E. 1420 feet, more or less to a white oak, a corner of the Beckley Court Addition and a point in the southern boundary line of Terrill Street; thence with the southern boundary line of Terrill Street which is also the southern boundary line of The Beckley Court Addition, S. 14 degrees 26 minutes W. 494.00 feet to a maple; thence S. 73 degrees 46 minutes W. 1403.33 feet to a white oak; thence No. 76 degrees 32 minutes W. 1339.97 feet to a stake; thence N. 34 degrees 04 minutes W. 1281.56 feet to a corner of the Beckley Court Addition; thence N. 34 degrees 04 minutes W. 735.00 feet to a corner of the Lilly Land Company Addition No. 2; thence with the boundary line of said Lilly Land Company No. 2, S. 85 degrees 06 minutes W. 131.96 feet to a point in the south line of Thirteenth Street; thence S. 34 degrees 55 minutes E. 168.30 feet to a corner of the Phipps Addition; thence S. 9 degrees 21 minutes E. 547.85 feet to the southeast corner of the Phipps Addition; thence S. 80 degrees 45 minutes W. 125.00 feet to the point where the Happy Hollow Branch crosses the southern boundary line of the Phipps Addition; thence down said Happy Hollow Branch following the meanderings thereof 450.00 feet, more or less, to the mouth of said branch; thence continuing the same general direction 100.00 feet; more or less, to a point in the northern right of way boundary line of the Piney Creek Branch of the Chesapeake and Ohio Railway Company; thence following the northern right of way boundary line of said railway in a westerly direction for a distance of 5830.00 feet to a point opposite Beckley Junction near the intersection of Cova Street; thence crossing the right of way of Piney Creek Branch of said railway, in a southwesterly direction about 90.00 feet to a point in the southern right of way boundary line; thence following the said southern right of way boundary line of said Piney Creek Branch and the western and northern right of way boundary line of the Piney River and Paint Creek Branch

of the Chesapeake and Ohio Railway Company to the point of beginning.
(Election of 8-3-54)

**Editor's note**—See official city map in office of recorder-treasurer for subsequent additions to city by annexation election, minor boundary adjustment and annexation by petition upon order of the common council.

### Sec. 3. City may be divided into wards.

Immediately upon the adoption of this provision as provided by law, the common council of said city shall appoint a nonpartisan committee whose duty it shall be to divide the city into at least five (5) but not more than nine (9) wards, the number to be determined by the said common council, having due regard to the precincts already established, the density of the population of the territory embraced in each ward and the equalization of the population of the several wards. The division into wards shall be completed not less than ninety (90) days before the first municipal primary election held hereafter.

The number of the wards within the above limits and the boundaries of the same may be changed from time to time by a similar committee appointed by the common council; provided, however, that no wards shall be created or changes made in the boundaries within sixty (60) days next preceding any municipal primary election.
(Election of 8-3-54)

**Editor's note**—For designation and boundaries of city wards, see official city map which is on file in the office of the recorder-treasurer.

### Sec. 4. City officers.

The municipal authorities of said city shall be a mayor, recorder-treasurer, police judge, and five (5) councilmen until the city shall be divided into wards as provided by section 3 of this act. Then the municipal authorities of said city shall be a mayor, recorder-treasurer, police judge; and one (1) councilman from each ward who shall be nominated and elected by the qualified voters therein; and two (2) councilmen who shall be nominated and elected at large by all of the qualified voters of the city.
(Election of 8-3-54)

### Sec. 5. Common council to exercise corporate powers.

All the corporate powers and functions pertaining to said city shall be exercised by its council, or under its authority, in the corporate name of said city, unless otherwise provided by state law or municipal ordinance.

**Editor's note**—The legislative body of the city is referred to in the 1927 charter and the 1954 amendments thereto as the "common council", the "city council", and simply as the "council". But see § 31 of the charter, which provides that the council of the city shall be officially known as and called the "Common Council of the City of Beckley".

### Sec. 6. Elective and appointive officers; procedure for appointment.

The mayor and councilmen shall be elected by the qualified voters of the said city. All other officers except a city manager of said city shall be nominated by the mayor, and he shall, by and with advice of the council (a majority of all the councilmen elected concurring by yeas and nays), appoint all officers whose offices are established by this act. No persons, after being rejected by the council shall be nominated for the same office, unless at the request of council.
(Election of 8-3-54)

### Sec. 7. List of appointive officers; salaries; term of office; removal of fire department members.

The mayor shall nominate a recorder-treasurer, a city engineer, a police judge, a city solicitor, a chief of police, a building inspector and all other officers except a city manager, whose offices may be established by ordinance of the city council or by this act, and such officers shall hold the respective offices to which they are appointed during the will and pleasure of council, except members of the fire department who may be removed at will by the mayor or any other officer so empowered by the council, or for incompetence, misfeasance or neglect of duty, or other good cause by the council, or until their successors are appointed and qualified. The several offices, or any two (2) or more may be held by the same person, provided the mayor and councilmen shall not be eligible to any of the appointive offices, and such officers shall receive such compensation as the

council may prescribe, by ordinance or order, unless said compensation be fixed by this act.
(Election of 8-3-54)

### Sec. 7a. Authority to appoint city manager; effect of appointment.

The city council in its discretion may appoint a city manager to serve at the pleasure of the council. At the time of such appointment an ordinance shall be adopted by the council delegating to such officer such powers and duties as in the opinion of the council he shall exercise, and the council may from time to time make such amendments and changes in said ordinance as it may desire.

When such an appointment has been made and such an ordinance shall have been adopted, this shall constitute an election by the council to operate under a city manager form of government, and such action shall not be rescinded thereafter except a change in this charter.
(Election of 8-3-54)

### Sec. 8. Qualifications of mayor and councilmen.

No person shall be eligible to the office of mayor or councilman unless at the time of his election he is legally entitled to vote in the city election for member of the common council; and he was for the preceding year assessed with taxes upon real or personal property within the said city of the assessed aggregate value of at least three hundred dollars ($300.00) and shall actually have paid the taxes so assessed; provided, that when the city shall have been laid off into wards, no person shall be elected a councilman from any ward unless he shall have been, for at least sixty (60) days next preceding the election a bona fide resident of the ward for which he is elected, and the removal of a councilman from the ward from which he is elected shall vacate his office.
(Election of 8-3-54)

### Sec. 9. Who may vote in city elections.

Every male and female person residing in said city shall be entitled to vote for all officers elected under this Act, except any person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason or bribery in an election, or who has not been a resident of this state for one year and of said city for six (6) months next preceding the election at which he desires to vote; provided, that when said city shall have been laid off into wards no person therein shall be entitled to vote for a councilman for his ward unless he shall have been a bona fide resident of such ward for at least sixty (60) days next preceding the municipal election.

### Sec. 10. Conduct of primary and general elections; when held; filing fee; state laws applicable.

All nominations shall be made by primaries duly called, which shall be held not less than thirty (30) days before the general municipal election, and it shall be the duty of the said recorder-treasurer to certify and enter of record all persons nominated, and no person whose nomination has not been so certified is eligible to be voted upon for office in said city. The first general municipal election hereunder shall be held on the fourth Tuesday in May, 1955, and other elections hereunder shall be held on the fourth Tuesday in May every four (4) years thereafter and the term of office shall begin on the first day of July after each such election. Each election shall be conducted under and by the direction of the council of the said city. The mode of voting shall be by ballot, but the voters shall be left free to vote an open or secret ballot, as they may elect. The election in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this state relating to general elections, except that the persons conducting said election shall, on the day the election is held deliver the ballots, tally sheets and poll books to the recorder-treasurer for safe keeping, and thereafter the council of said city shall meet within five (5) days (Sunday excepted) after said election and canvass the returns of said election, and declare the results thereof, and in all respects comply with the requirements of the statutes of the state relating to elections. The corporate authorities of said city shall perform all duties in relation to such election as the corresponding county officers carrying out similar duties for the county and in general, except as herein

otherwise provided, shall be governed by the election laws prescribed in the Code of West Virginia.

(a) [The] common council of said city shall, not later than the fifteenth day of March next preceding the election to be held on the fourth Tuesday in May, call a primary election, which shall be conducted in accordance with the laws in force in this state.

(b) When the city shall have been laid off into wards, each ward shall contain such number of voting precincts as the council shall deem advisable to place therein, but no precinct or part thereof shall lie in more than one ward.

(c) The common council shall fix a filing fee not to exceed ten dollars ($10.00) for each elective office.

All of the provisions of Chapter Three of the Code of West Virginia, 1931, and the amendments thereof, relating to elections are hereby adopted, so far as applicable, subject to the modifications contained herein.
(Election of 8-3-54)

**State law references**—For state law as to conduct of general elections, see W. Va. Code, Ch. 3, Art. 6; as to conduct of primary elections, see W. Va. Code, Ch. 3, Art. 5; see also § 8-5-14.

### Sec. 11. How tie vote decided.

Whenever two (2) or more persons receive an equal number of votes for mayor, recorder or councilman, such tie shall be decided by the council in existence at the time the election is held.

**Editor's note**—This section, which mentions the recorder, is as enacted by the legislature in 1927; § 6 of the charter, as enacted in 1927, provided that the recorder be elected, but § 6 as amended by the voters on Aug. 3, 1954, now provides that only the mayor and councilmen be elected, and § 11 (this section) was not amended to conform to § 6 as amended.

### Sec. 12. Contested elections.

All contested elections shall be heard and determined by the council in existence at the time the election is held, and the contest shall be made and conducted in the manner as provided for in contests for county and district officers, and the council by their proceedings in such cases shall, as nearly as practicable, conform with like proceedings of the county commission in such cases.

**State law references**—See Art. 9, § 9, W. Va. Constitution; name changed November 5, 1974, to "county commission" for state law as to proceedings of county courts in election contests, see W. Va. Code, §§ 3-7-6, 3-7-7.

### Sec. 13. Vacancies in appointive offices.

Whenever a vacancy from any cause shall occur in any appointive office, such vacancy shall be filled as provided by section six of this act; and, in case of vacancy in the office of councilman, recorder-treasurer or mayor, the remaining members of the council shall fill said vacancy.

**Editor's note**—This section is as enacted by the legislature in 1927; § 6, as amended by the electorate on Aug. 3, 1954, now provides that the recorder-treasurer be appointed. This section has not been amended to conform to § 6, as amended.

### Sec. 14. Oath of office.

The mayor, recorder-treasurer and councilmen, and all other officers provided for in this act, shall each, before entering upon the duties of their offices, and within fifteen (15) days after being elected or appointed, take and subscribe an oath to support the constitution of the United States, the constitution of the State of West Virginia, and to faithfully and impartially discharge the duties of his office to the best of his skill and judgment, and to account for and pay over, as required by law, all moneys which may come into his hands by virtue of his office.

### Sec. 15. Which officers to be bonded; terms, conditions, etc., of official bonds.

The recorder-treasurer of said city shall be required to give bond before entering upon the discharge of his duties in such sum as the council may require, but not less than ten thousand dollars ($10,000.00). The police judge shall, before entering upon the discharge of his duties, give bond in the sum of five thousand dollars ($5,000.00). All members of the police force shall give bond before entering upon the discharge of their duties in the sum of not less than three thousand five hundred dollars ($3,500.00). The council may, in its discretion, require bond of any other officer of the city in such amount as it may prescribe.

All bonds, obligations or other writings taken in pursuance of any provisions of this act or under the provisions of any order of said council, shall be made payable to the City of Beckley. Official bonds shall be conditioned to faithfully and impartially discharge the duties of such official's office and to account for and pay over, as required by law, all moneys coming into his hands by virtue of his office. All other bonds shall be conditioned as the council may prescribe.

The obligors in all bonds, their heirs, executors, administrators and assigns bound thereby, shall be subject to the same proceedings on such bonds, obligations or writings for enforcing the conditions or the terms thereof, by motion or otherwise, before any court of record having jurisdiction thereof, held or acting in or for said Raleigh County as the sheriff of said county, his deputies and their sureties.

Such officials as are herein required to give bonds shall give corporate surety bonds. The premium on the bond required of the recorder-treasurer and police judge shall be paid out of the city treasury.

**Sec. 16. Term of office.**

The mayor, recorder-treasurer and councilmen shall enter upon the duties of their offices upon the first day of July next after their election and their terms of office shall be for a period of four (4) years. All appointive officers shall enter upon their duties as soon as they have qualified, and shall remain in office during the will and pleasure of the council, or mayor, as hereinbefore provided.
(Election of 8-3-54)

**Editor's note**—The office of the recorder is no longer an elective office under the provisions of § 6, as amended by the electorate on Aug. 3, 1954. This section was also amended on that date, but was not made wholly to conform to § 6, as amended, by deletion of reference herein to the recorder.

**Sec. 17. Powers and duties of mayor, and of city manager if and when appointed; who acts in absence of mayor.**

The mayor shall be the chief executive officer of said city and shall have and exercise all the rights, powers and duties of mayor conferred by the terms of this Act and it shall be his duty to see that the laws and ordinances of the city and the resolutions and orders of the council are enforced; that peace and good order of the city are preserved, and that the person and property therein are protected. In vacation of the council, the mayor may appoint special police officers whenever he deems it necessary. He shall, from time to time, recommend to the council such measures as he may deem needful for the welfare of the city.

In the event the council shall appoint a city manager, the council may delegate to him each of the above powers as in the council's opinion it is advisable or necessary to do.

The mayor shall be the presiding officer of the council. In his absence, the council shall select one of their own number to preside in the mayor's stead, and such councilman so selected shall, during the absence of the mayor, be clothed with all the power and authority of the mayor, limited to the same restrictions, and charged with the performance of the same duties as are vested in and incumbent upon the mayor under this act. The mayor shall only vote in council meetings in case of a tie.
(Election of 8-3-54)

**Sec. 18. Powers and duties of recorder-treasurer; entry of ayes and nays in journal; office space for and hours of recorder-treasurer.**

It shall be the duty of the recorder-treasurer to attend all council meetings and record in a journal an accurate record of all its proceedings, acts, orders, resolutions and ordinances, which shall be indexed and kept open during all reasonable hours for the inspection of the citizens of the city. The proceedings of the last meeting shall be read to the council, corrected when necessary, and signed by the person presiding for the time being, and the recorder. Upon the request of any member, the ayes and nays on any question shall be recorded in the journal.

The recorder-treasurer shall also be the custodian of all city records, money, bonds, notes and certificates, together with all valuable papers of every kind and character which may come into his hands under and by virtue of his said office, and he shall be chargeable with and it shall be his duty to collect the city taxes, levies, assessments, fines and penalties under such regulations

as the council of said city may, by ordinance, prescribe; and such recorder-treasurer shall have the same powers and authority to distrain and sell property for delinquent taxes, levies, assessments, fines and penalties in like manner and to the same extent and effect as authorized and prescribed by the laws of the State of West Virginia for and respecting the collection of state and county taxes and levies.

The recorder-treasurer shall furnish the council upon its request with a statement showing all collections made since the last statement, and all disbursements during that time, as well as any other facts relating to the finances of the city as the council may require. He shall, in addition to the enumerated duties required of him under this act, do and perform such other matters and things as the council may, from time to time, prescribe or require of him.

All moneys coming into the hands of said recorder-treasurer shall be forthwith deposited by him in the name of the City of Beckley, in such of the local banks as the council shall designate as city depositories. The council may require indemnity bonds of such depositories if it deems it advisable so to do.

It is hereby made the duty of the council to provide the recorder-treasurer with suitable and proper office space in which to transact the main duties of his office, and if practical so to do, such office shall be located in the city hall for the convenience of the citizens of said city; and when such office is so provided, it is hereby made the duty of such recorder-treasurer to keep regular office hours each day, Sundays and legal holidays excepted.
(Election of 8-3-54)

State law reference—For state law as to distraint and sale of property for delinquent taxes, see W. Va. Code, §§ 8-13-15 and 11A-2-3 et seq.

### Sec. 19. Police court and its jurisdiction.

The judicial power of the city shall be vested in a police court. Said court shall have exclusive jurisdiction of all criminal proceedings for the violation of any ordinance, and concurrent jurisdiction with magistrates and other courts of all civil actions and proceedings arising out of a violation of said ordinance, and for the collection of any license, assessment or tax imposed by ordinance; and of the following offenses committed within the city (except when prosecuted by indictment or information): Petty larceny, assault and battery, breaches of the peace, rioting, committing wilful injury to property, and all misdemeanors punishable by fine or imprisonment in the county jail, or both; proceeding respecting vagrancy, lewd or disorderly persons; and exclusive jurisdiction of all offenses not properly falling under the jurisdiction of other courts. No jury shall be summoned to try any case in said court.
(Election of 8-3-54)

### Sec. 19a. City prosecutor.

When in the opinion of the mayor of the city it is necessary or advisable to do so, the mayor may nominate a city prosecutor, subject to the approval of the council as provided in section 6, who shall hold office during the will and pleasure of the council. The salary of such prosecutor shall be fixed by the council. The city prosecutor shall have the same qualifications as those set forth in section 22 for the city solicitor.

His duties shall be to represent the city in all criminal matters originating in the police court for the violation of any city ordinance and on appeal from said court to any other court from proceedings so originating. He also shall, upon request, advise members of the police department and other officials of the city on any criminal matters arising out of the violation of any city ordinance.
(Election of 8-3-54)

### Sec. 20. Qualifications, powers and duties of police judge; commitment of prisoners; appeals from police court; recorder-treasurer to collect fines and costs.

The police court shall be presided over by a police judge who shall be a practicing attorney of the Raleigh County bar, in good standing, and a citizen of the City of Beckley. The police judge shall within the city have, possess, and exercise all the powers and perform all the duties vested by law in a magistrate, except that he shall have

no jurisdiction in civil cases or causes of action arising outside of the corporate limits of the city. He shall have the same power to issue attachments in civil suits as a magistrate of the county has, though the causes of action arose outside of the city, but if the cause of action arose outside of the city, said attachment shall be returnable to and be heard before some magistrate of the county. Any warrant or other process issued by him may be executed at any place in the county. He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in default to the jail of the county or the city until the fine or penalty and costs shall be paid, but the term of imprisonment in such cases shall not exceed thirty (30) days. The police judge shall also be vested with the same powers to issue capias pro fine, as are vested in courts of record with prosecuting attorney and circuit clerks, by virtue of the Code of West Virginia, but no bond shall be made payable more than ninety (90) days from the date thereof, and the city shall have all the rights to enforce the collection of such bonds as are authorized by said code. The common council of the city may authorize the acceptance by the police judge, city recorder-treasurer or his deputies, of cash appearance bonds in lieu of bonds secured by property. The expense of maintaining any person committed to the county jail by him, shall be borne by the city and taxed as costs, except it be to answer an indictment.

He shall not receive any money belonging to the state or individuals unless he gives such bond and security as is required of a magistrate, and all provisions of the said Code of West Virginia relating to moneys received by magistrates shall apply as to like moneys received by the police judge.

Appeals shall lie from the judgment of the police court to the Criminal Court or Circuit Court of Raleigh County, as the case may be, in accordance with law.

The police judge shall tax as costs in each case the same fees as are permitted to be taxed by magistrates in like cases. He shall keep an accurate record of all of his proceedings in a book to be called "Police Docket," and all fines and costs collected by him shall be promptly turned over to the recorder-treasurer, who shall thereupon receipt the same, and such docket together with an itemized statement of all fines and costs collected shall be kept as a permanent record by the city recorder-treasurer.

The police judge shall have the same powers to fine and imprison for contempt as are now vested in magistrates under the statutes.
(Election of 8-3-54)

State law reference—Power of magistrate court to issue attachments in civil cases, W. Va. Code, § 50-6-3.

**Sec. 21. General powers of common council.**

The council of said city shall have the general powers enumerated in the subdivisions of this section, as follows:

(1) To lay off, open, close, vacate or maintain public grounds, parks, public places, name and re-name the same, to have control and supervision thereover, to protect the same from damage or other injury by persons or property, to fix fines and punishments for any injury thereto in violation of any of the orders of said council, and to maintain good order and prevent violations of the ordinances of said city therein or thereon.

(2) To protect divine worship within the limits of said city, and to fix fines and punishment for disturbance of any assemblage of people, then and there, met for the worship of God, to prohibit any interference with or disturbance of divine worship or an assemblage or people met together for the worship of God by any person or persons loitering about the premises or places where such worship is being had or such assemblage is met, or from loitering in the public streets or public places adjacent thereto in such manner as to interrupt such worship.

(3) To acquire either by purchase, condemnation or any other modes provided by general law, ground within said city for such streets and alleys as the council may deem proper to locate, lay off, vacate, close, open, alter, grade, straighten, widen or narrow,

pave or repave, construct and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, viaducts and gutters therein, for the use of the public or of any of the citizens thereof, and to improve and light the same and to keep the same clean and free from obstruction of every kind; that where said city shall be required to respond in damages by reason of injury to persons or property occasioned by the failure of any abutting owner to so provide or keep in repair any sidewalk along such property, after being notified by the council so to do, that such property owner shall be liable to the city for any sum of money, costs and counsel fees which it has been required to pay by reason thereof.

(4) To regulate the width of sidewalks and the streets and the width and the care of the public grounds or grass plots abutting thereon, and to order the sidewalks, footways, crossways, drains and gutters to be curbed, paved, or repaved and kept in good order, free and clean, and to provide for the removal of snow and ice therefrom, and for sprinkling the same by the owners or occupants of the real property next adjacent thereto, and to provide and enforce punishments for obstructing, injuring or preventing the free and proper use thereof, and to provide and enforce fines and penalties for throwing therein or thereon any paper, glass, rubbish, decaying substances or other things that would make said streets, sidewalks, grass plots, crosswalks, drains, or gutters unsightly or unhealthy.

(5) To regulate the use of the walks, highways, bridges, streets, alleys and gutters, and the rate of speed of travel thereon, and to prevent and punish for fast riding or driving thereon of any horse, bicycle, wheeled vehicle, wagon, steam or electric or traction engine, motor car or automobile, and to prevent injury to such streets, alleys, roads and highways from overloaded or improperly loaded vehicles where the council deems the public safety requires such regulation.

(6) To regulate the planting, trimming and preservation of shade trees, by persons and by corporations, in streets, alleys, roads, public grounds and places, and to require the owners of adjacent property to trim or remove any shade tree or ornamental shrubbery or other tree that in the opinion of the council is an obstruction to the streets, alleys or sidewalks, or a menace to public safety.

(7) The council shall have the right to require the owner or occupier of any property in the city to keep his premises clean and free from all matters that would endanger the health of the city, and may require the removal of any waste paper or waste material of any kind or character upon the private property of any citizen or property owner that would cause the spread of fire or when the council deems the same should be removed; and may require the removal or straightening of any fence, wire, palings, or other material enclosing any lot, when, in the opinion of the council, the same is dangerous or obstructs or encroaches upon the streets, alleys or sidewalks; provided, that in all such cases, if the owner or occupier of such property fails to do any of the things enumerated in this section required by the council, after notice by the council, the council may take such action as may be necessary to perform such acts and the expense thereof shall be charged to the property owner and collected as taxes are collected.

(8) To regulate the making of division fences of an unsightly nature and party walls by the owners of adjoining and adjacent premises and lots, in so far as the same shall not be in conflict with general law.

(9) To regulate or require drainage by the owner or occupier of any lot or other real estate, by proper drains, ditches, and sewers, and to require the owner or occupier of any lot to fill the same, at his own expense, so that water will not collect in a body thereon, or

so the same will not become a menace to public health.

(10) To regulate or prohibit street carnivals, or street fairs, or street parades, advertising exhibitions, or other exhibitions thereon, or the exhibition of goods, wares, merchandise, material or artificial curiosities upon any street, sidewalk, alley or public place of said city.

(11) To regulate or prohibit the ringing of bells, blowing of steam whistles, or use of hand-organs, or other instruments of any annoying character, or other music of itinerant performers in the streets, or public speaking and preaching in the streets, roads, parks, or public places of the municipality.

(12) To license, regulate or prohibit auctioneering.

(13) To license, regulate or prohibit the sale of goods, wares, merchandise, drugs or medicine on the streets or other public places.

(14) To prevent the illegal sale of tobacco, cigars, snuff, or cigarettes, within said municipality, and to prevent the smoking by any person under twenty-one (21) years of age, of any cigarette, in any public building, or upon any public grounds, street, alley, sidewalk or public place within the said city and to fix fines and punishments for violations thereof.

(15) To regulate control, or prohibit runners for hotels, boardinghouses and eating houses, and to regulate draymen or persons hauling or transporting for hire at and about the railroad depots and stations and other public places and in an assemblage of people within the said city.

(16) To regulate, assess and collect a license fee for the said city for the doing of anything or business on which a state license is required, under Chapter 8 of the Code of West Virginia, and as said chapter may be hereafter amended or added to, subject to the exceptions provided by general law.

(17) To establish, when the council may deem proper, locate and keep in repair market places and market houses, and regulate markets and prescribe the time for holding the same; to authorize the seizure thereat and destruction of any and all such foods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for its cost or value.

(18) To regulate the sale of food and drink products, milk, fresh meats, fish and vegetables, and to provide penalties for the sale of any such that are unwholesome or unfit for use.

(19) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets, or to residents of said city.

(20) To require the merchants and other persons selling goods, foods or materials that must be weighed, to keep correct scales, and to seize and destroy such as are found to be incorrect, and not corrected after due and proper notice to the owner or person using the same, without damage or expense to the municipality of the value thereof.

(21) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.

(22) To regulate the keeping, handling and transportation of explosives and dangerous combustibles within the municipality; and to regulate or prohibit the use of firecrackers, sky rockets, toy pistols, air rifles or guns within the said municipality.

(23) For the purpose of promoting health, safety, morals or the general welfare of the city and community, the council is hereby empowered to establish building lines, regulate and restrict the location and use of buildings, structures and land for trade, industry, residence or other purposes.

(24) For any or all of said purposes the council may divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purpose of this act, and within such districts it may regu-

late and restrict the erection, construction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

**Annotation**—For a 1949 case holding that subdivisions (23) and (24) of this section [21] authorized common council, subsequent to enactment of the Code of West Virginia, 1931, to adopt a zoning ordinance without holding a referendum as provided in W. Va. Code, § 8-24-48, see Baer v. City of Beckley, 133 W. Va. 459.

(25) Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

(26) To regulate or prohibit the use of walls or walks for signs; to regulate or prevent the distribution or posting of any sign, bill or other paper that, in the opinion of the council or mayor, is indecent or immoral.

(27) To define by ordinance what shall constitute a nuisance, and to abate all nuisances whether defined or not, and to require the removal or abatement of any building, obnoxious business, sign board, bill board, signs, or other thing, which in the opinion of the council is a nuisance.

(28) To regulate or prohibit the distribution of hand bills, circulars and other advertisements of like kind, on the streets, roads, alleys, and public places, or the placing of same in private yards, buildings or other structures, without having first procured the consent of the owner or occupier of such property.

(29) To regulate or prohibit within the municipality or within one (1) mile of its corporate limits, the erection or maintenance of any slaughter house, soap factory, glue factory, lamp black factory, tannery or other house, shop or factory of like kind or character.

(30) To regulate or establish within said municipality public drinking fountains and water troughs; and to regulate the time and place and manner of bathing in pools, streams and public waters within the police jurisdiction of said municipal corporation.

(31) To prevent hogs, cattle, sheep, horses, and other animals and fowl of all kinds, from going at large in the municipality; and to establish and maintain places for their detention, make regulations respecting the same, appoint a pound master and define his duties and provide for the sale of such property impounded.

(32) To arrest, convict and punish any person for committing adultery or fornication, or for any lewd or lascivious cohabitation within said city, and for keeping an assignation house, house of ill fame, or for leasing or letting to any other person any house or other building to be kept or used as such, or for knowingly permitting any house, under the control of or owned by any person, to be used as an assignation house or house of ill fame; and to convict and punish for frequenting, entering or loitering in any assignation house or house of ill fame within said municipality.

(33) To arrest, convict and punish any person for importing, printing, publishing, selling, giving away, exhibiting, or distributing any book, picture or device, or other thing containing any obscene picture or language, or making any indecent representation.

(34) To restrain, convict and punish vagrants, mendicants, beggars, tramps, common prostitutes, and their associates, and drunken

or disorderly persons within the municipality, and to provide for their arrest and manner of punishment.

(35) To prevent and prohibit the use of indecent or profane language within the corporate limits, and to provide and fix punishment therefor.

(36) To prevent and prohibit any tumult, riot, quarrel, angry contention, or abusive language, and to prevent the use of insulting epithets, assaults, assault and battery, and fix fines and punishments therefor.

Annotation—For a case holding that § 21, subdivision (36) granted power to common council to enact ordinance making assault and battery an offense against the city, see State v. Mills, 150 S. E. 142.

(37) To prevent and prohibit trespass upon private property or the doing of anything which would annoy the owner or occupier of any premises, and to fix and provide fines and punishments therefor.

(38) To provide against danger or damages by fire, and to that end, to require, when the council may think necessary, an inspection of all the properties within the said city, and to require the owner or occupier of any property in which a defective or dangerous chimney or flue is found, to immediately repair the same, and to prevent the use thereof until repaired as required.

(39) To prohibit and prevent intoxication or drunkenness, and the drinking of intoxicants in any public place, store, streets, or alley, and to fix fines and penalties therefor.

(40) To prohibit, prevent and punish for anything that is against the good morals and common decency, or that would tend to corruption, vice or crime.

(41) To prohibit and punish for larceny where the amount stolen is less than twenty dollars ($20.00).

(42) To protect the public schools in said city, and to prohibit and prevent any disturbance thereof in and about the buildings or upon the grounds, and to prevent injury, destruction or defacement of any school property or building.

(43) To establish a board of health and vest it with the necessary power to maintain its object, and to fix fines and penalties for any violation of its lawful orders.

(44) To establish quarantine, and to erect and maintain pest houses and places of detention, and to make and enforce necessary orders for controlling or preventing the spread of infections and contagious diseases, and for abating pestilences.

(45) To prohibit the bringing into the corporate limits by railroads, carriers, persons or in any manner, persons who are paupers or persons who are afflicted with contagious diseases; to punish by fine or imprisonment, or both, any person who shall bring into the corporate limits any such pauper or person afflicted with contagious disease, knowing or having reason to believe, at the time that such person is a pauper or afflicted with such contagious disease, and to collect and recover from any such railroad company, carrier, or other person, the expense of keeping and maintaining such pauper or diseased person, until such person can be lawfully removed from the corporate limits.

(46) To provide for the poor of the municipality, and to that end, the municipality may contract with the county commission of Raleigh County for the keeping of such poor person, or any number of them, at the county poor house, at a price and on such terms as may be agreed upon between the county commission and the proper municipal authorities.

(47) To authorize the taking up and providing for the maintenance and safe keeping of (for such period as may be deemed expedient) all children within said city who are destitute of proper parental and other care.

(48) To arrest, convict and punish any person for cruelty, unnecessary or needless beating, torturing, mutilating, killing or over-

loading, or overdriving, or wilfully depriving of necessary sustenance, any horse or other domestic animal.

(49) To regulate the hitching of horses within the corporate limits, and the driving of cows and cattle through, upon and along the streets and alleys of the said city.

(50) To prohibit, prevent and punish for the pollution of any stream of water running into or through the said municipality; and to prohibit and prevent the throwing into any such stream of any trash, dirt, filth, offal, decayed substances or matters, or anything that would make said water unhealthy or unfit for domestic use.

(51) To prohibit, prevent and punish for any desecration of the Sabbath day; prohibit the playing of any game, exhibiting any show, theater, picture show, and the keeping open of business places except hotels, eating houses, boardinghouses and restaurants.

(52) To restrain, prevent and punish fraudulent practices of any kind or character within the municipality.

(53) To arrest, convict and punish any person for gambling or keeping any gaming table, commonly called "faro bank", or table and chips used in playing such game; crap, crap table, chips or dice used in playing such game; or roulette or the wheel, chips, or other equipment used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice or otherwise on which anything is bet or wagered, whether the same be played in any public or private room or residence; and may convict and punish any person who shall be a partner or concerned in interest in the keeping of any such gambling devices heretofore enumerated, or in any game played, such as is prohibited hereby, or in keeping or maintaining any gambling house or place of gambling for money or anything of value; and shall have the right to destroy such gambling paraphernalia as may be found in use of any such premises; and any officer armed with a warrant for the arrest of any person engaged in any such unlawful game or for the search of any room in which gambling is suspected, or for the seizure of any gambling paraphernalia, shall have the right to break into any building, other than private dwelling house, without notice or demand, and into a private dwelling or room, after demand and refusal to open same, to execute any such warrant.

(54) To retain all felons and persons guilty of offenses against this state or the United States, and deliver them over to the authorities or court having jurisdiction of the offense whereof such persons are accused.

(55) To apprehend and punish any person who, without a state license therefor, is guilty of carrying about his person, within the municipality, any revolver or other pistol, dirk, bowie knife, sling shot, razor, billy, metallic or false knuckle, or any other dangerous or deadly weapons of like kind and character, as provided by Chapter 61 of the Code of West Virginia, or any amendment thereof, and the punishment therefor, whether for the first or other offenses, shall be that now or hereafter prescribed by said chapter for any such person guilty under the misdemeanor clause provided therein.

(56) To regulate the hanging of doors, the construction of stairways and elevators, and require fire escapes in theaters, churches, school buildings, factories and other places deemed necessary by the council.

(57) To establish fire limits and to regulate the construction of buildings, and designate materials to be used in the construction of buildings within such limits.

(58) To regulate the building of fire walls, fire places, chimneys, boilers, smokestacks, stove pipes, and the burning of waste paper, trash or other waste matter, in the corporate limits.

(59) To require any building that, in the opinion of the council, is dangerous, to be re-

paired, altered or removed by the owners thereof, or put in a safe condition, such as the council may approve, at the expense of such owner or occupier, and to provide punishments for failure to comply with any order of the council concerning same.

(60) To regulate the construction and inspection of all new buildings hereafter erected, the alteration and repair of any buildings now or hereafter erected, to require permits to be obtained of the council therefor, and the submission of plans and specifications to the council for its approval; to regulate the limits within which it shall be lawful to erect any steps, porticos, bay windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings on any street or alley.

(61) To provide for the prevention and extinguishing of fires, and for this purpose, the council may equip and govern fire companies, prescribe the powers and duties of such companies and departments, and of the several officers thereof, or may authorize volunteer fire companies, under such rules and regulations as the council may prescribe, and impose on those who fail to obey any lawful command of the officer in charge of any such company, or volunteer company, any penalty which the council is authorized to impose for violation of an ordinance, and to give authority to any such fire officer to direct the pulling down or destruction of any building, fence, wall or other thing, if such officers deem it necessary to prevent the spreading of any fire which is being extinguished under the direction of such officer, and without any liability on the municipality for damages therefor.

(62) To protect the persons and property within the corporate limits and preserve the peace and good order therein, and for this purpose, to appoint, when necessary, a police force and such other officers as may be deemed necessary; and to provide a lockup, jail or other suitable place to confine persons sentenced to imprisonment for violation of the ordinances of said city; provided, however, that the jail of Raleigh County may be used for that purpose, if authorized by the county commission of said county.

(63) To require any person violating any of the ordinances of said city, or any order for which a fine, imprisonment, or both is imposed, to work upon the streets of said city in case of nonpayment of said fine, until the same is paid by such labor, or in case imprisonment is imposed, to work upon the streets of said city during the term of such imprisonment in addition to the payment of such fine, under such regulations as the council may prescribe.

(64) To prescribe the powers, define the duties of the officers appointed under the corporate authority, fix their terms of service and compensation, if not otherwise prescribed by this act, and to require and take from them bonds, when deemed necessary, payable to the City of Beckley, with the sureties, and in such penalties as may be prescribed, conditioned for the faithful discharge of their respective duties.

(65) To make regulations with respect to, and have supervision and control over the erection, removal and relocation of all telephone, telegraph, electric light or other poles within said city, and the extension of wires, lines or poles by any individuals or corporations.

(66) To require the enlarging or extension of any electric light wire, telephone line, gas line, water system, or other public service within said corporate limits, to meet the needs of the inhabitants, when in the opinion of the council, such extension is necessary and justifiable.

(67) To grant and regulate all franchises in, upon, over and under the streets, alleys and public ways of said city, under such restrictions as shall be provided by ordinances and general law; but no exclusive franchise shall be granted by said city council to any individual or corporation; nor

shall any franchise be granted for a longer period than twenty (20) years.

(68) To acquire, erect or authorize or prohibit the erection of gas works, electric light works or water works within the city limits, to prevent injury to such works or the pollution of any gas or water used or intended to be used by the public or by individuals; and to do all things necessary to adequately supply said city and the inhabitants thereof with pure, healthful and wholesome water; and to require any company furnishing gas or electricity for sale or distribution in said city to furnish an adequate supply thereof; to require gas fixtures, electric light wires, telephone wires and all apparatuses used in connection with any of these to be kept in repair and suitable for use, and free from danger, so far as practicable; to use, generate, distribute, sell and control electricity and gas for heat, light and power, and to furnish light for the streets, highways, buildings, stores and other places in and about said city.

Editor's note—Word "and" before "adequate supply" was in original; probably a typographical error intended as "an".

(69) To require any gas company or person furnishing gas for said city or the inhabitants thereof, to put in standard meters for the measurement thereof, and may appoint a competent person to inspect the meters and remove the same if not standard and in good order; to prevent injury to any gas works, electric light works, water system or any gas meter or meters within said municipality.

(70) The council shall have the right to require of any water company or person furnishing water for the use of the inhabitants of said city, for hire, compensation or reward, to obey any order of the council with respect to keeping the reservoir or other source from which said water is furnished, free from filth and in good, clean condition, and may require said water company to properly filter the water distributed for use, and may require said company to put in such lines as may be necessary to pump the said water into the reservoir or other receptacle therefor, without pumping the same into the main distributing lines, or in any other way or manner effecting them; and may fix fines and penalties for any failure on the part of any corporation, company or other person distributing water, to obey any order of the council or any authorized officer of the city respecting the same, or any ordinance that may be enacted by the council relative thereto.

(71) The council shall have the right to provide a sewerage system for said city, and may require the owner of any property abutting upon any street or alley in which a sewer has been laid or placed, to connect a sewer leading from his or her property or lot into any public sewer which is located in such street or alley adjoining the same, and if the owner or occupier of said lot or property fails or refuses so to do, after having been given a reasonable notice, the council may enter upon such lot and construct such sewers, and may levy the actual cost thereof against the lot upon which the same is built and collect such costs from the owner of such lot in the same manner as city or state taxes are collected and as herein provided; in addition thereto, the council may punish by fine, or fine and imprisonment, any person who permits any drainage from his residence or lot to enter upon any street or upon any property after a sewer has been placed in a street or alley adjacent to his property to which he should connect, after notice has been given to him by the council to make such connection.

(72) The council shall have the right to impose fines and penalties for any interference with or destruction of the sewer system or any part thereof in said city, or for the destruction of or damage to any street, alley or sidewalk in said city, or any improper use thereof; it shall have the right to regulate or prevent the use of the sidewalks for bicycles, push carts, sleds, tricycles, roller skates and other things of like character, and to fix fines and penalties for violation of the ordinances respecting same.

(73) To grant by ordinance or resolution permits for the temporary use of such parts of its streets, roads, alleys and public places as the council may deem proper and right to be used in the construction, alteration or repair of buildings located thereon, or for such other purposes as the council may deem proper and right, and under such regulations and for such time as the council may prescribe.

(74) The council may buy, lease and operate either within or without the municipality, stone quarries, crushers and land for said purposes or for the purpose of furnishing a supply of stone or other material suitable for macadamizing or paving the streets, sidewalks and alleys, and improving public property.

(75) Whenever in the opinion of the council it is necessary that any sidewalk be built or repaired, it shall first have a competent engineer fix a grade line for such sidewalk and shall then, by order of the council, name the character of material out of which same is to be built, and fix the width thereof, and shall then give notice, in writing, to the owner or occupier of said lot, if he be found, and if he be not found, by posting a notice thereof upon the said lot and at the front door of the court house of Raleigh County for at least ten (10) days, requiring the construction of said sidewalk in accordance with the requirements of the council, and upon the grade fixed by the said engineer, and if such sidewalk be not built, altered or repaired within twenty (20) days after such notice is first given or posted, the council shall proceed to put in the same under its supervision and control, and shall charge the expense thereof against the property along which the same is being placed, altered or repaired, and shall cause an itemized account of the same to be made up and delivered to such property owner or occupier of such premises, if found, and if he be not found, have the same recorded in the county clerk's office of Raleigh County, and the same shall constitute a lien upon the said lot or property and shall be collected as other taxes are collected; provided, nothing herein contained shall prevent the council from requiring immediate repair of such sidewalks now or hereafter constructed that may become dangerous; and after notice to the property owner along which the same run, the council may make such immediate repairs, if the property owner fails to make same after such notice, and the expense thereof shall be a lien in the manner aforesaid.

(76) To authorize by ordinance such committees or boards, and delegate such authority thereto as may be deemed necessary or advisable by the council; except that the council cannot delegate the authority to impose a lien upon real estate; and to employ such legal counsel on behalf of the city, from time to time, as the city may deem necessary to protect the interests of the city.

(77) To provide for the annual assessment of the taxable property in said city, including dogs kept in said city, and to provide a revenue for the city for municipal purposes and appropriate such revenue to its expenses; provided, nothing herein contained shall require the council to keep in repair and maintain any bridge or bridges within said corporation, now or hereafter owned by the Chesapeake and Ohio Railway Company, but the officers of said city in the preservation of law and order shall have jurisdiction over any such bridges within such corporation; and provided further, that the police regulations as may be ordained by said city, and the right and power to enforce the same shall extend one mile into the State of West Virginia beyond the corporate limits of said city, but not into any other municipal corporation.

(78) The council may, within any prescribed area, prohibit the erection on any street or in any square, of any building, or of any addition to any building, unless the outer walls thereof be made of brick and mortar or other fire-proof material. And the common council may require the removal of any building or addition which shall be hereaf-

ter created contrary to this prohibition, at the expense of the owner or owners thereof.

(79) The council shall keep all roads, streets and alleys within its limits passable and in good repair, and may provide the expenses therefor by a direct taxation, as provided under this charter, or in any other manner authorized by law; and residents of said city who are taxed therein for the purpose of maintaining such streets and alleys shall be exempt from the payment of any county road tax.

(80) In the enforcement of the ordinances, orders, rules, regulations and by-laws of the said city, no fine shall be imposed exceeding one thousand dollars ($1,000.00), and no person shall be imprisoned as aforesaid, exceeding twelve (12) months; provided, that any violation of the liquor laws of this state shall be punished by the fines and penalties therein prescribed; and violations of the road law or automobile laws may be punished by the fines and penalties prescribed by general law, unless different fines and penalties are expressly prescribed by the ordinances of said city. And in all cases where a fine is imposed for an amount exceeding ten dollars ($10.00), or a person be imprisoned, an appeal may be taken from such decision upon the same terms and conditions that appeals are taken from the judgment of a magistrate of this state; and in no case shall a fine of less than ten dollars ($10.00) be imposed where the ordinance prescribes a fine if the defendant requests that such fine be made at least ten dollars ($10.00) for the purpose of appeal.

(81) The council shall have the right to enforce the attendance of its members at all regular meetings and at all special meetings of which such members have notice, and may cause the arrest and punishment by fine or fine and imprisonment, of any such member who refuses to attend and take part in its proceedings.

(82) It shall be the express duty of the council to present charges against any of its members, or any elective officer of the city, who fails to perform, or who does not promptly and diligently perform any duty prescribed by this act, or by any ordinance or resolution of the council, and upon hearing thereof before the council, after notice to such officer, he shall be removed from office by the council, if the charges be found correct.

(83) To carry into effect these enumerated powers and all others by this act or by general law conferred, or which may hereafter be conferred upon the said city or its council, or any of its officers, the said council shall have and possess full authority to make, pass and adopt all needful ordinances, by-laws, orders and resolutions, not repugnant to the constitution of the United States, constitution of West Virginia and laws of this state; and to enforce any and all of such ordinances, by-laws, orders or resolutions, by prescribing for a violation thereof fines and penalties, and imprisonment in either the county jail of Raleigh County, or the city prison, if there be one. Said fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced by the judgment of the police judge of said city.

(Election of 8-3-54)

**State law reference**—General powers of cities, W. Va. Code, § 8-12-5.

### Sec. 22. Qualifications, powers and duties of city solicitor.

The city solicitor shall be a member of the Raleigh County bar, in good standing, and a citizen of the City of Beckley; he shall be the legal adviser of and counsel for said city and for all officers thereof in matters relating to their official duties. He shall prepare all ordinances, contracts, bonds and other instruments in writing in which the city is concerned, and no written contract with the city, except bonds given to said city by officials or others, shall take effect until the legality thereof shall have been approved by such city solicitor. He shall attend the council meetings and perform such other duties, from time to time, as the council may require of him.

### Sec. 23. Powers and duties of chief of police.

It shall be the duty of the chief of police to preserve order and quiet in said city, and to see that all subordinate police officers faithfully perform their official duties. He shall attend all regular council meetings and be present in the police court, whenever the same shall be in session, and see that all its orders and requirements are properly executed.

In case of the violation of any ordinance of said city in the presence of or within view of the chief of police, or other police officer, the offender may be forthwith apprehended and taken before the police judge, and a complaint under oath, stating such violation, there lodged and filed, and thereupon such offender may be tried and dealt with according to law without summons. The chief of police or any other police officer of said city shall execute within the County of Raleigh any proper process issued by the police judge in proceedings for the enforcement of ordinances; he shall collect, by a levy of execution or otherwise, and duly account for all fines assessed and costs imposed and collected by him in such proceedings. He shall also have the rights and powers within said city in regard to the arrest of persons, the collection of claims and the execution and return of process, that are or may be lawfully exercised by a deputy sheriff within said county; and he and his sureties shall be liable for all fines, penalties and forfeitures for which a constable is liable, and for dereliction of duty in office, to be recovered in the same manner and in the same courts that such fines, penalties and forfeitures are recovered against deputy sheriffs.

In addition to the above duties, the chief of police shall have such other duties as the council may by ordinance prescribe.
(Election of 8-3-54)

**Annotation**—For a case sustaining trial court's instruction that chief of police had right to arrest, without warrant, persons charged with violation of a speed limit ordinance in his presence, and to confine them in jail until they could be brought before police judge the next day, subject to their right to have a reasonable opportunity to give bond, see Moran v. City of Beckley, 67 F. (2d) 161. Such case also held that it is for the jury to determine whether or not person arrested for a bailable offense was given "reasonable opportunity" to give bail. Such case further held that it was arbitrary and unjust to jail over night persons charged with bailable offense and, next morning, to accept bail in an amount they could give, when the night before he had asked for bail in an amount they could not give.

### Sec. 24. Chief of fire department.

The duties of chief of fire department shall be such as the council may, by ordinance, prescribe.

### Sec. 25. Powers and duties of city assessor.

It shall be the duty of the city assessor to cooperate with the county assessor to the end that all property within the city, subject to taxation, may be charged upon the land and personal property books, respectively, and proper valuation thereon placed.

### Sec. 26. City health officer.

The city health officer shall be a legally qualified physician. His duties shall be such as the council may by ordinances prescribe.
(Election of 8-3-54)

### Sec. 27. Streets and roads; when residents exempt from county road tax.

The said city shall construct and maintain its own roads and streets and by reason thereof it shall not be required to pay any district or county road levies for the construction and maintenance of roads outside of the city limits, but this provision shall not be construed to relieve the city from any liability on existing or future county or district bond issues for road purposes.

### Sec. 28. Effect of charter with respect to conditions existing in 1927.

All ordinances and resolutions of said city in force at the time of the passage of this act, which are not inconsistent therewith, shall be and remain in full force over the whole boundary of said city as established by this act until the same are amended or repealed by the council of said city, and the officers elected at the last election, in the City of Beckley, shall remain in office until their successors, under this act, are elected and qualified as hereinbefore provided, and after this act takes effect, the present officers of said city shall have jurisdiction over all the territory embraced in the boundary specified in this act, and such

present officers shall then be vested with full power and authority to pass any new ordinances or resolutions under this act that are not inconsistent therewith. Nothing in this act shall be construed or held to in any way affect or impair any of the bonds, obligations or indebtedness of the City of Beckley existing at the time of the passage of this act.

Editor's note—The charter act passed the legislature on April 26, 1927, and took effect ninety (90) days thereafter. This section speaks as of such time.

### Sec. 29. Bond issues.

The City of Beckley, by and through its council, may issue and sell its bonds, in the manner, and subject to the limitations and conditions contained in Chapter 14, Acts of the Legislature, 1923.

State law reference—Ch. 14, Acts 1923, is now classified as W. Va. Code, §§ 13-1-1 to 13-1-32; 18-9-2.

### Sec. 30. Licenses.

Whenever anything for which a license is required or permitted under the Code of West Virginia be done within said city, the council may require a license therefor, and may impose a reasonable tax thereon for the City of Beckley.
(Election of 8-3-54)

### Sec. 31. Common council; designation; quorum.

The council of said city shall be officially known as and called the "Common Council of the City of Beckley." A majority of the council shall be necessary to form a quorum for the transaction of business.

### Sec. 32. Salaries; officials interested in contracts.

The council may at any time by a two-thirds (⅔) majority of the members elected change the salaries of any appointive or elective officers; but any such changes that affect the salaries of the elective officers shall be effective only as to such officers as are thereafter nominated and elected; provided, however, that no changes shall reduce the compensation to be paid below the minimum fixed by this section. No officer, councilman, agent or employee of said city shall have a voice or be directly or indirectly pecuniarily interested in any contract, sale or purchase for or on behalf of the city, or in the proceeds of any improvement made by or on behalf of the city, nor shall he receive, directly or indirectly, any compensation for his services rendered on behalf of the city, other than herein provided to be paid, nor shall such councilman remain present while any such matters are being voted upon by the council. Salaries shall be paid by the city in monthly installments.
(Election of 8-3-54)

Editor's note—The first paragraph, containing specific salaries, has been omitted, except the second sentence thereof, which has been placed at the end of the section.

Code reference—Section 2-2 of the code for specific salary of elected officials.

### Sec. 33. City not to incur debt exclusive of bond issues; liability of councilmen for violation.

The council of said city shall not for any purpose, exclusive of bond issues, create any indebtedness against the said city exceeding available revenues of the city for the current fiscal year, and any councilman who shall violate the provisions of this section shall be personally liable therefor and subject to all other penalties prescribed by any statute of this state for so doing; but nothing in this section shall be construed to prevent the council from lawfully issuing orders after the first day of July, to be paid out of the city treasury, provided, such orders do not exceed the available revenues for that fiscal year, based upon the assessments and levies made or to be made for said year, but such orders shall not draw interest.

### Sec. 34. Meetings of common council.

The council shall fix the place and time of holding its regular meetings. It may provide for special and adjourned meetings and prescribe rules and regulations not inconsistent with this act for the transaction of business and for its own guidance and government.

### Sec. 35. How funds disbursed.

No money shall be paid out of the city treasury unless authorized by an order entered of record in the council journal, signed by the mayor, or other

presiding officers, and the recorder-treasurer, and all warrants drawn upon the city treasury shall be signed by the mayor and recorder-treasurer before payment thereof shall be authorized by any city depository.

### Sec. 36. City records as evidence.

A copy or transcript of any records of the police court, purporting to have been attested or certified by the police judge thereof, may be admitted as evidence in any court of this state without any proof of the signature, or of the official character of the person whose name is signed to it; and a copy or transcript of any records of any department of said city, purporting to have been attested or certified by the mayor or recorder-treasurer of said city, may be admitted as evidence in any court of this state without any proof of the signature or of the official character of the person whose name is signed to it, whether the seal of said city be attached thereto or not.

### Sec. 37. Oaths and acknowledgments.

The mayor of said city shall have the same power within the city to administer oaths and affirmations as is now vested in a justice of the peace under the Code of West Virginia; and the recorder-treasurer of said city shall have the same power and authority to administer oaths or affirmations and take acknowledgments to deeds and other writings in said city as is now vested in a magistrate under and by virtue of said Code. (Election of 8-3-54)

**State law reference**—For state law as to authority of magistrate court to administer oaths and take acknowledgments, see W. Va. Code, § 50-2-1.

### Sec. 38. Liens for street improvements; filing and indexing.

For the construction of all streets and sidewalks by this city, pursuant to section 8-18-2 of the Code of West Virginia, the lien for such improvements shall exist against the property so improved from the date the construction work actually begins, and the lien of the assessments provided for in section 8-18-10 of the Code of the West Virginia shall relate back to the beginning of such construction work; provided, no lien imposed by the said city on real estate therein except liens for municipal taxes shall continue to exist unless a notice thereof be filed for record in Raleigh County Court Clerk's office within ninety (90) days after the report of the completion of such improvements has been filed before the city council by the city engineer; such notice shall be recorded by said clerk in appropriate record book and indexed together with other liens against real estate; and releases of said liens shall, when discharged, be also recorded and indexed in said clerk's office as other releases.

### Sec. 39. Mayor's power to punish for contempt.

The mayor of this city, while discharging his official duties, is hereby vested with the same power to punish for contempt committed in his presence, as is now vested in magistrates of this state.

**State law reference**—Power of magistrate court to punish for contempt, W. Va. Code, § 50-5-11.

### Sec. 40. Prior charter repealed; what state statutes incorporated in this charter; other state laws applicable to city.

Chapter 8 of the Code of West Virginia, and all amendments thereto, in so far as they are not inconsistent with the several provisions of this act, are hereby adopted as a part of this act; and no act of the legislature or existing law of this state, in conflict with the several provisions of this act, shall be applicable to the City of Beckley; and the charter of the City of Beckley passed by the legislature of West Virginia on the fourteenth day of February, 1908, is hereby repealed. Nothing in this act shall be construed to modify, diminish or in anywise change or deprive the public service commission of the State of West Virginia of any of the rights, duties and responsibilities placed upon it under existing public service statutes, all of which are to remain in full force and effect insofar as this charter is concerned, notwithstanding any provisions herein contained.

[The next page is 71]

## CHARTER COMPARATIVE TABLE

This original charter, an Act of the Legislature passed on April 26, 1927, is included herein. The following table shows amendments to the charter.

| Election Date | Section this Charter |
|---|---|
| 8- 3-54 | 1–3 |
| | 6, 7, 7a |
| | 8 |
| | 10 |
| | 16–19 |
| | 19a |
| | 20, 21 |
| | 26 |
| | 30, 32 |
| | 37 |

I certify that the foregoing is a true and accurate copy of the current Charter of the City of Beckley that is in effect, having neither been repealed or revoked, as of March 18, 1997.

Date:

3-18-98

Emmett S. Pugh III
Mayor
City of Beckley

[The next page is 81]

June 26, 2007

**AN ORDINANCE AMENDING THE BECKLEY CITY CODE, AS THE SAME APPLIES TO STORMWATER MANAGEMENT AND SURFACE WATER DISCHARGE CONTROL AND APPLICABLE RATES AND FEES.**

**WHEREAS, the 2001 West Virginia Legislature amended sections 8-16-1 et seq., and 16-13-1 et seq., of the West Virginia Code so as to authorize municipalities to regulate stormwater management and surface water discharge, as part if its public works program and sanitary sewerage system; and,**

**WHEREAS, there is a public need to protect life, property and the water environment from loss, injury and damage caused by storm and surface water, and a responsibility of the City as a trustee of the water environment for future generations; and,**

**WHEREAS, the City of Beckley, and its contiguous urban watershed, has been designated by Federal Law as a regulated municipal separate storm sewer system, and, such, must comply with the regulatory requirements established under the Clean Water Act; and,**

**WHEREAS, accordingly, it is necessary for the City of Beckley to enact rules and regulations, as well as service fees, pertaining to stormwater management and surface water discharge control in its urban watershed.**

**NOW, THEREFORE, the City of Beckley hereby ordains that Chapter 9, Article V, addressing stormwater management and surface water drainage control is added to its City Code and reads as follows:**

## CHAPTER 9, ARTICLE V

### Stormwater Management and Surface Water Discharge Control

**Sec. 9-600. Definitions**:

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

(a) **"Best Management Practices (BMPs)"** are physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the state. BMPs may include schedules of activities, prohibition of practices, design standards, educational activities and treatment requirements.

(b) **"City watershed"** are those areas within the corporate limits of the City of Beckley, and designated areas outside of those limits, over which surface water naturally drains into the City. Designation of areas outside of the corporate limits of the City of Beckley shall be made by the Director.

(c) **"Director"** is the General Manager of the Beckley Sanitary Board.

(d) **"Facility"** for purposes of this Article is a building, structure, installation or construction site in which pollutants are produced and/or generated as a result of a process or processes, conducted within the building, structure or installation.

(e) **"Flat rate charge"** is the charge applicable to a single-family dwelling per dwelling unit.

(f) **"Footing drain"** is a pipe or conduit which is placed around the perimeter of a building foundation or other structures for the purpose of admitting ground water.

(g) **"Illicit connection"** means any physical connection to a publicly maintained storm drain system which has not been permitted allowed by the Beckley Sanitary Board from the date of enactment of this ordinance.

(h) **"Illicit discharge"** means any discharge to a storm drain or into the stormwater collection system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and other discharges exempted in this Article.

(i) **"Impervious area"** is land area covered by buildings, pavement, gravel or other material that significantly inhibits stormwater from penetrating the soil.

(j) **"Industrial sites"** are those sites that contain industrial activities which require NPDES stormwater permits as set forth in 40 CFR 122.26(a)(6).

(k) **"Multi-unit property"** is a residential, non-residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.

(l) **"Non-stormwater"** is all flows to the stormwater system not defined as stormwater in this Article or as determined by the Director. This includes, but is not limited to, cooling water, process water, ground water from a purge well and swimming pool discharge.

(m) **"Pervious area"** is all land area that is not impervious.

(n) **"Pollutant"** means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions,

chemical waste, detergents, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil, rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.

(o) **"Pollution"** is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the state and/or the discharge of any pollutant to the waters of the state which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

(p) **"Public facility"** is a stormwater facility that serves two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties, and all taps or other connections onto a public facility. Public facilities that are privately owned upon enactment of this Article shall become publicly owned facilities, and thus the responsibility of the stormwater utility, only upon conveyance by the private owner and acceptance by the Director.

(q) **"Private facility"** is a stormwater facility not otherwise classified as a public facility as defined in paragraph (p), above.

(r) **"Service area"** is all areas within the political boundaries of the City of Beckley and those areas outside of said boundaries that naturally drain into the City, also called the "City Watershed", and as designated in the operating permit issued under the provisions of the Clean Water Act.

(s) **"Stormwater"** is atmospheric precipitation, surface runoff water, ground water discharge, water used in fire fighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City of Beckley stormwater NPDES permit, except as may be defined as non-stormwater by this Article.

(t) **"Stormwater management"** is the process of collection, conveyance, storage, treatment and disposal of stormwater to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream and the other hazards associated with flooding.

(u) **"Stormwater service charge"** is a flat rate charge, a charge based on land area, and/or a non-stormwater user charge.

(v) **"Stormwater system"** is public and private stormwater sewers, drains, ditches, streets, retention/detention structures, dams, river impoundments and flood control facilities used for collecting and transporting stormwater and non-stormwater.

(w) **"User"** is a firm, person or property which is the legal owner or occupant of a property that directly or indirectly contributes stormwater or non-stormwater flows to the stormwater system, whether within or outside the corporate limits of the City of Beckley.

**Sec. 9-601. General**:

(a) This article has been enacted to protect and enhance the water quality of our watercourses, water bodies, groundwater and wetlands in a manner pursuant to and consistent with the Clean Water Act and associated federal and state stormwater regulations.

(b) The intent of this article is:

(1) To control non-stormwater discharges to storm drain systems.

(2) To reduce pollutants in stormwater discharges.

(3) To control stormwater runoff by providing design, construction and maintenance criteria for permanent and temporary stormwater facilities.

(4) To maintain and improve the stormwater collection system in order to protect and improve water quality in the receiving streams and to reduce or eliminate local flooding resulting from stormwater accumulation.

(5) To fully comply with federal and state statutory and regulatory requirements and schedules regarding stormwater management and the water quality of the receiving streams.

**State law references: W. Va. Code §§ 8-16-1, 16-13-1, 16-13-2.**

revised by amendment

**Sec. 9-602. Stormwater User Fees and Service Charges**:

(a) Users connected to or draining into the public storm drainage system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to, and necessary additions to the stormwater system. Therefore, all owners or tenants of real property in the City of Beckley and the City watershed shall be charged for the use of the stormwater system based on the amount of stormwater and rate of flow of stormwater which is projected to discharge into the stormwater system from the property.

(b) The City Council shall, by ordinance, set user fees which will recover from users their fair share of costs for use of the stormwater system by property within and outside the corporate limits of the City of Beckley and within the City watershed. Such user fees will be for the operation and maintenance of, improvements to, necessary additions to, and environmental compliance programs for the stormwater system.

(c) The Director may establish and enforce service fees to be charged and collected for services rendered by the stormwater utility or by agents of the utility, including, but not limited to, fees for permit application, stormwater management plan review, inspection, and other services.

**State law reference: W. Va. Code §§ 8-16-18, 8-16-21, 16-13-22.**

**Sec. 9-603. Property Affected:**

Except as provided in this Article and/or by regulation, all real property shall be subject to the stormwater user fee and service charges regardless of whether privately or publicly owned.

**State law reference: W. Va. Code §§ 8-16-18, 8-16-21, 16-13-16, 16-13-17, 16-13-22.**

**Sec. 9-603. Flat Rate Charges:**

The monthly fee for users occupying a single-family residential dwelling, as defined by the Director, shall be $ 3.75. After July 1, 2008, the monthly service charge for a single-family residential dwelling shall be $3.75. The City Council may, from time to time, by ordinance, change this user fee.

**State law reference: W. Va. Code §§ 8-16-18, 16-13-16, 16-13-17, 16-17-23(a).**

**Sec. 9-604. Charges Based on Land Area:**

The monthly fee for properties other than described in Section 9-603 (above) shall be $10.00 per drinking water service. If an improved property does not contain a water service, the service fee shall be $10.00 per parcel. After July 1, 2008, the monthly fee for properties other than described in Section 9-603 shall be computed in the following manner: $1.25 per 1,000 square feet of impervious area upon the property, as determined by the Director.

User fees for a multi-unit property shall be billed to each individual tenant upon the property in a fair and proportionate share of the total property fee, if said tenant has an individual drinking water service meter. At the discretion of the property owner, or if the individual tenants do not have individual drinking water service meters, fees for a multi-unit property may be billed to the property owner. A property owner exercising this choice must complete a written agreement as required by the Director.

(Revised by Amendment)

The Director shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities. The Director may further assign discount credits to those existing properties employing rate of flow reduction practices.

The City Council may, from time to time, by ordinance, change these user fees.

**State law reference: W. Va. Code §§ 8-16-18, 16-13-16, 16-13-17, 16-13-23(a).**

**Sec. 9-605. Billing**:

The billing for stormwater service may be combined with the billing for other utility services provided by the Beckley Sanitary Board.

**State law reference: W. Va. Code §§ 8-16-18, 16-13-16**

**Sec. 9-606. Collection**:

The Director is authorized to assess interest and penalties upon unpaid and past due stormwater user fees and service charges, and to act as deemed appropriate to enforce collection of unpaid fees and charges. Unpaid stormwater fees and charges shall constitute just cause for disconnection of public water service to the non-paying property. The Director shall ensure sufficient notice of disconnection is issued no later than thirty (30) days prior to the scheduled disconnection and that notice of disconnection is posted on the affected property no later than five (5) days prior to the scheduled disconnection. Water service shall be reactivated only upon full payment of the stormwater service charges or other payment arrangements approved by the Director. The Director may also take appropriate legal action to collect unpaid charges, including, but not limited to, placing a lien upon the subject property and/or bringing a civil action in a court of competent jurisdiction to recover unpaid charges and fees.

**State law reference: W. Va. Code §§ 8-16-18, 16-13-16.**

**Sec. 9-607. Use of Funds**:

All funds collected for stormwater service shall be accounted for separately and shall be used solely for the construction, operation and maintenance of the stormwater system and stormwater environmental compliance programs.

**State law reference: W. Va. Code §§ 16-13-16, 16-13-23(a).**

**Sec. 9-608. General Requirements and Prohibitions**:

(a) The use of the stormwater collection system shall be the collection and transportation of stormwater.

(b) No person shall place or cause to be placed any pollutant into the stormwater system other than stormwater, unless written approval has been granted by the Director. The Director may refuse to grant approval to discharge non-stormwater into the stormwater system for any reason or combination of reasons.

(c) The Beckley Sanitary Board shall administer use of the stormwater system to all users within the City watershed, whether located within or outside City limits.

(d) No person shall cause or permit the introduction of any pollutant into the stormwater system, whether solid, liquid or gaseous, that will cause:

(1) Chemical reaction, either directly or indirectly with the materials of construction used in the stormwater system or that will impair the strength or durability of sewers or structures;

(2) Mechanical action that will destroy or damage sewers or structures;

(3) Restriction of the normal maintenance and inspection of sewers;

(4) Danger to public health and safety or to the environment;

(5) Conditions that create a public nuisance;

(6) An oil sheen or unusual color;

(7) Abnormal demand on the stormwater system capacity; or,

(8) The stormwater system to violate its NPDES permit or applicable receiving water standards and all other Federal, State, and local regulations.

(e) Any person or entity engaged in activities which will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, compliant operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities, and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the Director. Approval by the Director must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to

possible exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-609. Illicit Connections:**

It is prohibited to establish, use, maintain or continue illicit connections to the municipal stormwater system, or to commence or continue any illicit discharges to the municipal stormwater system.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-610. Outdoor Storage Areas:**

In outdoor areas, no person shall store grease, oil or other hazardous substances in a manner that will or may result in such substances entering the stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the stormwater system. To prevent the discharge of hazardous substances to the stormwater system, the Director may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-611. Construction Sites:**

Any person performing construction work in the city watershed of the City of Beckley shall comply with the provisions of this Article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to the storm drain system and/or receiving stream. The Director shall establish by regulation standards and guidelines for the implementation and maintenance of best management practices designed to provide erosion and sediment control from construction sites. At a minimum, these regulations shall address:

(1) Erosion controls through the protection and preservation of the soil at an active construction site to prevent off-site sedimentation.

(2) Sediment controls to remove sediment from runoff before the runoff is discharged from an active construction site.

(3) Stabilization and structural practices to prevent sedimentation and erosion.

(4) Stormwater management measures to be installed before, coincident with and upon completion of construction activities. These measures shall be designed to reduce or

eliminate pollutants discharged from the site and to promote flood control objectives designated by the Director.

(5) Construction site housekeeping best management practices, including, but not limited to, equipment maintenance, repair and cleaning, waste management and collection, storage of materials and chemicals, and sanitary facilities.

(6) Compliance with any and all other requirements imposed under the provisions of the Clean water Act.

No landowner or land operator shall receive any building, grading or other land development permit or administrative authorization/license required for building or land disturbance activities without first meeting the requirement of this section.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-612. Discharge of Pollutants:**

Discharges from the following activities will not be considered a regulated source of pollutants to the municipal separate storm sewer and waters of the state when properly managed: water line flushing and uncontaminated discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, groundwater infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting activities and training.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-613. Discharge in Violation of Permit:**

Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the City of Beckley and/or the Beckley Sanitary Board relating to such discharge as provided by applicable rules of law.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-614. Notification of Spills:**

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training and maintain notification procedures to assure that immediate notification is provided to the Director upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the municipal stormwater system or into a receiving stream.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-615. Construction**:

(a) Only designated Beckley Sanitary Board employees or parties authorized by the Director may perform construction upon the public facilities of the stormwater system. Public facilities of the system shall include:

(1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties; and,

(2) All taps or other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private stormwater facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Director.

(c) Parties authorized by the Director to perform construction of or upon the public facilities of the stormwater system shall comply with the design and construction standards promulgated by the Director. These parties shall allow for inspection of the construction by the Director at all times, and construction shall only occur during normal working hours of the Sanitary Board. No facility constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Director. This authority shall be granted by the Director upon satisfaction of the announced design and construction standards.

(d) All public facilities shall, upon authorized completion, be property of the City of Beckley.

(e) A party authorized by the Director to perform construction upon the public facilities of the stormwater system shall meet the following requirements prior to and throughout construction:

(1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,

(2) Compliance with all relevant and applicable state laws regarding government construction contracts, including, but not limited to, WV Code §§ 5-22-1, et seq. And 21-5A-1, et seq.; and,

(3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers' Compensation Division; and,

(4) Contractor's liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, which may include commercial general, automobile, umbrella and builders risk policies, naming the City of Beckley and the Beckley Sanitary Board as additional insureds. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Director; and,

(5) A construction bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, equal to the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,

(6) A repair bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, in an amount no more than the reasonable estimate of repair costs, as determined by the Director, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,

(7) Certification of full compliance with all relevant state and local permitting and tax rules and regulations, certification of appropriate property rights to perform the construction, and conveyance to the City of Beckley of appropriate property rights for the completed public facilities.

(8) Nothing in sub-paragraphs 2, 3, 4, 5 and 6 shall apply to any situation where the Director shall come to an agreement with volunteer or a volunteer group doing work for a qualified not-for-profit entity, whereby the Director will provide engineering, technical or other services and the volunteers will provide the necessary labor without charge to, or liability upon, the City of Beckley or the Beckley Sanitary Board. The not-for-profit entity shall be responsible for all costs to the utility associated with such a project.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-616. Stormwater Taps:**

(a) The Director or a party authorized by the Director will furnish and install stormwater system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Director. The applicant shall pay the full cost of the tap installation.

(b) The Director may deny a tap application when the requested tap is proposed to an inadequate public facility.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-617. Enforcement:**

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this Article.

(b) The Director and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this Article.

(d) The Director is authorized to take appropriate legal action to require compliance with this Article.

(e) The Director is authorized to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described therein.

(f) If, after reasonable notice, a person fails to comply with this Article, the Director may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Director, for full payment of the invoiced amount.

(g) The Director is authorized to take all steps necessary to immediately halt any discharge of pollutants which reasonably appear to present an imminent danger to the health or welfare of persons or to the environment.

(h) Persons aggrieved by any determination of the Director in enforcing this Article may appeal that determination to the Beckley Sanitary Board or a court of proper jurisdiction. Prosecution shall be stayed pending such an appeal.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-618. Stormwater Management and Comprehensive Drainage Plans:**

(a) Upon the effective date of this Article, the Director shall enact regulations providing for specific requirements and standards for stormwater management and drainage upon all new developments and redevelopment projects. These regulations shall be written to minimize the discharge and transport of pollutants to storm drain systems and prevent the deterioration of water quality. At a minimum, these regulations shall address:

(1) Prevention of any direct discharge of untreated stormwater, either on or off-site.

(2) Prevention of increased post-development discharge rates.

(3) Removal of a designated amount, determined by the percentage of impervious parcel area, of annual total load of pollutants generated from development or redevelopment runoff prior to any off-site discharge.

(4) Description and implementation of best management practices, and the continuation of those BMPs for appropriate periods of time.

(5) Protection of ground water from instances of polluted runoff infiltration.

(6) Protection and preservation of the stormwater collection system, including, but not limited to, open natural drainage ways and riparian areas, which together function to attenuate runoff volumes, peak discharges and pollutant loading to the water environment.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-619. Drainage System Standards:**

Drainage systems shall comply with the standards established by the Director.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-620. Plan Submission and Review Process:**

(a) Upon the effective date of this Article, and following the enactment of regulations providing for specific requirements and standards for stormwater management and drainage upon all new developments and redevelopment projects, stormwater management plans and comprehensive drainage plans for any new construction or reconstruction within the city watershed shall be submitted to the Director. The plans shall be reviewed by the Director or his/her designated representative for compliance with the applicable rules and standards. Plans developed to meet federal or state requirements may be submitted, and will be approved if they conform to the requirements of this Article. If the Director employs outside services for plan review, the cost of that review shall be paid by the Applicant.

(b) The plan submission and review process shall be coordinated with and integrated into the City planning and permitting process. Following the effective date of this section, no building permit shall be issued without an approved stormwater management plan if required under this Article.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-621. Maintenance of Stormwater Facilities:**

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Director upon request.

(d) The Director may perform corrective or maintenance work, which shall be at the owner's expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Director.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this Article and guidance of the Director.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

revised by amendment

**Sec. 9-622. Inspection:**

(a) Stormwater systems within the City watershed shall be inspected by the Director during and after construction to assure consistency with the approved stormwater management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Director to ensure compliance with this Article and may be inspected when deemed necessary.

(c) The owner of a private stormwater system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Director has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this Article, the Director may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this Article; provided that (1) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Article, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges, or similar factors.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-623. Sampling:**

With the consent of the owner or occupant or with Court order, the Director may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Director may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-624. Testing and Monitoring:**

(a) Whenever the Director determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Director may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Director may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports, shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the Order.

(b) Within twenty (20) days of the date of receipt of the order notice, the recipient shall respond personally or in writing advising the Director of the recipient's position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Director to review the Order's requirements and revise the Order as the Director may deem necessary. Within ten (10) days of such meeting, the Director shall issue a final written order. Final Orders issued pursuant to this Section may be appealed to the Beckley Sanitary Board by the filing of a written appeal with the Sanitary Board within ten (10) days of receipt of the final Order. The appeal notice shall set forth the particular Order requirements or issues being appealed. The Sanitary Board shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Sanitary Board shall be final, but may be subject to review by a Court of competent jurisdiction.

(c) In the event the owner or operator of a facility or property fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein, the Director may cause such monitoring and/or analyses to occur. If a violation is found, the Director may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Director may pursue judicial action to enforce the Order and recover all costs incurred.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-625. Concealment:**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this Article shall constitute a violation of such provision.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec.9-626. Acts Resulting in Violation of Federal Clean Water Act:**

Any person who violates any provision of this Article, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

**Sec. 9-627. Violations Deemed a Public Nuisance:**

(a) In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Article shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the Director and may be summarily abated and/or restored by the Director and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance

(b) The cost of such abatement and/or restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

(c) If any violation of this Article constitutes a seasonal and recurrent nuisance, the Director shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further declaration.

(d) In any administrative or civil proceeding under this Article in which the City or its agent prevails, the City or its agent may be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorneys' fees.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-628. Administrative Enforcement Powers:**

(a) In addition to the other enforcement powers and remedies established by this Article, the Director has the authority to utilize the following administrative remedies.

(1) Cease and Desist Orders. When the Director finds that a discharge has taken place or is likely to take place in violation of this Article, the Director may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (a) comply with the requirement; (b) comply with a time schedule for compliance, and/or (c) take appropriate remedial or preventive action to prevent the violation from recurring. The Director may refer the violation to the West Virginia Department of Environmental Protection for further civil and/or criminal prosecution in accordance with the Clean Water Act. The Director may, in any case, assess a charge to the violator to recover the cost of response/remediation incurred by the utility. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. The Director may also bring a civil action in a court of competent jurisdiction to recover unpaid costs and fees.

(2) Notice to Clean. Whenever the Director finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system or a non-stormwater discharge to the storm drain system, he or she may give notice to the property owner remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.

(3) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Director may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. The Director may also

bring a civil action in a court of competent jurisdiction to recover unpaid costs and fees.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-629. Nonexclusivity of Remedies:**

Remedies under this Article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

**Sec. 9-630. Appeal:**

Any person, firm, corporation or organization notified of non-compliance with this Article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Director may appeal such decision in writing to the Beckley Sanitary Board within ten (10) days following the effective date of the decision. Upon receipt of such request, the Sanitary Board shall request a report and recommendation from the Director and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the Sanitary Board may hear additional evidence, and may revoke, affirm or modify the earlier decision. Such decision shall be final, subject to appeal to a Court of competent jurisdiction.

**State law reference: W. Va. Code §§ 16-13-2, 16-13-22.**

**Sec. 9-631. Disclaimer of Liability:**

The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this Article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. This Article shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

_____
Mayor

ADOPTED:

FILED:

_____
City Clerk

RECORDED:

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M. JUNE 26, 2007 IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., Ann Worley, Tim Berry, Lee Leftwich, and Robert Rappold; Recorder-Treasurer Gary Sutphin; City Attorney William H. File III, and Secretary Linda Carr.

THOSE ABSENT: Councilmen Pete Francesa and Howard Mollohan.

ALSO PRESENT: Fire Chief Kevin Taylor, Acting Police Chief Tim Deems, Director of Housing and Community Development Manuel Cartelle, Director of Human Rights Commission Elmer Day, Director of IT Department Bill Kelly, Street Commissioner Robert Robinson, and Chief of Code Enforcement Bob Cannon.

The Mayor called the meeting to order followed by the Pledge of Allegiance to the Flag.

Council dispensed with reading of the minutes of the previous meeting which had been made available to each member and adopted the minutes as written on a motion by Councilman Rappold and seconded by Councilman Berry.

The Mayor presented plaques to former Councilman Nickell and Councilman Berry thanking them for their years of service to the citizens of Beckley.

The Police Chief of Lewisburg and President of the West Virginia Police Chiefs Association Tim Stover presented Chief Cole with a plaque recognizing his 42 years of service as a police officer. The Mayor presented Chief Cole with a plaque also commending him for his years of service to the citizens of Beckley.

The Mayor presented the name of Lt. Tim Deems for appointment as the City's Police Chief. On a motion by Councilman Rappold and seconded by Councilman Worley, Lt. Tim Deems was unanimously approved as the City's new Police Chief.

Mr. File presented for second reading and public hearing an Ordinance adding Section 227(b) to the City Code as the same applies to storm water management and control by the Beckley Sanitary Board. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

June 22, 2007

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, Inc., a corporation, of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 15th day of June, 2007, and ending with the issue of the 22nd day of June, 2007, (and was posted at the Raleigh County Courthouse on the 22nd day of June, 2007); that said annexed notice was published on the following dates:

06/15/07,06/22/07 and that the

COPY OF PUBLICATION

Public hearing for the following Ordinance will be held during the regular meeting of Common Council on Tuesday, June 26, 2007, in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

*AN ORDINANCE AMENDING CHAPTER 9, ARTICLE II, DIVISION 2, SECTION 9-227 OF THE BECKLEY CITY CODE BY ADDING A NEW SECTION 9-227(b) AS THE SAME APPLY TO STORMWATER MANAGEMENT AND CONTROL BY THE BECKLEY SANITARY BOARD*

*WHEREAS, Beckley Common Council desires to amend Chapter 9 of the Beckley City Code so as to clearly state that the Beckley Sanitary Board has authority to manage and control stormwater.*

*NOW, THEREFORE, the City of Beckley ordains that Chapter 9 is amended by adding a new subsection 9-227(b) which shall read as follows (new matter underlined, deleted matter struck through):*

*Section 9-227. Powers, duties; limitations thereon; obligation and expenditure of funds; employees.*

(a) The sanitary board shall have the supervision and control of the custody, administration, operation and maintenance of all works for the collection, treatment and disposal of sewage which are now owned or may hereafter be acquired by the city. The sanitary board shall have power to take all steps and proceedings, and to make and enter into all con-

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilman Leftwich, the following Ordinance was unanimously approved by Council:

FIRST READING 6-12-07 SECOND READING 6-26-07

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE II, DIVISION 2, SECTION 9-227 OF THE BECKLEY CITY CODE BY ADDING A NEW SECTION 9-227(b) AS THE SAME APPLY TO STORMWATER MANAGEMENT AND CONTROL BY THE BECKLEY SANITARY BOARD.

WHEREAS, Beckley Common Council desires to amend Chapter 9 of the Beckley City Code so as to clearly state that the Beckley Sanitary Board has the authority to manage and control stormwater.

NOW, THEREFORE, the City of Beckley ordains that Chapter 9 is amended by adding a new subsection 9-227(b) which shall read as follows (new matter underlined, deleted matter struck through):

Sec. 9-227. Powers, duties; limitations thereon; obligation and expenditure of funds; employees.

(a) The sanitary board shall have the supervision and control of the custody, administration, operation and maintenance of all works for the collection, treatment and disposal of sewage which are now owned or may hereafter be acquired by the city. The sanitary board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of the powers granted to it by law, and shall have all of the powers granted to such sanitary board under and by virtue of the W. Va. Code, ch. 16, art. 13, and shall be subject to all restrictions and limitations contained therein as well.

(b) The management, control, and operation of the stormwater drainage and sewer system of the City shall be vested in the Beckley Sanitary Board. The Board shall have full and complete supervision, management, and control of the stormwater drainage system, including the maintenance, operations, improvements, and extension thereof. All assets and liabilities of the stormwater system, including accounts receivable and accounts payable, shall be under the management and control of the Board.

(b)(c) The sanitary board may employ engineers, architects, inspectors, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of W. Va. Code, ch. 16, art. 13 shall be paid solely from funds provided under the authority of that article, and the sanitary board shall not exercise or carry out any authority or power given it so as to bind the board of the city beyond the extent to which money shall have been or may be provided under the authority of the aforesaid article 13.

This Ordinance shall become effective upon passage.

Mr. File then presented for second reading and public hearing an Ordinance amending the City Code as it applies to storm water management and surface water discharge control and applicable rates and fees. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

June 22, 2007

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, Inc., a corporation, of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 15th day of June, 2007, and ending with the issue of the 22nd day of June, 2007, (and was posted at the Raleigh County Courthouse on the 22nd day of June, 2007); that said annexed notice was published on the following dates:

06/15/07,06/22/07 and that the cost of publishing said annexed notice as aforesaid was $ 209.01

Signed Tara Meyer
Tara Meyer
Legal Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
22nd day of June, 2007

My commission expires March 27, 2011

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA D. SLONE
BECKLEY NEWSPAPERS
P. O. BOX 2398
BECKLEY, WV 25802
MY COMMISSION EXPIRES MARCH 27, 2011

Notary Public of Raleigh County, West Virginia

COPY OF PUBLICATION

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Ordinance was unanimously approved by Council:

FIRST READING

6-12-07

SECOND READING

6-26-07

AN ORDINANCE AMENDING THE BECKLEY CITY CODE, AS THE SAME APPLIES TO STORMWATER MANAGEMENT AND SURFACE WATER DISCHARGE CONTROL AND APPLICABLE RATES AND FEES.

WHEREAS, the 2001 West Virginia Legislature amended sections 8-16-1 et seq., and 16-13-1 et seq., of the West Virginia Code so as to authorize municipalities to regulate stormwater management and surface water discharge, as part if its public works program and sanitary sewerage system; and,

WHEREAS, there is a public need to protect life, property and the water environment from loss, injury and damage caused by storm and surface water, and a responsibility of the City as a trustee of the water environment for future generations; and,

WHEREAS, the City of Beckley, and its contiguous urban watershed, has been designated by Federal Law as a regulated municipal separate storm sewer system, and, such, must comply with the regulatory requirements established under the Clean Water Act; and,

WHEREAS, accordingly, it is necessary for the City of Beckley to enact rules and regulations, as well as service fees, pertaining to stormwater management and surface water discharge control in its urban watershed.

NOW, THEREFORE, the City of Beckley hereby ordains that Chapter 9, Article V, addressing stormwater management and surface water drainage control is added to its City Code and reads as follows:

CHAPTER 9, ARTICLE V

Stormwater Management and Surface Water Discharge Control

Sec. 9-600. Definitions:

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

(a) "Best Management Practices (BMPs)" are physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the state. BMPs may include schedules of activities; prohibition of practices, design standards, educational activities and treatment requirements.

MO363169.1

Lastly, Mr. File presented for second reading and public hearing an Ordinance establishing a storm water utility and delegating responsibility of said utility to the Beckley Sanitary Board. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

June 22, 2007

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, Inc., a corporation, of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 15th day of June, 2007, and ending with the issue of the 22nd day of June, 2007, (and was posted at the Raleigh County Courthouse on the 22nd day of June, 2007); that said annexed notice was published on the following dates:

06/15/07,06/22/07

and that the cost of publishing said annexed notice as aforesaid was $ 317.36

Signed Tara Meyer
Tara Meyer
Legal Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
22nd day of June, 2007

My commission expires October 24, 2011

NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. STONE
BECKLEY NEWSPAPERS
P. O. Box 2038
BECKLEY, WV 25802
My commission expires October 24, 2011

Diana L. Stone
Notary Public of Raleigh County.

COPY OF PUBLICATION

systems as part of a municipal combined waterworks and sewage system; and,

WHEREAS, there is a public need to protect life, property and the water environment from loss, injury and damage caused by storm and surface water, and a responsibility of the City as a trustee of the water environment for future generations; and

WHEREAS, there is a public need to establish a single authority for planning acquisition, improvement, construction, inspection, development, installation, modification, management, operation, maintenance, repair, replacement, control, demolition, abandonment, regulation and funding of storm and surface water drainage services, systems and facilities; and,

WHEREAS, the City of Beckley, and its contiguous urban watershed, has been designated by Federal Law as a regulated municipal separate storm sewer system, and, as such, must comply with the regulatory requirements established under the Clean Water Act; and,

WHEREAS, it is in the public interest to transfer all storm, flood and surface water drainage responsibility, management, interest and authority to the Beckley Sanitary Board and empower and authorize and approve the Sanitary Board in providing storm, flood and surface water drainage services to all real property located within the corporate limits of the City of Beckley and in its adjacent watershed drainage area, as now or in the future may exist, and for the Sanitary Board to charge service fees for storm, flood and surface drainage services rendered by the Sanitary Board,

NOW, THEREFORE, the City of Beckley hereby ordains that:

1. There is hereby established the Beckley Stormwater Utility. This utility shall serve the Beckley urban watershed, which shall include all areas within the corporate boundaries of the City of Beckley and all adjacent and contiguous areas over and through which surface and stormwater flows into the City of Beckley. The Stormwater Utility shall provide

sion, flooding, and other potential hazards, whether from natural causes or from human activity, and shall protect, to the greatest extent practicable, surface waters and receiving waters from pollution, mechanical damage, excessive flows, and other conditions which degrade the water environment, reduce recharging of groundwater, or endanger aquatic and benthic life within the Beckley urban watershed and other receiving waters of the State. The Beckley Stormwater Utility shall further meet the requirements of state and federal law and the City municipal separate storm sewer system NPDES permit.

3. The Beckley Stormwater Utility is authorized to plan, acquire, improve, construct, inspect, develop, install, modify, manage, operate, maintain, replace, control, demolish, abandon, regulate and fund storm and surface water drainage services, system and facilities within the urban watershed. The Utility is further authorized to acquire property and/or rights in land by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to alter and to extend storm water and flood management facilities within the City watershed. The Utility is further authorized to charge and collect rates and fees for these services, which rates and fees shall be determined by the Common Council of the City of Beckley. The Utility is further authorized to accept funds under any federal law for actions preliminary to construction / reconstruction or construction or reconstruction of storm water and flood management facilities.

4. The Beckley Stormwater Utility is authorized in anticipation of the collection of revenues derived from stormwater utilities, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment and extension of such facilities and to pledge part or all of the payment of said bonds and interest thereon from any part of the revenues of the Utility.

5. The Beckley Sto

Public hearing for the following Ordinance will be held during the regular meeting of Common Council on Tuesday, June 26, 2007, in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE ESTABLISHING A STORMWATER UTILITY AND DELEGATING

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilman Leftwich, the following Ordinance was unanimously approved by Council:

FIRST READING

6-12-07

SECOND READING

6-26-07

AN ORDINANCE ESTABLISHING A STORMWATER UTILITY AND DELEGATING RESPONSIBILITY OF SAID UTILITY TO THE BECKLEY SANITARY BOARD.

WHEREAS, the West Virginia Legislature amended sections 8-20-1 et seq. and 16-13-1 et seq. of the West Virginia Code in 2001 so as to authorize municipalities to include the operation and management of stormwater systems as part of a municipal combined waterworks and sewerage system; and,

WHEREAS, there is a public need to protect life, property and the water environment from loss, injury and damage caused by storm and surface water, and a responsibility of the City as a trustee of the water environment for future generations; and,

WHEREAS, there is a public need to establish a single authority for planning, acquisition, improvement, construction, inspection, development, installation, modification, management, operation, maintenance, repair, replacement, control, demolition, abandonment, regulation and funding of storm and surface water drainage services, systems and facilities; and,

WHEREAS, the City of Beckley, and its contiguous urban watershed, has been designated by Federal Law as a regulated municipal separate storm sewer system, and, as such, must comply with the regulatory requirements established under the Clean Water Act; and,

WHEREAS, it is in the public interest to transfer all storm, flood and surface water drainage responsibility, management, interest and authority to the Beckley Sanitary Board and empower and authorize and approve the Sanitary Board in providing storm, flood and surface water drainage services to all real property located within the corporate limits of the City of Beckley and in its adjacent watershed drainage area, as now or in the future may exist, and for the Sanitary Board to charge service fees for storm, flood and surface drainage services rendered by the Sanitary Board.

NOW, THEREFORE, the City of Beckley hereby ordains that:

1. There is hereby established the Beckley Stormwater Utility. This utility shall serve the Beckley urban watershed, which shall include all areas within the corporate boundaries of the City of Beckley and all adjacent and contiguous areas over and through which surface and stormwater flows into the City of Beckley. The Stormwater Utility shall provide storm, flood and

Mr. File presented for first reading an Ordinance re-zoning property adjacent to City Avenue from "M", Manufacturing, to "B-1", Neighborhood Highway Business District. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the first reading of this proposed Ordinance was unanimously approved by Council.

Mr. File presented for first reading an Ordinance closing a public right-of-way that runs north of Carter Street. On a motion by Councilman Rappold and seconded by Councilman Berry, the first reading of this proposed Ordinance was unanimously approved by Council.

The Mayor presented a Resolution granting longevity raises to full-time City employees. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Resolution was unanimously approved by Council:

*RESOLUTION*

*WHEREAS,* the Common Council wants to recognize the hard work and dedication of its employees; and

*WHEREAS,* the Common Council is responsible for the financial soundness of the City.

*NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY THAT:*

1. As of July 1, 1993, the annual across-the-board longevity increase for the employees of the City of Beckley was suspended.

2. That as of July 1, 1993, all longevity increases for the employees of the City of Beckley shall be approved by the Common Council the last Council meeting in June of each year.

3. That for the Fiscal Year July 1, 2007 to June 30, 2008, the longevity pay increase for the employees of the City of Beckley, except for Civil Service employees with fewer than six years of experience which shall remain the same as was prior to the enactment of this Resolution, shall be:

(a) For employees who will reach their 6th month of employment during FY 2007-08, the longevity increase will be $265.00 per year.

(b) For employees who will reach their 1st, 2nd, or 3rd anniversary date during FY 2007-08, the longevity increase will be $265.00 per year.

(c) For employees who will reach their 4th, 5th, or 6th anniversary date during FY 2007-08, the longevity increase will be $333.00 per year.

(d) For employees who will reach their 7th, 8th, or 9th anniversary date during FY 2007-08, the longevity increase will be $396.00 per year.

The Mayor stated this is the date advertised for the second public hearing concerning applying for Small Cities Block Grant Funds. The public hearing was opened for comments. There being none, the public hearing was closed. The Mayor then presented for Council approval a Resolution to apply for Small Cities Block Grant Funds for the East Beckley Sewage System Upgrade. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Resolution was unanimously approved by Council:

## RESOLUTION

**WHEREAS,** the City of Beckley wishes to submit an application to the State of West Virginia HUD Small Cities Block Grant program to request funding for construction of the Redbrush/Piney Oaks Sewer Improvements Project, and

**WHEREAS,** the City of Beckley must give assurance that all Small Cities Block Grant program regulations related to grant administration, civil rights and other applicable State and Federal Laws will be followed, and

**WHEREAS,** the City of Beckley must designate an official representative to act on its behalf in connection with the application and execute all necessary program documents.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The City of Beckley authorized the submission of an application with the State of West Virginia HUD Small Cities Block Grant Program for funding for the construction of the Redbrush/Piney Oaks Sewer Improvements Project.

2. The City of Beckley will comply with all laws and regulations pertaining to the program.

3. Emmett S. Pugh, III, Mayor of the City of Beckley, is designated as the authorized official to act in connection with the application.

Emmett S. Pugh, III, Mayor

I, Gary R. Sutphin, Clerk of the City of Beckley, certify that the above is a true copy of a Resolution adopted the 26th day of June, 2007 at a meeting of the Beckley City Council. I further certify that a quorum of the Council were present and a majority of its members voted affirmatively for this Resolution.

Clerk

Mr. Cannon presented reports to Council on Notices of Intent to Apply for a Private Club License. The first establishment was Fahrenheit located at 200 South Heber Street. It is in an area properly zoned for this intended use and is not in an area designated for Community Development Block Grant Funds. The next business is DeSoto's located at 306 Beckley Plaza. This club is in an area properly zoned for this use and is not in an area designated for Community Development Block Grant Funds. These applications will be forwarded to the West Virginia Alcohol Beverage Control Commission.

Councilman Leftwich asked whose responsibility it is to pick up dead animals on State rights-of-way. The Mayor stated it is the State's responsibility, but they won't pick up dead animals. If anyone calls the Board of Public Works, the City will try to pick up these dead animals.

The Mayor announced to those present that the Oaths of Office will be administered to the Mayor and Council Members on Friday, June 29, 2007, beginning at 7:00 p.m.

Mr. Wayne Rebich of ACT addressed Council on the current status of the litigation concerning prevailing wages on the Neville Street property.

With no further business to be addressed, the meeting adjourned at 7:58 p.m. on a motion by Councilman Rappold and seconded by Councilman Leftwich.

I certify that the above is a true and accurate copy of the minutes duly passed by the Common Council of the City of Beckley at its regular meeting held on June 26, 2007.

9.23.10
Date

Emmett S. Pugh III - Mayor

# Oath of Office

## CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Emmett S. Pugh III, who was duly elected Mayor of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Mayor of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Mayor of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

(SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)

CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date:

I, Gary R. Sutphin, who was duly appointed Recorder-Treasurer for the City of Beckley by Emmett S. Pugh III, Mayor, effective March 6, 1989, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Recorder-Treasurer for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 6th day of March, 1989.

_____ (SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 6th day of March, 1989.

_____ (SEAL)

CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, A. K. Minter, Jr., who was duly elected Councilman - Ward I of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003, as Councilman - Ward I of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward I of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, XX 2003

A. K. Minter (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, XX 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

# Oath of Office

CITY OF BECKLEY
BECKLEY, WEST VIRGINIA

Date: August 24, 2004

I, Ann W. Worley, who was duly appointed Councilwoman - Ward II for the City of Beckley by Emmett S. Pugh III, Mayor, effective August 24, 2004, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilwoman - Ward II for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 24th day of August, 19 2004

Ann W. Worley (SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 24th day of August, 19 2004

S. Pugh III (SEAL)

CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 29, 2007

I, Frank Williams, who was duly elected Councilman - Ward III of the City of Beckley at an election held on May 22, 2007, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held May 31, 2007, as Councilman - Ward III of the City of Beckley for a four year term beginning July 1, 2007, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward III of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 29th day of June, ~~XX~~ 2007

Frank Williams (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 29th day of June, ~~XX~~ 2007

(SEAL)
CITY OF BECKLEY

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: June 29, 2007

I, Mike Atterson, who was duly elected Councilman - Ward IV of the City of Beckley at an election held on May 22, 2007, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held May 31, 2007, as Councilman - Ward IV of the City of Beckley for a four year term beginning July 1, 2007, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward IV of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 29th day of June, ~~XX~~ 2007.

Mike Atterson (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 29th day of June, ~~XX~~ 2007.

(SEAL)
CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, A. Lee Leftwich, who was duly elected Councilman - Ward V of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman - Ward V of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward V of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

A. Lee Leftwich (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Robert R. Rappold, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman-at-Large of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, XX 2003

Robert R. Rappold (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, XX 2003

(SEAL)
CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 29, 2007

I, Cedric Robertson, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 22, 2007, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held May 31, 2007, as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 2007, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman-at-Large of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 29th day of June, ~~19~~ 2007

Cedric R Robertson (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 29th day of June, ~~19~~ 2007

(SEAL)
CITY of BECKLEY

Feb 24, 2009

**Sec. 9-602. Stormwater User Fees and Service Charges:**

(a) Users connected to or draining into the public storm drainage system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to, and necessary additions to the stormwater system. Therefore, all owners or tenants of real property in the City of Beckley and the City watershed shall be charged for the use of the stormwater system based on the amount of stormwater and rate of flow of stormwater which is projected to discharge into the stormwater system from the property.

(b) The City Council shall, by ordinance, set user fees which will recover from users their fair share of costs for use of the stormwater system by property within and outside the corporate limits of the City of Beckley and within the City watershed. Such user fees will be for the operation and maintenance of, improvements to, necessary additions to, and environmental compliance programs for the stormwater system.

(c) The Director may establish and enforce service fees to be charged and collected for services rendered by the stormwater utility or by agents of the utility, including, but not limited to, fees for permit application, stormwater management plan review, inspection, and other services.

(d) The Director may establish and administer a stormwater service fee reduction credit program to encourage the installation and maintenance of sound technical design practices which reduce the negative impact of development upon the stormwater drainage system and/or the water environment, and to encourage and implement public education regarding stormwater management and the water environment. Credits may be assigned in amounts designated by the Director for practices that effectively and positively impact stormwater runoff water quality, quantity, and/or velocity, or for practices that improve the public knowledge of stormwater runoff, the watershed and/or the water environment. The Director shall designate and administer the process by which credits may be obtained and maintained by the stormwater customer.

**State law reference: W. Va. Code §§ 8-16-18, 8-16-21, 16-13-22.**

**Sec. 9-603. Property Affected:**

Except as provided in this Article and/or by regulation, all real property shall be subject to the stormwater user fee and service charges regardless of whether privately or publicly owned.

**State law reference: W. Va. Code §§ 8-16-18, 8-16-21, 16-13-16, 16-13-17, 16-13-22.**

**Sec. 9-603. Flat Rate Charges:**

The monthly fee for users occupying a single-family residential dwelling, as defined by the Director, shall be $ 3.75. After July 1, 2008, the monthly service charge for a single-family residential dwelling shall be $3.75. The City Council may, from time to time, by ordinance, change this user fee.

**State law reference: W. Va. Code §§ 8-16-18, 16-13-16, 16-13-17, 16-17-23(a).**

**Sec. 9-604. Charges Based on Land Area:**

The monthly fee for properties other than described in Section 9-603 (above) shall be $10.00 per drinking water service. If an improved property does not contain a water service, the service fee shall be $10.00 per parcel. After July 1, 2008, the monthly fee for properties other than described in Section 9-603 shall be computed in the following manner: $1.25 per 1,000 square feet of impervious area upon the property, as determined by the Director.

User fees for a multi-unit property shall be billed to each individual tenant upon the property in a fair and proportionate share of the total property fee, if said tenant has an individual drinking water service meter. At the discretion of the property owner, or if the individual tenants do not have individual drinking water service meters, fees for a multi-unit property may be billed to the property owner. A property owner exercising this choice must complete a written agreement as required by the Director.

~~The Director shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities. The Director may further assign discount credits to those existing properties employing rate of flow reduction practices.~~

The City Council may, from time to time, by ordinance, change these user fees.

**State law reference: W. Va. Code §§ 8-16-18, 16-13-16, 16-13-17, 16-13-23(a).**

**Sec. 9-622. Inspection:**

(a) Stormwater systems within the City watershed shall be inspected by the Director during and after construction to assure consistency with the approved stormwater management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Director to ensure compliance with this Article and may be inspected when deemed necessary.

(c) The owner of a private stormwater system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Director has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this Article, the Director may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this Article; provided that (1) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Article, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges, or similar factors.

(g) Stormwater customers assigned service fee reduction credits as authorized in this Article shall, at all reasonable times, allow the Director to enter upon and inspect the qualifying controls or practices to ensure continuing qualification for these credits.

**State law reference: W. Va. Code §§ 8-16-5, 16-13-2, 16-13-22.**

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS

BECKLEY, WEST VIRGINIA 25801

February 23, 2009

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of February, 2009, and ending with the issue of the 23rd day of February, 2009, that said annexed notice was published on the following dates: 02/16/09,02/23/09 and that the cost of publishing said annexed notice as aforesaid was $ 135.64

Signed Tara Meyer
Tara Meyer
Legal Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of February, 2009

My commission expires March 27, 2011

Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. HOME
BECKLEY, WV 25802
My commission expires March 27, 2011

### COPY OF PUBLICATION

Public hearing for the following Ordinance will be held during the regular meeting of Common Council on Tuesday, February 24, 2009 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE AMENDING CITY OF BECKLEY CODE CHAPTER 9, ARTICLE V SECTION 9-602, STORM WATER USER FEES AND SERVICE CHARGES, BY ADDING SECTION 9-602(d) AUTHORIZING THE ESTABLISHMENT OF A STORM WATER SERVICE FEE REDUCTION CREDIT PROGRAM

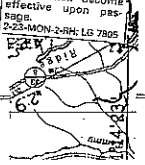
*WHEREAS*, at its regular meeting on the fourteenth day of January, 2009 the City of Beckley Sanitary Board unanimously adopted a resolution requesting the City of Beckley Common Council adopt an ordinance amending the City Code to authorize the establishment of a storm water service fee reduction credit program which, in part, is intended to encourage the installation and maintenance of sound technical design practices which reduce the negative impact of development upon the storm water drainage system and / or the water environment.

*NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:*

*Section 1*: That City of Beckley Code Chapter 9, Article V, Sections heretofore passed by the Common Council of the City of Beckley, which are in conflict with this Ordinance, are hereby repealed.

*Section 3*: This Ordinance shall become effective upon passage.

2-23-MON-2-RH; LG 7805



The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilman Robertson, the following Ordinance was unanimously approved by Council:

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M. FEBRUARY 24, 2009 IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members Ann Worley, Frank Williams, Mike Atterson, Lee Leftwich, Robert Rappold, and Cedric Robertson; City Attorney William H. File III, and Secretary Linda Carr.

THOSE ABSENT: Councilman A. K. Minter, Jr. and Recorder-Treasurer Gary Sutphin.

ALSO PRESENT: Fire Chief Kevin Taylor, Police Chief Tim Deems, Street Commissioner Robert Robinson, Director of Exhibition Mine Renda Morris, Director of Housing and Community Development Manuel Cartelle, and Chief of Code Enforcement Bob Cannon.

The Mayor called the meeting to order followed by a word of prayer by Councilman Robertson and the Pledge of Allegiance to the flag.

Council dispensed with reading of the minutes of the previous meeting which had been made available to each member and approved the minutes as written on a motion by Councilman Rappold and seconded by Councilman Williams.

Father Tom Acker of Forward Southern West Virginia informed Council that the low bid for renovation of the Thrifty Building Project in downtown Beckley is Nichols Construction Company of Summersville. The total price is $687,745 and was based on West Virginia prevailing wage rates. On a motion by Councilman Rappold and seconded by Councilman Leftwich, this bid award was unanimously approved by Council.

Mr. File presented for second reading and public hearing an Ordinance re-zoning thirteen lots off Woodcrest Drive and Timber Ridge Drive from "B-1", Neighborhood Highway Business District, to "R-1", One-Family District. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS

### BECKLEY, WEST VIRGINIA 25801

February 19, 2009

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for one successive weeks (Class I), commencing with the issue of the 19th day of February, 2009, and ending with the issue of the 19th day of February, 2009, that said annexed notice was published on the following dates:

02/19/09

and that the

...leigh County, WV; Public h-here named the coun-ruary 24y, state in which the real estate is situated) AN ORDwhich was returned OF TheRinquent in the AMENDname of BLUE FLASH DRIVE AOD MART INC., and OF BEor which the tax liens thereon were sold by WHERthe sheriff of Raleigh a lawfulCounty as the sale for cels offdelinquent taxes made 230.0, 20n Monday, Novem-properter 19, 2007, has re-Businesquested that you be WHERnotified that a deed for fic to thisuch real estate will be Commomade to (him/her) on rict to or after the first day of NOW, April, 2009, as provid-Sectioed by law, unless be-the Zonore that day you re-Woodcdeem such real estate. 230.1, 2The amount you will City of bave to pay to redeem and legTuesday, March 31, Highwa2009, will be as fol-Sectiolows: amendeTax amount paid Sectio $17,035.50 are in.of interest $2,898.03 Sectiofile exam $200.00 Title exam interest $8.00 Preparation fees $5.00 BeginNotices to redeem Parcel 2 $5.00 thenceCertified mail cost and 230 $27.50 commoPublication fees at appr $150.00 tance oTotal Due Sheriff tersecti $20,327.03 Drive, TTotal Due Clerk $35.00 thence boundaTotal sale amount 230.2 a $24,000.00 feet, thIess Tax amount paid ly 314.5 $17,035.50 1); Total excess amount thenc $6,964.50 feet 23Excess taxes are re-230.10 funded to purchaser commoby the Sheriff. 230.9 a

NATIONAL BANK - SOUTH (NOW UNITED BANK INC.)

ANY AND ALL HEIRS AT LAW, DEVISEES, CREDITORS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS OF RICHARD CLAY BURDISS II AND ROBERT BRUCE BURDISS

No mailing address was available

You will take notice that ED BOER, the purchaser of the tax liens on the following real estate, SUR NO PT LOT 34 FURROW HOMESTEAD, (here described the real estate for which the tax liens thereon were sold), located in Raleigh County, WV, there named the county, state in which the real estate is situated) which was returned delinquent in the name of BURDISS RICHARD CLAY II AND ROBERT BRUCE BURDISS and for which the tax liens thereon were sold by the sheriff of Raleigh County as the sale for delinquent taxes made on Monday, November 19, 2007, has requested that you be notified that a deed for such real estate will be made to (him/her) on or after the first day of April, 2009, as provided by law, unless before that day you redeem such real estate. The amount you will

...ny, WV; LOT H... describ... tate for... liens ... sold), ... leigh ... (here n... ty, stat... real est... which ... delinqu... name o... NA MA... for whi... thereon ... the she... County ... delinqu... on Mo... ber 19, ... quested ... notified ... such re... made t... or after ... April, 2... ed by ... fore th... deem s... The am... have to ... Tuesda... 2009, ... lows: ... Tax am... Tax int... Title ex... Title ex... Prepara... Notices ... Certifie... Publicat... Total D... Total D... Total sa... less Tax

NOTICE TO REDEEM

Certificate of Sale 07-S-0225

O
ICHARD CLAY
RUDISS II
10101 ST RT 550
VINCENT, OH 45784

ICHARD BRUCE
URDISS
10101 ST RT 550
VINCENT, OH 45784

OBERT BRUCE
URDISS
2-19-TH(261 SULLIVAN ROAD

Please make this check payable to the Sheriff.

Total Due Clerk: $35.00

Please make this check payable to the Clerk.

You may redeem at any time on or before Tuesday, March 31, 2009, by paying the above total less any unearned interest and unused publication

Coun... 3-5-THU...

Yo...

Classifi... al as y... own ad ... online-... It's fast, ... lent, an... able! T... customi... ad visit ...

regist...

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Ordinance was unanimously approved by Council:

FIRST READING
2-10-09

SECOND READING
2-24-09

AN ORDINANCE AMENDING THE CITY OF BECKLEY ZONING ORDINANCE OF 1971 AND THE COMPREHENSIVE PLAN OF THE CITY OF BECKLEY AND THE ZONE MAP OF THE CITY OF BECKLEY, AS FROM TIME TO TIME HAS BEEN AMENDED, TO PROVIDE FOR THE RE-ZONING OF THIRTEEN (13) LOTS OFF WOODCREST DRIVE AND TIMBER RIDGE DRIVE AS SHOWN ON TAX MAP 49A, BECKLEY CORPORATION, CONTAINING ±1.60 ACRES, ALL WITHIN THE CITY OF BECKLEY, RALEIGH COUNTY, WEST VIRGINIA, FROM "B-1", NEIGHBORHOOD HIGHWAY BUSINESS DISTRICT, TO "R-1", ONE-FAMILY DISTRICT

***WHEREAS,*** the City of Beckley Planning Commission, during its regular meeting held on December 16, 2008 conducted a lawful public hearing on the Petition by the majority of the owners of the subject property to re-zone thirteen (13) parcels off Woodcrest Drive and Timber Ridge Drive as shown on Tax Map 49A, Beckley Corporation, including parcels 230.0, 230.1, 230.2, 230.3, 230.4, 230.5, 230.6, 230.7, 230.8, 230.9, 230.10, 230.11, and 230.12, containing ±1.60 acres, which property is more specifically described on the attached map and legal description, from "B-1", Neighborhood Highway Business District, to "R-1", One-Family District.

***WHEREAS,*** at the conclusion of the public hearing held on December 16, 2008, there being no objections from the public to the proposed re-zoning, the City of Beckley Planning Commission unanimously passed a Motion recommending Common Council approve the re-zoning of the herein described lots from "B-1", Neighborhood Highway Business District to "R-1", One-Family District.



Next, Mr. File also presented for second reading and public hearing an Ordinance amending Chapter 9, Article V, Section 9-602, Storm Water User Fees and Service Charges, by adding Section 9-602(d) authorizing the establishment of a storm water service fee reduction credit program. Affidavit of Publication is hereinafter incorporated:

FIRST READING
2-10-09

SECOND READING
2-24-09

AN ORDINANCE AMENDING CITY OF BECKLEY CODE CHAPTER 9, ARTICLE V, SECTION 9-602, STORM WATER USER FEES AND SERVICE CHARGES, BY ADDING SECTION 9-602(d) AUTHORIZING THE ESTABLISHMENT OF A STORM WATER SERVICE FEE REDUCTION CREDIT PROGRAM

***WHEREAS,*** at its regular meeting on the fourteenth day of January, 2009, the City of Beckley Sanitary Board unanimously adopted a resolution requesting the City of Beckley Common Council adopt an ordinance amending the City Code to authorize the establishment of a storm water service fee reduction credit program which, in part, is intended to encourage the installation and maintenance of sound technical design practices which reduce the negative impact of development upon the storm water drainage system and/or the water environment.

***NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:***

Section 1. That City of Beckley Code Chapter 9, Article V, Section 9-602 is hereby amended by adding paragraph (d) as follows:

> (d) The Director may establish and administer a storm water service fee reduction credit program to encourage the installation and maintenance of sound technical design practices which reduce the negative impact of development upon the storm water drainage system and/or the water environment, and to encourage and implement public education regarding storm water management and the water environment. Credits may be assigned in amounts designated by the Director for practices that effectively and positively impact storm water runoff water quality, quantity and/or velocity, or for practices that improve the public knowledge of storm water runoff, the water-shed and/or the water environment. The Director shall designate and administer the process by which credits may be obtained and maintained by the storm water customer.



Mr. File then presented for second reading and public hearing an Ordinance amending Chapter 9, Article V, Section 9-604, Charges based on Land Area. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS

### BECKLEY, WEST VIRGINIA 25801

February 23, 2009

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of February, 2009, and ending with the issue of the 23rd day of February, 2009, that said annexed notice was published on the following dates: 02/16/09,02/23/09 and that the cost of publishing said annexed notice as aforesaid was $ 63.98

Signed Tara Meyer
Tara Meyer
Legal Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of February, 2009

My commission expires March 27, 2011

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA M. LEWIS-PAULINE
BECKLEY, WEST VIRGINIA
P. O. Box 2358
My commission expires March 27, 2011

Notary Public of Raleigh County, West Virginia

COPY OF PUBLICATION

Public hearing for the following Ordinance will be held during the regular meeting of Common Council on Tuesday, February 24, 2009, in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE AMENDING CITY OF BECKLEY CHAPTER 9, ARTICLE V, SECTION 9-604, CHARGES BASED ON LAND AREA

*NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:*

*Section 1*: That City of Beckley Code Chapter 9, Article V, Section 9-604 is hereby amended by deleting the following paragraph:

"The Director shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities. The Director may further assign discount credits to those existing properties employing rate of flow reduction practices."

*Section 2*: That any Ordinance or Ordinances heretofore passed by the Common Council of the City of Beckley, which are in conflict with this Ordinance, are hereby repealed."

*Section 3*: This Ordinance shall become effective upon passage.

2-23-MON-2-RH; LG 7807

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilman Atterson, the following Ordinance was unanimously approved by Council:

FIRST READING
2-10-09

SECOND READING
2-24-09

AN ORDINANCE AMENDING CITY OF BECKLEY CHAPTER 9, ARTICLE V, SECTION 9-604, CHARGES BASED ON LAND AREA

*NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:*

Section 1. That City of Beckley Code Chapter 9, Article V, Section 9-604 is hereby amended by deleting the following paragraph:

> "The Director shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities. The Director may further assign discount credits to those existing properties employing rate of flow reduction practices."

Section 2. That any Ordinance or Ordinances heretofore passed by the Common Council of the City of Beckley, which are in conflict with this Ordinance, are hereby repealed.

Section 3. This Ordinance shall become effective upon passage.

Lastly, Mr. File presented for second reading and public hearing an Ordinance amending City of Beckley Code Chapter 9, Article V, Section 9-622, Inspection, by adding Section 9-622(g). Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS

### BECKLEY, WEST VIRGINIA 25801

February 23, 2009

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of February, 2009, and ending with the issue of the 23rd day of February, 2009, that said annexed notice was published on the following dates:

02/16/09,02/23/09

and that the cost of publishing said annexed notice as aforesaid was $ 66.55

Signed Tara Meyer
Tara Meyer
Legal Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of February, 2009

My commission expires March 27, 2015

NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
P. O. BOX 2473
BECKLEY, WV 25802
My commission expires March 27, 2015

Notary Public of Raleigh County, West Virginia

### COPY OF PUBLICATION

Public hearing for the following Ordinance will be held during the regular meeting of Common Council on Tuesday, February 24, 2009, in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE AMENDING CITY OF BECKLEY CODE CHAPTER 9, ARTICLE V, SECTION 9-622, INSPECTION BY ADDING SECTION 9-622(g)

*NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:*

*Section 1*: That City of Beckley Code Chapter 9, Article 5, Section 9-622 is hereby amended by adding the following paragraph (g):

(g) Storm water customers assigned service fee reduction credits as authorized in the Article shall, at all reasonable times, allow the Director to enter upon, and inspect, the qualifying controls or practices to ensure continuing qualification of these credits.

*Section 2*: That any Ordinance or Ordinances heretofore passed by the Common Council of the City of Beckley, which are in conflict with this Ordinance, are hereby repealed.

*Section 3*: This ordinance shall become effective upon passage.

2-23-MDN-2-RH: LG 7806

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Ordinance was unanimously approved by Council:

FIRST READING
2-10-09

SECOND READING
2-24-09

AN ORDINANCE AMENDING CITY OF BECKLEY CODE CHAPTER 9, ARTICLE V, SECTION 9-622, INSPECTION, BY ADDING SECTION 9-622(g)

***NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:***

Section 1. That City of Beckley Code Chapter 9, Article 5, Section 9-622 is hereby amended by adding the following paragraph (g):

(g) Storm water customers assigned service fee reduction credits as authorized in this Article shall, at all reasonable times, allow the Director to enter upon, and inspect, the qualifying controls or practices to ensure continuing qualification of these credits.

Section 2. That any Ordinance or Ordinances heretofore passed by the Common Council of the City of Beckley, which are in conflict with this Ordinance, are hereby repealed.

Section 3. This Ordinance shall become effective upon passage.

Mr. File presented for Council approval a Resolution authorizing a lease purchase agreement for the purchase of property from Jeffrey and Jacqueline McPeake, which property will be utilized by the Sanitary Board. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS

### BECKLEY, WEST VIRGINIA 25801

February 20, 2009

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Manager for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for one successive weeks (Class 1), commencing with the issue of the 20th day of February, 2009, and ending with the issue of the 20th day of February, 2009, that said annexed notice was published on the following dates:

02/20/09

and that the cost of publishing said annexed notice as aforesaid was $ 172.58

Signed Tara Meyer
Tara Meyer
Legal Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
20th day of February, 2009
My commission expires March 27, 2011

Notary Public of Raleigh County, State of West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA C. ROSE
BECKLEY NEWSPAPERS
P.O. BOX 2587
BECKLEY, WV 25802
My commission expires March 27, 2011

### COPY OF PUBLICATION

Public hearing for the following Resolution will be held during the regular meeting of Common Council on Tuesday, February 24, 2009 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

*A RESOLUTION AUTHORIZING A LEASE PURCHASE AGREEMENT FOR THE PURPOSE OF FINANCING THE COSTS OF PROCURING CERTAIN PROPERTY AND BUILDINGS (S) LOCATED IN THE CITY LIMITS OF THE CITY OF BECKLEY, WEST VIRGINIA; AUTHORIZING THE GROUND LEASE OF SAID PROPERTY AS SECURITY FOR THE LEASE PURCHASE AGREEMENT; DESIGNATING THE LEASE PURCHASE AGREEMENT AS A QUALIFIED TAX EXEMPT OBLIGATION; AND AUTHORIZING AND PRESCRIBING OTHER MATTERS RELATED THERETO*

*WHEREAS*, the City of Beckley Sanitary Board (the "Sanitary Board") is desirous of increasing its garage space in order to park, and perform maintenance on, its larger equipment; and

*WHEREAS*, Jeffrey C. McPeake and Jacqueline McPeake have offered to sell to the Sanitary Board a tract of real estate located on New River Drive identified as Sur Lot JW Harper Add., and more particularly identified as Parcel 76 on Tax Map 100-2 of Town District , (the "Property"), said property containing a garage which will meet the immediate needs of the Sanitary Board, for the sum of One Hundred Ninety Thousand and no/100 dollars ($190,00.00); and

*WHEREAS*, the Common Council ("Council") of the City of Beckley, West Virginia (the "Lessee") has approved the purchase of the Property and the execution of any and all documents required to facilitate the purchase of the Property; and

*WHEREAS*, the Lessee is authorized, under the Constitution and laws of the State of West Virginia (the "State"), to enter into financing agreements (including lease obligations) to finance capital improvements for the government and miscellaneous functions of the Lessee; and

*WHEREAS*, the Council finds that it is in the best interests of the Lessee to provide for the financing of the Property by entering into a Lease Purchase Agreement (the "Lease Purchase Agreement") with Crews & Associates, Inc., an Arkansas corporation, or one or more of its affiliates or designees (the Lessor"); and

*WHEREAS*, to secure the Lessee's obligations under the Lease Purchase Agreement, the Council that the Pro be leased t sor pursua terms of lease, whic incorporate Lease Purch ment or an in a separa lease agree "Ground Le collectively Lease Purc "Lease Doc and

*WHEREAS* see desires nate the L chase Agree "qualified ta obligation" see for the of Section 2 the Internal Code of amended ("C

*NOW, TH BE IT RESC THE COMMC CIL OF THE BECKLEY as*

*Section 1.* authority of stitution and the State, hereby authc execution of Documents sor. The Les ments shall b

On a motion by Councilman Rappold and seconded by Councilman Atterson, the following Resolution was unanimously approved by Council:

A RESOLUTION AUTHORIZING A LEASE PURCHASE AGREEMENT FOR THE PURPOSE FINANCING THE COSTS OF PROCURING CERTAIN PROPERTY AND BUILDING(S) LOCATED IN THE CITY LIMITS OF THE CITY OF BECKLEY, WEST VIRGINIA; AUTHORIZING THE GROUND LEASE OF SAID PROPERTY AS SECURITY FOR THE LEASE PURCHASE AGREEMENT; DESIGNATING THE LEASE PURCHASE AGREEMENT AS A QUALIFIED TAX EXEMPT OBLIGATION; AND AUTHORIZING AND PRESCRIBING OTHER MATTERS RELATED THERETO.

**WHEREAS,** the City of Beckley Sanitary Board (the "Sanitary Board") is desirous of increasing its garage space in order to park, and perform maintenance on, its larger equipment; and

**WHEREAS,** Jeffery C. McPeake and Jacqueline McPeake have offered to sell to the Sanitary Board a tract of real estate located on New River Drive, identified as Sur Lot JW Harper Add., and more particularly identified as Parcel 76 on Tax Map 100-2 of Town District (the "Property"), said property containing a garage which will meet the immediate need of the Sanitary Board, for the sum of One Hundred Ninety Thousand and NO/100 Dollars ($190,000.00); and

**WHEREAS,** the Common Council ("Council") of the City of Beckley, West Virginia (the "Lessee") has approved the purchase of the Property and the execution of any and all documents required to facilitate the purchase of the Property; and

**WHEREAS,** the Lessee is authorized under the Constitution and laws of the State of West Virginia (the "State") to enter into financing agreements (including lease obligations) to finance capital improvements for the governmental and miscellaneous functions of the Lessee; and

**WHEREAS,** the Council finds that it is in the best interests of the Lessee to provide for the financing of the Property by entering into a Lease Purchase Agreement (the "Lease Purchase Agreement") with Crews & Associates, Inc., an Arkansas corporation, or one or more of its affiliates or designees (the "Lessor"); and

**WHEREAS,** to secure the Lessee's obligations under the Lease Purchase Agreement, the Council agrees that the Property shall be leased by the Lessee (as the Ground Lease Lessor) to the Lessor (as the Ground Lease Lessee) pursuant to the terms of a Ground Lease which will be executed and delivered simultaneously with the Lease Purchase Agreement (the "Ground Lease," and collectively with the Lease Purchase Agreement, the "Lease Documents")

**WHEREAS,** the Lessee desires to designate the Lease Purchase Agreement as a "qualified tax exempt obligation" of the Lessee for the purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended ("Code").

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL,** as follows:

Section 1. Under the authority of the Constitution and laws of the State, there is hereby authorized the execution of the Lease Documents with Lessor. The Lease Documents shall be in such form as the Mayor of the Lessee, in consultation with counsel for the Lessee, shall approve, such approval to be evidenced by the Mayor's signature upon the Lease Documents; provided, that, the principal amount financed pursuant to the Lease Purchase Agreement shall not exceed $200,000, and the interest rate on the Lease Purchase Agreement shall not exceed 6.00% per annum. Interest on the Lease Purchase Agreement shall begin to accrue from the Effective Date (as defined in the Lease Purchase Agreement).

Section 2. Lessee hereby represents that it reasonably expects that it will not issue more than $30,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during the calendar year 2009. Lessee

The Mayor presented for Council approval a Resolution authorizing the City's participation in the Certified Development Community Program implemented by the 4-C Economic Development Authority. On a motion by Councilman Rappold and seconded by Councilman Leftwich, the following Resolution, read in its entirety, was unanimously adopted by Council:

## RESOLUTION

**WHEREAS,** the City of Beckley is interested in the economic well-being of its citizens and the community-at-large; and

**WHEREAS,** the Common Council of the City of Beckley is prepared to support appropriate efforts within the community to become totally prepared to promote economic development; and

**WHEREAS,** the West Virginia Chamber of Commerce, the West Virginia Economic Development Council, and the West Virginia Development Office are offering a program that is specially designed to help West Virginia communities become better prepared for industrial and related economic development; and

**WHEREAS, BE IT RESOLVED** by the Common Council of the City of Beckley that our City wishes to participate in the Certified Development Community Program, and that the leadership of this community fully realizes this Program requires dedicated effort; and

**BE IT FURTHER RESOLVED** that, by making entry into this Program, we are pledging our honest effort to become designated as a "Certified" community; and

**BE IT FURTHER RESOLVED** that the Program requires the existence or formation of a Local Economic Development Organization, and this governing body designates the 4-C Economic Development Authority as representing our City for the purpose of participation in this Program.

This Resolution is duly adopted by the Common Council of the City of Beckley at its regular meeting held on February 24, 2009 on a motion by Councilman Robert Rappold and seconded by Councilman Lee Leftwich.

Gary R. Sutphin - Recorder-Treasurer

The Mayor presented for Council approval a Resolution designating Saturday, February 28, 2009 (Election Day), not an official holiday for City employees. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Resolution was unanimously approved by Council:

*RESOLUTION*

*WHEREAS,* the City of Beckley has never recognized, as a holiday, the Saturday on which a special election falls; and

*WHEREAS,* a special County-wide election is scheduled for Saturday, February 28, 2009.

*NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY* that Saturday, February 28, 2009, is not recognized as a holiday by the City of Beckley.

This Resolution is duly adopted this 24th day of February, 2009 on a motion by Councilman Robert Rappold and seconded by Councilwoman Ann Worley.

Gary R. Sutphin – Recorder-Treasurer

Mr. Cannon presented to Council a report for a Notice of Application to Operate a Private Club known as Miss Alice's - Two located at 1501 South Eisenhower Drive. The establishment is in an area properly zoned for this use and is not in an area designated for Community Development Block Grant Funds.

Under new business, the Mayor reminded Council of a budget workshop to be held March 5, 2009 beginning at 5:00 p.m. in Council Chambers.

The Mayor also provided Council with last year's list of Community Priority Rankings and Revisions for their review and recommendations.

Chief Taylor informed Council of a series of workshops in relation to the Emergency Operations Plan. The first seminar will be held May 19, 2009 and will deal with Critical Incident Protocol Training.

The Mayor informed Council of a Storm Water Seminar to be held March 12 and 13, 2009 at the DEP Headquarters in Charleston.

Councilman Robertson commended Councilman Williams for his efforts in trying to obtain lifeguards for the City pools this summer. Councilman Williams stated he has placed a public service announcement on the TV, has passed out flyers at area churches and Head Start, and plans to place information and applications at Mountain State University.

With no further business to be addressed, the meeting was adjourned at 7:57 p.m. on a motion by Councilman Williams and seconded by Councilman Leftwich.

I certify that the above is a true and accurate copy of the minutes duly passed by the Common Council of the City of Beckley at its regular meeting held on February 24, 2009.

9-23-10
Date

Emmett S. Pugh III - Mayor

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS
## BECKLEY, WEST VIRGINIA 25801

11/04/2010

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Clerk for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia: that such newspaper is a newspaper of "general circulation" as that term is defined in article three ,chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area of areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices; that the annexed notice

of NOTICE OF PUBLIC HEARING
(Description of notice)
was duly published in said newspaper once a week for 2 successive

weeks (Class 2), commencing with the issue of 10/28/2010

and ending with the issue of 11/04/2010, that said annexed notice was

published on the following dates: 10/28/2010, 11/04/2010,

and that the cost of publishing said annexed notice as aforesaid was $ 156.64

Signed Tara Meyer
Tara Meyer
Legal Advertising Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this day:
11/04/2010

My commission expires March 27, 2011

Diana L. Slone
Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
P. O. BOX 2398
BECKLEY, WV 25802
My commission expires March 27, 2011

## COPY OF PUBLICATION

NOTICE OF PUBLIC HEARING ON THE CITY OF BECKLEY BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Beckley (the "City") to be held on Tuesday, November 9, 2010, at 7:30 p.m. at the City Hall, Beckley, West Virginia, and at such hearing any person interested may appear before the City and present protests, and all protests and suggestions shall be heard by the City and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

CITY OF BECKLEY
(WEST VIRGINIA)

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC STORMWATER SYSTEM OF THE CITY OF BECKLEY, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF STORMWATER REVENUE BONDS, SERIES 2010 A OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $2,000,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used to (i) to finance the costs acquisition and construction certain extensions, additions, betterments and improvements to the stormwater system of the Issuer (the "Project"), (ii) to fund the Series 2010A Bonds Reserve Account, and (iii) to pay certain costs of issuance of the Bonds and related costs. The Bonds are payable from the revenues derived from the System. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

The above-entitled Ordinance was adopted by the Council of the City of Beckley on October 26, 2010. A certified copy of the aboveentitled Ordinance is on file with the City for review by interested parties during regular office hours.

Following the public hearing, the City intends to enact the Ordinance upon final reading.

*/s/ Gary Sutphin*
Recorder
11-4-THU-2-RH-LG 1485

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A
(JP Morgan Chase Bank, N.A.)

EXCERPT OF MINUTES ON ADOPTION
OF SUPPLEMENTAL RESOLUTION

The undersigned Recorder of the City of Beckley (the "City") hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the Council of the City.

* * * * * * * * *

The Council of the City met in regular session, pursuant to notice duly given, on the 14th day of December, 2010, in Beckley, West Virginia, at the hour of 7:30 p.m.

| | | |
|---|---|---|
| PRESENT: | Emmett S. Pugh, III | - Mayor |
| | A.K. Minter, Jr. | - Councilmember |
| | Mike Atterson | - Councilmember |
| | Cedric Robertson | - Councilmember |
| | Ann Worley | - Councilmember |
| | Frank Williams | - Councilmember |
| | Lee Leftwich | - Councilmember |
| | Robert Rappold | - Councilmember |
| | John Stump | - Steptoe & Johnson |

ABSENT:

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Mayor presented proposed Supplemental Resolution and Conformed Bond Ordinance in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE STORMWATER REVENUE BONDS, SERIES 2010 A OF THE CITY OF BECKLEY; AND THE SALE AND DELIVERY OF SUCH BONDS TO JP MORGAN CHASE BANK, N.A.; APPROVING A CONFORMED ORDINANCE; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK;

GRANTING AUTHORITY TO THE SANITARY BOARD TO APPROVE REMAINING DRAWS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion.

Thereupon, on motion duly made and seconded, it was unanimously ordered that the above-entitled Supplemental Resolution and Conformed Bond Ordinance be finally enacted and put into effect immediately.

* * * * * * * * *

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

[Remainder of Page Intentionally Blank]

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the City of Beckley and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 15th day of December, 2010.

Recorder

12.13.10
059320.00007

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M. OCTOBER 12, 2010 IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., Ann Worley, Frank Williams, Mike Atterson, Lee Leftwich, Cedric Robertson, and Robert Rappold; Recorder-Treasurer Gary Sutphin, and City Attorney William H. File III.

ALSO PRESENT: Police Chief Tim Deems, Director of the Human Rights Commission Elmer Day, Street Commissioner Robert Robinson, Fire Chief Kevin Taylor, Director of Exhibition Mine Renda Morris, Director of Housing and Community Development Manuel Cartelle, General Manager of the Sanitary Board Luke Richmond, and Chief of Code Enforcement Bob Cannon.

The Mayor called the meeting to order followed by a word of prayer by Councilman Leftwich and the Pledge of Allegiance to the flag.

Council dispensed with reading of the minutes of the previous meeting which had been made available to each member and approved the minutes as written on a motion by Councilman Rappold and seconded by Councilwoman Worley.

Mr. File presented for second reading and public hearing an Ordinance rescinding an Ordinance adopted August 12, 2008 requiring vehicles traveling on "A" Street to travel in an easterly direction from Minnesota Avenue to South Kanawha Street and prohibiting vehicles from entering "A" Street from South Kanawha Street and prohibiting vehicles from traveling in a westerly direction on "A" Street between South Kanawha Street and Minnesota Avenue. Affidavit of Publication is hereinafter incorporated:

## AFFIDAVIT OF PUBLICATION
### BECKLEY NEWSPAPERS
### BECKLEY, WEST VIRGINIA 25801

10/07/2010

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Clerk for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three ,chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area of areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)
was duly published in said newspaper once a week for 1 successive

weeks (Class 1), commencing with the issue of 10/07/2010

and ending with the issue of 10/07/2010, that said annexed notice was

published on the following dates: 10/07/2010,

and that the cost of publishing said annexed notice as aforesaid was $ 93.94

Signed Tara Meyer
Tara Meyer
Legal Advertising Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this day: 10/07/2010

My commission expires March 27, 2011

Diana L. Slone
Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
P.O. BOX 2369
BECKLEY, WV 25802
My commission expires March 27, 2011

### COPY OF PUBLICATION

PUBLIC hearing for the following Ordinance will be held during the regular meeting of Common Council of the City of Beckley on Tuesday, October 12, 2010, in Council Chambers of Beckley City Hall. all interested parties are urged to attend.

AN ORDINANCE RESCINDING THE ORDINANCE ADOPTED AUGUST 12, 2008 TITLED, AN ORDINANCE TO PROVIDE FOR THE AMENDMENT TO THE TRAFFIC CONTROL MAP OTHER THAN PARKING AND TRAFFIC CONTROL FILE REQUIRING VEHICLES TRAVELING ON "A" STREET TO TRAVEL IN AN EASTERLY DIRECTION FROM MINNESOTA AVENUE TO SOUTH KANAWHA STREET AND PROHIBITING VEHICLES FROM ENTERING "A" STREET FROM SOUTH KANAWHA STREET AND PROHIBITING VEHICLES FROM TRAVELING IN A WESTERLY DIRECTION ON "A" STREET BETWEEN SOUTH KANAWHA STREET AND MINNESOTA AVENUE"

*WHEREAS*, Chapter 14, Traffic and Vehicles, Article III, Traffic Control Map and File, of the Code of the City of Beckley, West Virginia, provides for the establishment of Traffic Control Maps; and

*WHEREAS*, at the request of Mountain State University, an Ordinance was adopted on August 12, 2008 requiring vehicles traveling on "A" Street to travel in an easterly direction from Minnesota Avenue to South Kanawha Street and prohibiting vehicles from entering "A" Street from South Ka-

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilman Williams, the following Ordinance was unanimously approved by Council:

FIRST READING
9-28-10

SECOND READING
10-12-10

AN ORDINANCE RESCINDING THE ORDINANCE ADOPTED AUGUST 12, 2008 TITLED, "AN ORDINANCE TO PROVIDE FOR THE AMENDMENT TO THE TRAFFIC CONTROL MAP – OTHER THAN PARKING AND TRAFFIC CONTROL FILE – REQUIRING VEHICLES TRAVELING ON "A" STREET TO TRAVEL IN AN EASTERLY DIRECTION FROM MINNESOTA AVENUE TO SOUTH KANAWHA STREET AND PROHIBITING VEHICLES FROM ENTERING "A" STREET FROM SOUTH KANAWHA STREET AND PROHIBITING VEHICLES FROM TRAVELING IN A WESTERLY DIRECTION ON "A" STREET BETWEEN SOUTH KANAWHA STREET AND MINNESOTA AVENUE"

**WHEREAS,** Chapter 14, Traffic and Vehicles, Article III, Traffic Control Map and File. of the Code of the City of Beckley, West Virginia, provides for the establishment of Traffic Control Maps; and

**WHEREAS,** at the request of Mountain State University, an Ordinance was adopted on August 12, 2008 requiring vehicles traveling on "A" Street to travel in an easterly direction from Minnesota Avenue to South Kanawha Street and prohibiting vehicles from entering "A" Street from South Kanawha Street and prohibiting vehicles from traveling in a westerly direction on "A" Street between South Kanawha Street and Minnesota Avenue; and

**WHEREAS,** it is now deemed necessary by the Common Council of the City of Beckley to rescind its August 12, 2008 Ordinance and amend the Traffic Control Map provided for in Section 14-300 of said Article III, and the Traffic Control File provided for in Section 14-301 of said Article III, in the manner and form provided for in Section 14-302 of said Article III.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY, WEST VIRGINIA,** that the Ordinance adopted on August 12, 2008 converting "A" Street to a one-way street is rescinded and the Traffic Control Map – other than parking – and the Traffic Control File of the City of Beckley be, and the same are hereby, amended to permit vehicles traveling on "A" Street to travel in both an easterly direction from Minnesota Avenue to South Kanawha Street and in a westerly direction between South Kanawha Street and Minnesota Avenue.

Vehicles entering South Kanawha Street from "A" Street are required to stop on "A" Street at the South Kanawha Street intersection before proceeding onto South Kanawha

The Mayor presented for Council approval the first reading of a Bond Ordinance providing for the issuance of its Storm Water Revenue Bonds, Series 2010A (the "Bonds"). The proceeds of the Series 2010A Bonds will be used (i) to finance the costs acquisition and construction certain extensions, additions, betterments, and improvements to the storm water system of the Issuer (the "Project"); (ii) to fund the Series 2010A Bonds Reserve Account; and (iii) to pay certain costs of issuance of the Series 2010A Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the system of the City. Luke Richmond, General Manager of the Sanitary Board, gave an overview of the projects to be completed with this financing. On a motion by Councilman Rappold and seconded by Councilman Robertson, the first reading of this proposed Ordinance was unanimously approved by Council.

Next, the Mayor presented for Council approval a Resolution to enter into a contract with J. D. Meadows as Project Director for the Highway Safety Program. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Resolution was unanimously approved by Council:

RESOLUTION

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that the Mayor is hereby authorized to enter into the attached Agreement between the City and J. D. Meadows for the purpose of providing administrative and management consultation services regarding overseeing grants from the Governor's Highway Safety Program.

This Resolution is duly adopted by the Common Council of the City of Beckley at its regular meeting held on the 12th day of October, 2010 on a motion by Councilman Robert Rappold and seconded by Councilwoman Ann Worley.

Gary R. Sutphin - Recorder-Treasurer

The Mayor also presented for Council approval a Resolution to enter into a Contract with Dave Cook as Project Director for the Highway Safety Program. On a motion by Councilman Rappold and seconded by Councilman Robertson, the following Resolution was unanimously approved by Council:

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RESOLUTION

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that the Mayor is hereby authorized to enter into the attached Agreement between the City and D. H. Cook for the purpose of providing continued administrative and management consultation services regarding overseeing grants from the Governor's Highway Safety Program.

This Resolution is duly adopted by the Common Council of the City of Beckley at its regular meeting held on the 12th day of October, 2010 on a motion by Councilman Robert Rappold and seconded by Councilman Cedric Robertson.

Gary R. Sutphin - Recorder-Treasurer

Under old business, Councilman Leftwich asked about the complaint of Mr. Joe Oliver concerning a fence next door to his residence that blocks his view when backing out of his driveway. The Mayor stated Mr. Cannon is looking into this matter, but there may be nothing that can be done to rectify this situation.

Under old business, Councilman Rappold asked again about the turn signal at Ragland Road and Robert C. Byrd Drive. The Mayor stated these traffic lights have been checked and are working as they should.

Councilman Minter asked about the demolition of the house at the corner of North Lilly Drive and Maxwell Hill Road. The Mayor informed those present that the property owners have stopped demolition, and the City is taking them to Court.

Under new business, the Mayor stated that the public hearing for the Brownfield Program was held on Thursday, October 7, 2010, for the purpose of hearing public comments concerning this project. The City will be applying for an EPA Brownfield Assessment Grant in the amount of $200,000.

Councilman Robertson asked whose responsbility it is for the removal of dead animals in the streets. The Mayor stated that, on State routes, it is the Department of Highways' responsibility. On City streets, it is the City's responsibility.

The Mayor recognized Delta Sigma Theta Sorority from Mountain State University who attended to observe the business being conducted.

With no further business to be addressed, the meeting was adjourned at 7:51 p.m. on a motion by Councilman Rappold and seconded by Councilwoman Worley.

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M. OCTOBER 26, 2010 IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., Ann Worley, Frank Williams, Mike Atterson, Lee Leftwich, and Cedric Robertson; Recorder-Treasurer Gary Sutphin, City Attorney William H. File III, and Secretary Linda Carr.

THOSE ABSENT: Councilman Robert Rappold.

ALSO PRESENT: Police Chief Tim Deems, Director of the Human Rights Commission Elmer Day, Street Commissioner Robert Robinson, Fire Chief Kevin Taylor, Director of Exhibition Mine Renda Morris, Director of Housing and Community Development Manuel Cartelle, General Manager of the Sanitary Board Luke Richmond, and Chief of Code Enforcement Bob Cannon.

The Mayor called the meeting to order followed by a word of prayer by Councilman Leftwich and the Pledge of Allegiance to the flag.

Council dispensed with reading of the minutes of the previous meeting which had been made available to each member and approved the minutes as written on a motion by Councilwoman Worley and seconded by Councilman Williams.

Mr. File presented for Council approval the second reading of a Bond Ordinance providing for the issuance of its Storm Water Revenue Bonds, Series 2010A (the "Bonds"). The proceeds of the Series 2010A Bonds will be used (i) to finance the costs acquisition and construction of certain extensions, additions, betterments, and improvements to the storm water system of the Issuer (the "Project"); (ii) to fund the Series 2010A Bonds Reserve Account; and (iii) to pay certain costs of issuance of the Series 2010A Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the system of the City. Luke Richmond, General Manager of the Sanitary Board, provided an overview of the projects to be completed with this financing. On a motion by Councilman Leftwich and seconded by Councilman Williams, the second reading of this proposed Ordinance was unanimously approved by Council.

The Mayor presented for Council approval a Resolution for a $5,000 grant for Beckley Renaissance. On a motion by Councilman Leftwich and seconded by Councilwoman Worley, the following Resolution was unanimously approved by Council:

*RESOLUTION*

***WHEREAS,*** Beckley Renaissance has been awarded a grant in the amount of $5,000.00 by the West Virginia Development Office; and

***WHEREAS,*** these funds are to be used for the purchase of a sound system, signage, and other items to conduct the annual Kids Classic Festival; and

***WHEREAS,*** the City of Beckley has been designated as the conduit for these funds.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY** that the Mayor is hereby authorized to enter into the attached Contract with the West Virginia Development Office.

This Resolution is duly adopted by the Common Council of the City of Beckley at its regular meeting held on October 26, 2010 on a motion by Councilman Lee Leftwich and seconded by Councilwoman Ann Worley.

Gary R. Sutphin – Recorder-Treasurer

The Mayor also presented for Council approval a Resolution for a $11,000 grant for the Youth Museum. On a motion by Councilman Leftwich and seconded by Councilman Atterson, the following Resolution was unanimously approved by Council:

*RESOLUTION*

***WHEREAS,*** the Youth Museum of Southern West Virginia has been awarded a grant in the amount of $11,000.00 by the West Virginia Development Office; and

***WHEREAS,*** these funds are to be used for roof repairs at the Youth Museum's Mountain Homestead, which consists of authentic structures relocated at the site, and includes a log home, barn, blacksmith shop, one-room schoolhouse, and other historic structures; and

***WHEREAS,*** the City of Beckley has been designated as the conduit for these funds.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY** that the Mayor is hereby authorized to enter into the attached Contract with the West Virginia Development Office.

This Resolution is duly adopted by the Common Council of the City of Beckley at its regular meeting held on October 26, 2010 on a motion by Councilman Lee Leftwich and seconded by Councilman Mike Atterson.

Mary R. Sullivan – Recorder-Treasurer

Lastly, the Mayor presented for Council approval a Resolution for a $4,000 grant for the American Red Cross. On a motion by Councilwoman Worley and seconded by Councilman Robertson, the following Resolution was unanimously approved by Council:

*RESOLUTION*

***WHEREAS,*** the American Red Cross has been awarded a grant in the amount of $4,000.00 by the West Virginia Development Office; and

***WHEREAS,*** these funds are to be used for the purchase of a video camera, laptop computers, trade show display boards, and related items as funds permit; and

***WHEREAS,*** the City of Beckley has been designated as the conduit for these funds.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY** that the Mayor is hereby authorized to enter into the attached Contract with the West Virginia Development Office.

This Resolution is duly adopted by the Common Council of the City of Beckley at its regular meeting held on October 26, 2010 on a motion by Councilwoman Ann Worley and seconded by Councilman Cedric Robertson.

Gary R. Sutphin – Recorder-Treasurer

Under new business, the Mayor informed Council that the EPA has contacted the City of Huntington concerning the deficiencies with their storm water program. There are several other cities in the State with this same problem.

The Mayor also informed Council that the City of Parkersburg has a $2.5 million deficit in their budget and is considering instituting a $3.00 user fee.

Councilman Robertson asked about the dates for the Fall Leaf Pickup. The Pickup will be held November 15-19, 2010.

The Mayor notified Council that the City has a new web site – Beckley.org, and two web cams have been installed for the BIG Project.

With no further business to be addressed, the meeting was adjourned at 7:40 p.m. on a motion by Councilwoman Worley and seconded by Councilman Williams.

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M. NOVEMBER 9, 2010 IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., Ann Worley, Frank Williams, Mike Atterson, Lee Leftwich, Robert Rappold, and Cedric Robertson; Recorder-Treasurer Gary Sutphin, City Attorney William R. File III; and Secretary Linda Carr.

ALSO PRESENT: Police Chief Tim Deems, Director of the Human Rights Commission Elmer Day, Street Commissioner Robert Robinson, Fire Chief Kevin Taylor, Director of Exhibition Mine Randa Morris, Director of Housing and Community Development Manuel Cartelle, General Manager of the Sanitary Board Luke Richmond, and Chief of Code Enforcement Bob Cannon.

The Mayor called the meeting to order followed by a word of prayer by Councilman Leftwich and the Pledge of Allegiance to the flag.

Council dispensed with reading of the minutes of the previous meeting which had been made available to each member and approved the minutes as written on a motion by Councilman Rappold and seconded by Councilwoman Worley.

Mr. File presented for Council approval the third reading and public hearing of a Bond Ordinance providing for the issuance of its Storm Water Revenue Bonds, Series 2010A (the "Bonds"). The proceeds of the Series 2010A Bonds will be used (i) to finance the costs acquisition and construction of certain extensions, additions, betterments, and improvements to the storm water system of the Issuer (the "Project"); (ii) to fund the Series 2010A Bonds Reserve Account; and (iii) to pay certain costs of issuance of the Series 2010A Bonds and related costs. The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Rappold and seconded by Councilman Leftwich, the following Ordinance was unanimously approved by Council:

Bond Ordinance

CITY OF BECKLEY
(WEST VIRGINIA)

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC STORMWATER SYSTEM OF THE CITY OF BECKLEY AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF STORMWATER REVENUE BONDS, SERIES 2010 A OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $2,000,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX AND NON-ARBITRAGE CERTIFICATE, AN OFFICIAL STATEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, The City of Beckley (the "Issuer" or the "City") presently owns and operates a public stormwater system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer, and for the improvement of the water environment of the project area, that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing stormwater system of the Issuer, consisting of box culvert installation on Sisson Street, storm pipe installation to alleviate home flooding in Brookwood/Sandalwood area, relocate public drainage near Little Valley Flea Market, bioswale and pipe installation in Birdhaven Lane area, replace some existing storm pipes and add bioswales and rain gardens in Pine Hills Subdivision, replace storm pipe in Dry Hill Road area, and install storm pipes & bioswales in Front Street area including all necessary appurtenances, together with all necessary appurtenances (collectively, the "Project") (the existing stormwater system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer;



Mr. File also presented for Council approval a Resolution providing for the issuance of its Taxable University Facilities Revenue Refunding Bond Anticipation Notes, Series 2010 (Mountain State University, Inc.) (the "Series 2010 Notes"). The proceeds of the Series 2010 Notes will be used for the purpose of (i) currently refunding the City of Beckley University Facilities Bond Anticipation Notes, Series 2009 (Mountain State University); and (ii) paying certain costs of issuance of the Series 2010 Notes and related costs. Bond counsel, John Stump of STeptoe and Johnson, explained the purpose of the Resolution and confirmed that the City has no liability in the payment of the Bonds. Councilman Minter asked that the minutes reflect that the City has no liability in the payment of these bond monies. On a motion by Councilman Rappold and seconded by Councilwoman Worley, the following Resolution was unanimously approved by Council:

CITY OF BECKLEY, WEST VIRGINIA
Taxable University Facilities Bond Anticipation Notes, Series 2010
(Mountain State University, Inc.)

NOTE AUTHORIZING RESOLUTION OF
CITY OF BECKLEY, WEST VIRGINIA

A RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE OF NOT MORE THAN $11,000,000 AGGREGATE PRINCIPAL AMOUNT OF UNIVERSITY FACILITIES BOND ANTICIPATION NOTES, SERIES 2010 (MOUNTAIN STATE UNIVERSITY, INC.), OF THE CITY OF BECKLEY, WEST VIRGINIA FOR THE PURPOSE OF PAYING IN FULL THE OUTSTANDING PRINCIPAL OF AND INTEREST ON THE NOTES TO BE REFUNDED WHICH WERE ISSUED FOR THE PURPOSE OF TEMPORARILY FINANCING A PORTION OF THE COSTS OF CAPITAL EXPENDITURES, INCLUDING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN RENOVATIONS, ADDITIONS AND IMPROVEMENTS FOR ADDITIONAL STUDENT HOUSING PENDING THE ISSUANCE OF REVENUE BONDS ANTICIPATED TO BE ISSUED NEXT YEAR; AUTHORIZING THE ISSUANCE OF AN AMOUNT NOT TO EXCEED $11,000,000 OF UNIVERSITY FACILITIES REFUNDING REVENUE BONDS SERIES 2011 (MOUNTAIN STATE UNIVERSITY, INC.) FOR THE PURPOSE OF PAYING THE OUTSTANDING PRINCIPAL AND INTEREST ON THE NOTES; PROVIDING PARAMETERS FOR ESTABLISHING THE PRINCIPAL AMOUNTS, PROVISIONS FOR REDEMPTION AND MATURITY OF, AND RATES OF INTEREST ON AND OTHER TERMS AND PROVISIONS OF SUCH NOTES AND BONDS; APPOINTING THE PRESIDENT AS THE REPRESENTATIVE OF THE ISSUER TO APPROVE THE FINAL TERMS AND PRICING OF THE NOTES AND BONDS WITHIN SUCH PARAMETERS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE, A LOAN AGREEMENT AND A NOTE PURCHASE AGREEMENT; AUTHORIZING DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT; AUTHORIZING EXECUTION AND DELIVERY OF OTHER DOCUMENTS, INSTRUMENTS, AGREEMENTS AND CERTIFICATES; APPOINTING A TRUSTEE, REGISTRAR, AUTHENTICATING AGENT AND PAYING AGENT; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS RELATING TO FINANCING THE PROJECT.

WHEREAS, the City of Beckley, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), under Chapter 13, Article 2C of the West Virginia Code of 1931, as amended (the "Act"), has plenary power and authority to finance commercial projects located within Raleigh County, West Virginia, by making loans to private corporations to provide funds for the acquisition and construction of such projects and to issue bonds and notes for the purpose of defraying the costs of acquisition and construction of such projects or any additions, extensions or improvements thereto;

WHEREAS, Mountain State University, Inc., a West Virginia nonprofit corporation (the



The Mayor presented for Council approval a Resolution for the street dedication of Wills Lane. On a motion by Councilman Leftwich and seconded by Councilman Atterson, the following Resolution was unanimously approved by Council:

## RESOLUTION ACCEPTING DEDICATION BY THOMAS W. JARRETT OF WILLS LANE

*WHEREAS,* Thomas W. Jarrett has requested the City of Beckley accept into its street system a certain street known as Wills Lane, situate near the intersection of South Eisenhower Drive and Brookshire Lane, in the City of Beckley, Raleigh County, West Virginia, said street being more particularly described on the metes and bounds description and map attached hereto; and

*WHEREAS,* the City of Beckley has inspected the said street and has determined that it meets the City of Beckley's paving and drainage standards.

*NOW, THEREFORE, BE IT RESOLVED THAT THE COMMON COUNCIL OF THE CITY OF BECKLEY* does hereby accept the dedication of a street known as Wills Lane, said street being more particularly described in the metes and bounds description and map attached hereto, and agrees to maintain the said street in the future.

This Resolution is adopted this 9th day of November, 2010 on a motion by Councilman Lee Leftwich and seconded by Councilman Mike Atcheson.

Gary R. Surghin – Recorder-Treasurer

Mr. Cannon presented for Council information a Notice of Application to Operate a Private Club, Private Wine Restaurant, or Tavern; namely, Union Square Pure located at 325 Neville Street. This establishment is located in an area allowing this use and is not in an area designated for Community Development Block Grant Funds.

Under old business, Councilman Rappold thanked the Board of Public Works for placing reflective tape on the barriers in the parking area on Leslie C. Gates Place.

The Mayor provided Council members with a yearly activity summary from July 1, 2009 through June 30, 2010 from the Beckley Sanitary Board as well as a list of proposed Storm Water Projects. The Mayor also informed Council that the City has an entry in the Wonderland of Trees located at Crossroads Mall. He urged all present to view the trees, vote for their favorite tree, and take part in the auction on November 19, 2010.

Councilman Leftwich commended the Board of Public Works on the construction of the waiting area for Greyhound Bus customers.

Councilman Rappold, in reviewing the Storm Water Project list, noted that half of the projects are located outside City limits. The Mayor stated that the storm water watershed is approximately 20 square miles, with much of that area located outside of City limits. It is only fair that the fees generated be used for all of the affected parties.

With no further business to be addressed, the meeting was adjourned at 7:47 p.m. on a motion by Councilman Rappold and seconded by Councilman Williams.

FIRST READING 6-12-07

SECOND READING 6-26-07

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE II, DIVISION 2, SECTION 9-227 OF THE BECKLEY CITY CODE BY ADDING A NEW SECTION 9-227(b) AS THE SAME APPLY TO STORMWATER MANAGEMENT AND CONTROL BY THE BECKLEY SANITARY BOARD.

WHEREAS, Beckley Common Council desires to amend Chapter 9 of the Beckley City Code so as to clearly state that the Beckley Sanitary Board has the authority to manage and control stormwater.

NOW, THEREFORE, the City of Beckley ordains that Chapter 9 is amended by adding a new subsection 9-227(b) which shall read as follows (new matter underlined, deleted matter struck through):

Sec. 9-227. Powers, duties; limitations thereon; obligation and expenditure of funds; employees.

(a) The sanitary board shall have the supervision and control of the custody, administration, operation and maintenance of all works for the collection, treatment and disposal of sewage which are now owned or may hereafter be acquired by the city. The sanitary board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of the powers granted to it by law, and shall have all of the powers granted to such sanitary board under and by virtue of the W. Va. Code, ch. 16, art. 13, and shall be subject to all restrictions and limitations contained therein as well.

(b) The management, control and operation of the stormwater drainage and sewer system of the City shall be vested in the Beckley Sanitary Board. The Board shall have full and complete supervision, management and control of the stormwater drainage system, including the maintenance, operations, improvements, and extension thereof. All assets and liabilities of the stormwater system, including accounts receivable and accounts payable, shall be under the management and control of the Board.

(b)(c) The sanitary board may employ engineers, architects, inspectors, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of W. Va. Code, ch. 16, art. 13 shall be paid solely from funds provided under the authority of that article, and the sanitary board shall not exercise or carry out any authority or power given it so as to bind the board of the city beyond the extent to which money shall have been or may be provided under the authority of the aforesaid article 13.

This Ordinance shall become effective upon passage.

CERTIFICATION

The undersigned, Mayor of the City of Beckley, West Virginia, does hereby certify that the foregoing copies of Ordinances establishing the Sanitary Board of the City of Beckley are a true, correct, and complete copy of Ordinances as duly recorded by the then Recorder-Treasurer and of record in the official Record Book No. 5.

Charles F. Shoemaker - Mayor

Robert Cannon - Witness

The Sanitary Board of said city presented the following request:

"G. C. Hedrick, Mayor and Members of the Common Council of The City of Beckley;

We, the undersigned, appointed by your Honorable Body as Sanitary Board for the City of Beckley, do hereby petition to your Honorable Body to enact ordinances in connection with the Act under which we are operating, setting forth a brief and general description of the works we are to take over, as well as the extensions and improvements that you anticipate.

(a) Set forth in your ordinance the estimated cost of the project.

(b) Taking over the present sewer system by the Sanitary Board.

(c) Direct that revenue bonds of the municipality be issued pursuant to the act creating said Board, being House Bill No. 29, passed, effective from passage May 11th, 1933, and such amount as may be found necessary to pay the cost of the works; also such other provisions as may be necessary in the premises.

G. C. HEDRICK
E. C. MINTER
E. S. PUGH "

SECTION NO. 223: AN ORDINANCE AMENDING PARAGRAPH FIVE OF SECTION 186 OF THE ORDINANCES OF SAID CITY:

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY: That paragraph 5 of Section No. 186 of the ordinances of said city be amended as follows: No person, firm or corporation shall park any motor vehicle or other vehicle on the east side of South Heber Street, but parking shall be allowed parallel with the curb of the west side thereof and within one foot thereof, from Earwood Street to the south end thereof. The same penalties shall be applicable to the violation of this ordinance as are prescribed under sub-section 19 of the Parking Ordinance of this city.

On motion duly made, seconded and carried, the said ordinance is approved and passed to take effect from date of passage.

SECTION No. 224: AN ORDINANCE AMENDING THE PARKING ORDINANCE OF THE CITY OF BECKLEY BY REGULATING THE PARKING OF MOTOR VEHICLES AND OTHER VEHICLES ON THIRD AVENUE:

BE IT ORDANCED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY: That the parking ordinance thereof be amended as follows: No person, firm or corporation shall park any motor vehicle or other vehicle on the west side of Third Avenue between Neville Street and a point opposite the Dunn Feed Store building; that parking is allowed for thirty minutes on the west side of said Third Avenue from a point opposite the Dunn Feed Store building to a point opposite the mouth of Second Street, but there shall be a driveway left for vehicles at each

SECTION NO. 227: AN ORDINANCE CREATING A SEWAGE UTILITH TO BE KNOWN AS SMOKELESS COAL CAPITAL SEWAGE SYSTEM, and providing for the taking over of the present sewerage system in the City of Beckley, Raleigh County, West Virginia, and the operation of the same as a Public Service, or Public Utility Company, to be municipally owned and controlled providing for replacements, betterments, improvements and extensions, including garbage disposal and if and when found necessary, the erection of the sewage treatment works; under and by the direction of the Sanitary Board hereinbefore created and named as the Sanitary Board of said City.

WHEREAS, it is necessary for the preservation of the public health and for compliance with orders of the State Board of Health, that a sewage system, and/or said sewage treatment works, and/or garbage disposal be provided, properly maintained, operated and controlled, and

WHEREAS, Funds for the maintenance, operation and control of said sewerage system and sewage treatment works and garbage disposal system will not be available from the current operating revenue of the City, and

WHEREAS, The Legislature of the State of West Virginia, in its extraordinary session 1933, known as House Bill No. 29, enacted the law authorizing and empowering municipal corporations, and/or sanitary districts, to construct, own, equip, operate, maintain and improve works for the collection, and/or treatment, purification and disposal of sewage, authorizing the municipality to enter a charge against owners of premises for the use of such works, and to provide for the collection of same; also authorizing municipal corporations and/or sanitary districts to issue revenue bonds payable solely from the revenue of such works and make such bonds exempt from taxation; to authorize contracts for the use of such works by other municipal corporations and political sub-divisions, and charges against owners of premises therein served thereby and a lien against such premises.

THEREFORE, be it ordained by the Council of the City of Beckley, Raleigh County, West Virginia:

Section 1. That the Sewerage System of Beckley, West Virginia, be and is hereby converted into a Public Utility municipally owned by said City of Beckley, Raleigh County, West Virginia, and to be known and by named "SMOKELESS COAL CAPITAL SEWAGE SYSTEM", and the Sanitary Board of said city is hereby authorized and directed to manage and control the said sewerage system, and all additions, replacements, betterments and extensions as hereinafter provided, in a safe and economical manner, maintaining and extending such service to its citizenship as fully and completely as conditions will permit, however, in full compliance with the Act of the Legislature of West Virginia providing for such.

Section 2. It is also ordered and decreed that such replacements, betterments, extensions, improvements, additions be made to the present system as may be found necessary, consistent to safe and economical management, including if found necessary and advisable, a sewage disposal or treatment plant and garbage disposal system.

Section 3. That the Sanitary Board is hereby authorized and directed to make such by-Laws and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the sewerage system, and/or sewage treatment works, and/or garbage disposal system, and for the construction and use of house sewers and connections to the sewerage system; that such by-laws and regulations shall have the same force and effect as ordinances when not repugnant thereto nor to the constitution or laws of the State, or the Act creating the same.

In compliance with the Act empowering the Council to create this Utility and agreeable to the Sanitary Board's request, we submit the following estimates of the cost of the things proposed to be done:

(a) Extensions to the present system so as to more effectively serve the present and future needs of its citizenry, three (3) miles of lines and connections of various sizes. Estimated cost of ($30,000.00) Thirty Thousand Dollars.

(b) To extend the sewer line ending just below what is known as Beckley Junction three and six tenths (3.6) miles down Whitestick and Piney Creeks, ending about one mile below Raleigh, West Virginia, said line to be of sufficient size to amply accommodate the sewage collection from the various lines serving the water shed of that section of the City, with future anticipations, including all necessary "manholes", at an estimated cost of Sixty Thousand ($60,000.00) Dollars.

(c) Connect all lines extending in direction of the main provided in (b) to said main, requiring about two (2) miles of line of various sizes and including the placing of additional "manholes" that may be needed, at an estimated cost of Ten Thousand ($10,000.00) Dollars.

(d) To erect, if found necessary, a sewage disposal plant, or sewage treatment works, at an estimated cost of Thirty Thousand ($30,000.00) Dollars.

(e) To establish and maintain a garbage disposal system, including trucks, other equipment, garages and other things necessary for operating such system, at an estimated cost of Ten Thousand ($10,000.00) Dollars.

(f) Also to provide over-head expenses, such as engineering, attorney fees, books, stationery, and all the expenses incident and necessary in connection with the taking over, extending and developing the said sewerage system, at an estimated cost of Twenty Thousand ($20,000.00) Dollars.

BE IT FURTHER ORDAINED and decreed by the said Council of the City of Beckley, West Virginia, that revenue bonds of this municipality be issued pursuant to Act of the Legislature of West Virginia, enabling the creation of the sewerage system, as herein set out; be issued not in excess of the amount of Two Hundred Thousand ($200,000.00) Dollars, as may be found necessary and convenient to pay the costs thereof as herein provided, and on such time and at such rate of interest as may be found expedient.

ALSO BE IT FURTHER ORDAINED, that the said Council of the City of Beckley, West Virginia, pass immediately a supporting ordinance to the ordinance providing a sewer rental fixing a charge against owners of premises for the use of said system, or works, with methods of collecting for a sufficient amount to maintain said "Smokeless Coal Capital Sewage System" herein and hereby established, including all costs in connection therewith, and to provide for the payment of interest and retirement of any and all bonds issued hereunder.

Upon motion, duly made, seconded and carried the foregoing was proposed as an ordinance of said city to be finally voted upon by the Common Council of said city at its regular meeting on the 12th day of September, 1933.

SECTION NO. 228: AN ORDINANCE TO PROVIDE FUNDS FOR THE MAINTENANCE, OPERATION AND CONTROL OF THE SEWERAGE SYSTEM AND SEWERAGE TREATMENT WORKS AND GARBAGE DISPOSAL SYSTEM FOR THE CITY OF BECKLEY, RALEIGH COUNTY, WEST VIRGINIA.

WHEREAS, The City of Beckley has an inadequate sewerage system and desires to extend, develop and rebuild said system so as to more adequately meet the demands of the City, and if found necessary to install a sewage treatment works, and establish a garbage disposal system, and

WHEREAS, it is necessary for the preservation of the public health and for compliance with orders of the State Department of Health, that said sewerage system and sewerage treatment works, if found necessary, be properly installed, maintained, operated and controlled, and

WHEREAS, Funds for the maintenance, operation and control of said sewerage system and said sewerage treatment works and a garbage disposal system will be available from the current operating revenue of the City, and

WHEREAS, The Legislature of the State of West Virginia has enacted a law authorizing municipalities, corporations, sanitary districts to construct, own, operate, maintain and

improve works for the collection and/or treatment, purification and disposal of sewage; and empowering municipalities to fix charges against owners of premises for the use of such works, and to provide for the collection of same;also authorizing municipal corporations and/or sanitary districts to issue revenue bonds payable solely from the revenues of such works and to do other things necessary in carrying out the purpose of said Act, which Act is known as House Bill No. 29, passed by the Legislature May 11th, 1933, effective from passage and approved by Governor Kump.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY, STATE OF WEST VIRGINIA:

Section 1. That a Sewerage Commission is hereby created in compliance with said Act to consist of three (3) members as provided by said Act, and they are hereby authorized and directed to build, extend and relay the said sewerage system of Beckley and to build such sewerage disposal or sewage treatment plants that may be necessary, and to create and operate a garbage disposal system and to manage and control said sewerage system and said sewage system and said sewage treatment works, if such are created, and said garbage system, in an economical and efficient manner.

Section 2. That the Sanitary Commission be, and is hereby authorized and directed to make such by-laws and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the sewerage system, and sewage treatment works, garbage disposal dystem, and for the construction and use of house sewers and connections to the sewage system; that such by-laws and regulations shall have the same force and effect as ordinances when not repugnant thereto nor to the constitution or laws of the State, or the Act under which said system is to be operated.

Section 3. That the terms and conditions upon which the owners of lots and lands within the corporate limits of the City of Beckley, may connect to the sewage system either directly or indirectly, shall be as follows:

Article 1. Charges shall be paid at the office of the Treasurer and for each calendar year, or part thereof they shall be in accordance with the following schedule of rates:

DWELLINGS AND APARTMENTS:
One-family (one connection) $4.00 per annum.
Two-family (one connection) $7.50 per annum.
Two-family (two connections) $8.00 per annum.
Four-family (two connections) $15.00 per annum.
Others (for each family) $4.00 per annum.
For each additional family on same connection $3.75 per annum.

HOTELS:
For each room with bath $1.75 per annum.
For each room without bath $1.00 per annum.

ROOMING HOUSES AND CLUBS:
Four dollars ($4.00) per annum plus One Dollar ($1.00) per annum for each person renting a room therein.

STORES, RESTAURANTS, OFFICES AND MERCANTILE ESTABLISHMENTS:
Private toilets, each $4.00 per annum.
Public toilets, each $8.00 per annum.
Kitchen sinks, each $4.00 per annum.
Slop sinks, each$2.00 per annum.

FACTORIES AND SHOPS:
For each and every person employed or engaged in services on the premises, in accordance with the following schedule:
Ten persons or less, each $1.00 per annum.
More than ten and not over 25, 90¢ per annum.
More than 25 and not over 50, 80 cents per annum.
More than fifty and not over 100, 70 cents per annum.
All over 100, 60 cents per annum.

CHURCHES:
For each toilet $2.00 per annum.

SCHOOLS AND COLLEGES:
All schools, college buildings and dormitories not subject to taxation shall be grouped and the sewer rental fixed on a per capita student population:
For each registered student 75 cents per annum.

HOSPITALS AND SANITARIUMS:
Beckley Hospital $100.00 per annum.
Raleigh General Hospital $75.00 per annum.

MISCELLANEOUS:
For special cases which are not clearly defined in the above schedule, rates shall be established by Council upon the recommendation of the Sanitary Board.

Article 2. Charges shall become due and payable in advance on the first day of January, April, July and October. All bills not paid by the fifteenth of the month in which same becomes due shall be subject to a ten per cent penalty.

Article 3. Charges shall constitute a lien upon the property served by such connections, and if not paid within ninety days, shall be collected in the same manner as ~~other city taxes~~.

Article 4. Charges for discharging industrial wastes into the sewerage system shall be fixed by the Sanitary Board and approved by the Council.

Section 4. That the funds received from the use of sewers shall [illegible]

fund and shall be known as SEWER RENTAL FUND. When appropriated by the Council it shall be subject to the order of the Sanitary Board, through the Mayor, who is ex-officio chairman of the Sanitary Board, who shall sign all orders drawn on the Treasury of the City against such fund.

Section 5. Funds received from the use of sewers shall be used for the payment of the costs and expenses of the management, maintenance, operation and repair of the sewerage system, sewage treatment works, garbage disposal system, and for the payment of interest and retirement of the principal and interest on any outstanding bonds issued in connection with the system, and any surplus in such fund shall be used for the enlargement or replacement of the same or for the retirement of any debts, bonded or otherwise incurred for the construction of such sewerage system, sewage treatment works, garbage disposal system, or for the creation of a Sinking Fund for the payment of such debts, but shall not be used for the extension of the sewerage system to serve unsewered areas nor for any other purpose whatsoever.

Section 6. That this ordinance constitutes a part of an emergency measure and shall take effect and be in force from and after its passage, subject to change or amendment when deemed necessary.

Upon motion duly made, seconded and carried the foregoing was proposed as an ordinance of said city to be finally voted upon by the Common Council of said city at its regular meeting on the 12th day of September, 1933.

There being no further business to come before the meeting, upon motion duly made and seconded, it was adjourned.

MAYOR

RECORDER-TREASURER

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Emmett S. Pugh III, who was duly elected Mayor of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2nd, 2003, as Mayor of the City of Beckley for a four year term beginning July 1st, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of the office of Mayor of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this thirtieth day of June, ~~19~~ 2003

(SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY

# Oath of Office

CITY OF BECKLEY
BECKLEY, WEST VIRGINIA

Date: July 1, 2004

I, Thomas Keyser, who was duly appointed Member of the Sanitary Board for the City of Beckley by Emmett S. Pugh III, Mayor, effective July 1, 2004, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Member of the Sanitary Board for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 1st day of July, 2004

Thomas Keyser (SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 1st day of July, 2004

(SEAL)

CITY of BECKLEY

# Oath of Office

CITY OF BECKLEY
BECKLEY, WEST VIRGINIA

Date: July 1, 2002

I, John M. Sadowski, who was duly appointed Member of the Sanitary Board for the City of Beckley by Emmett S. Pugh III, Mayor, effective July 1, 2002, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Member of the Sanitary Board for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 1st day of July, 2002

(SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 1st day of July, 2002

(SEAL)

CITY of BECKLEY

PETITION OF THE SANITARY BOARD OF THE CITY OF BECKLEY
TO THE COUNCIL OF THE CITY OF BECKLEY

Whereas, the City of Beckley (the "City") owns a storm sewer collection system, which system is under the operation and control of the City of Beckley Sanitary Board (the "Sanitary Board"); and

Whereas, pursuant to the provisions of Chapter 16, Article 13, Section 5 of the West Virginia Code of 1932, as amended, the Sanitary Board of the City hereby petitions the Council of the governing body of the City (the "Council") to enact an ordinance to authorize the issuance of not more than $2,000,000 of the City's Storm Water Revenue Bonds, Series 2010 (the "Series 2010 Bonds") in one or more series, to pay the costs of acquisition and construction of certain additions, betterments and improvements to the storm sewer system of the City (the "System"), consisting of the construction of 2010 Storm Sewer Improvements Projects located in the System (the "Project"); and

Whereas, the Sanitary Board has determined that the costs of paying the costs of the Project should be paid from the issuance of bonds payable from the revenues of the system to be purchased by the West Virginia Department of Environmental Protection through the State Revolving Fund, or from the private financial sector, whichever yields the better result for the Projects.

Now Therefore Be It Resolved By the Sanitary Board of the City of Beckley;

1. That the City Council is requested to issue its storm sewer system revenue bonds in one or more series in an amount not to exceed $2,000,000.00 in order to finance the costs of the Project as the same will be later more specifically defined by the ordinance authorizing the issuance of the Series 2010 Bonds.

2. That the City Council take such other action as may be required in order to issue the Series 2010 Bonds in one or more series for the benefit of the City and the users of the system.

Witness our signatures on this the 8th day of September, 2010.

Chairman, Sanitary Board of the City of Beckley

Member

Member

**WV MUNICIPAL BOND COMMISSION**
1207 Quarrier Street
Suite 401
Charleston, WV 25301
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date ~~of Report~~: 15-Dec-10

ISSUE: City of Beckley
Stormwater Revenue Bonds, Series 2010 A
(JP Morgan Chase Bank, N. A.)

ADDRESS: Post Office Box 2514, Beckley, West Virginia 25802 COUNTY: Raleigh

PURPOSE OF ISSUE:
New Money: X
Refunding:

REFUNDS ISSUE(S) DATED:

ISSUE DATE: 15-Dec-10 CLOSING DATE: 15-Dec-10

ISSUE AMOUNT: $2,000,000.00 RATE: 3.87%

1ST DEBT SERVICE DUE: 1-Feb-11 1ST PRINCIPAL DUE 1-Feb-11

1ST DEBT SERVICE AMOUNT $12,003.59 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm:
Contact:
Phone:

CLOSING BANK:
Bank: JP Morgan Chase Bank, N.A.
Contact: Nancy Kissinger
Phone: 304.256.2157

ESCROW TRUSTEE:
Firm:
Contact:
Phone:

KNOWLEDGEABLE ISSUER CONTACT
Contact: Emmett S. Pugh, III
Position: Mayor
Phone: 304.256.1750

OTHER:
Agency: JP Morgan Chase Bank, N.A.
Contact: Nancy Kissinger
Position: VP
Phone: 304.256.2157

DEPOSITS TO MBC AT CLOSE

| By: | | | |
|---|---|---|---|
| ____ Wire | ____ Accrued Interest: | $ | |
| ____ Check | ____ Capitalized Interest: | $ | |
| | ____ Reserve Account: | $ | |
| | ____ Other: | $ | |

REFUNDS & TRANSFERS BY MBC AT CLOSE

| By: | | | |
|---|---|---|---|
| ____ Wire | ____ To Escrow Trustee | $ | |
| ____ Check | ____ To Issuer | $ | |
| ____ IGT | ____ To Cons. Invest. Fun | $ | |
| | ____ To Other: ____ | $ | |

NOTES: A Reserve Account is not required.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED:
TRANSFERS REQUIRED:

CITY OF
BECKLEY

P.O. BOX 2514 BECKLEY, WEST VIRGINIA 25802-2514

Phone 304/256-1750

EMMETT S. PUGH III
Mayor

December 2, 2010

Ms. Nancy Kissinger
City Executive
Beckley Market President
Chase Business Banking
500 Neville Street
Beckley, West Virginia 25801

RE: Commitment Letter

Dear Ms. Kissinger:

On behalf of the City of Beckley, I want to thank you for the proposal put forth by Chase for the issuance of $2,000,000 in Storm Water Revenue Bonds.

Based upon the proposals received by the City, Chase has been selected as the institution to provide the tax exempt financing for this project.

Your bid set forth several different financing scenarios for the City to consider. We have selected option C2 which provides an interest rate of 3.87% for a period of twenty years. This option is also "full call" which would allow the City an option to redeem the bonds after a five-year period.

The City of Beckley thanks Chase for its interest and looks forward to completing this financing package.

Best regards.

Sincerely,

Emmett S. Pugh III

MAYOR
CITY OF BECKLEY

ESP:llc
cc: Gary Sutphin
Luke Richmond
John Stump

CHASE

Option C-2

December 1, 2010

Gary Sutphin
Treasurer/Recorder
City of Beckley
409 S Kanawha
P.O. Box 2514
Beckley, West Virginia 25802

*RE: $2,000,000 Stormwater Revenue Bonds, Series 2010, to be issued by the City of Beckley, Raleigh County, State of West Virginia*

JPMorgan Chase Bank, NA ("Bank") is pleased to submit this bid letter ("Bid Letter") for tax-exempt financing to the City of Beckley, Raleigh County, State of West Virginia (the "Issuer"). This Bid Letter constitutes a firm and unconditional offer to purchase and assumes that the Issuer is qualified under relevant state and federal laws and is subject to the following terms and conditions:

| | |
|---|---|
| **TYPE OF FINANCING:** | Qualified tax-exempt, privately placed financing (the "Bonds") pursuant to the provisions of federal, state and local statutes. |
| **FORM OF BONDS:** | Bank will require a single term bond with equal annual sinking fund payments. Bank intends to hold the Bonds to maturity and will not require DTC book entry or registration. |
| **BANK ELIGIBILITY:** | This Bid Letter assumes that Issuer will issue less than $30 million in tax-exempt obligations this calendar year (2010).. |
| **USE OF PROCEEDS:** | To assist in financing the costs of acquisition and construction of improvements for the City's stormwater management system (the "Project"). |
| **FINANCED AMOUNT:** | $2,000,000 |
| **FINANCING TERM:** | Option A: Ten (10) years<br>Option B: Fifteen (15) years<br>Option C: Twenty (20) years |
| **OPTIONAL REDEMPTION:** | Option 1: "no-call"; redemption in whole or in part on any date prior to final maturity is prohibited<br><br>Option 2: "full-call"; redemption in whole or in part may be made on any date prior to final maturity with thirty (30) days written notice to Bank. *Optional redemption is prohibited during the initial sixty (60) months following closing.* |

Option 3: "full-call"; redemption in whole or in part may be made on any date prior to final maturity with thirty (30) days written notice to Bank. *Optional redemption is prohibited during the initial twelve (12) months following closing.*

**INTEREST RATE:**

Fixed, with a 30/360 accrual basis:

Option A1: 2.81%
Option A2: 2.96%
Option A3: 3.15%

Option B1: 3.22%
Option B2: 3.53%
Option B3: 3.64%

Option C1: 3.47%
Option C2: 3.87%
Option C3: 3.97%

**PROJECT ACCOUNT:**

At closing, the Bank's purchase of the Bonds will fully fund a segregated project account to be held at Bank, from which periodic construction draws may be made upon satisfactory evidence of Issuer's approval to withdraw, including, but not limited to, a requisition form prepared by counsel, providing for resolution and certification of incumbency.

**REPAYMENT TERMS:**

Equal annual payments of principal commencing one year from closing, plus semi-annual payments of accrued interest commencing six months from closing.

At Issuer's option, a fully amortizing "mortage-style" repayment schedule of level monthly payments may be established, to commence thirty days from closing.

**SECURITY:**

A first lien pledge of the net revenues of the Stormwater Utility. Issuer will covenant to maintain user charges and rates sufficient to provide for 110% of the principal and interest payments necessary to retire the debt.

**DOCUMENTATION:**

Documentation shall be prepared by bond counsel, Steptoe & Johnson PLLC, which represents Issuer at Issuer's expense. The Bank's bid is subject to approval of the documentation at the Bank's sole discretion, including but not limited to the form of bond ordinance and form of bond.

**INDEPENDENT BANK COUNSEL:**

Fees at Bank's expense.

| | |
|---|---|
| PROPOSAL EXPIRATION: | This proposal must be accepted on or before December 2, 2010, with closing to occur not later than December 15, 2010. If acceptance and closing have not occurred by these dates, Bank reserves the right to terminate the offer. |
| MISCELLANEOUS: | A material change in the aggregate amount of the Bonds, plus or minus, will constitute a re-pricing event and the interest rate will be adjusted. Funding will occur upon receipt of all documentation required by Bank, in form and substance acceptable to Bank and its counsel. |

We appreciate your interest in us and look forward to your favorable response. Should you have any questions regarding this proposal, please contact me at (304) 256-2157 or at nancy.kissinger@chase.com.

Sincerely,
JPMorgan Chase Bank, NA

Nancy Kissinger
City Executive
Beckley Market President
Chase Business Banking

IRS Circular 230 Disclosure: Bank and its affiliates (collectively, "Chase") do not provide tax advice. Accordingly, any discussion of U.S. tax matters contained herein (including any attachments) is not intended or written to be used, and cannot be used, in connection with the promotion, marketing or recommendation by anyone unaffiliated with Chase of any of the matters addressed herein or for the purpose of avoiding U.S. tax-related penalties.

ACCEPTED BY: (for the) City of Beckley

Option: _____

By: _____

Name: _____

Title: _____

Date: _____

CHASE

Mark L. Gunter
Vice President

December 15, 2010

City of Beckley
Stormwater Revenue Bonds, Series 2010 A

City of Beckley
Beckley, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

The undersigned Mark Gunter, Vice President of JP Morgan Chase Bank, N.A., Beckley, West Virginia (the "Purchaser"), on behalf of the Purchaser in connection with its purchase of $2,000,000 aggregate principal amount of Stormwater Revenue Bonds, Series 2010 A (the "Bonds"), issued by the City of Beckley (the "Issuer") on the date hereof, hereby makes the following representations and warranties to you that:

1. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by our purchase of the Bonds, and our net worth and available assets are such that we are able to bear the economic risk of our purchase of the Bonds.

2. We understand that the entire principal of and interest on the Bonds are payable by the Issuer solely from and secured by a first lien on the Net Revenues of the System, on a parity with the Prior Bonds; that the Bonds are special and limited obligations of the Issuer and are not general obligations or secured by any obligation or pledge of any monies received or to be received by the Issuer other than as described above; that the Bonds do not now and shall never constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

There are outstanding bonds of the Issuer which will rank on a parity with the Series 2010 A Bonds as to liens, pledge, source of and security for payment being the Issuer's Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA GREEN),

JPMorgan Chase Bank, N.A. • Business Banking • WV1-1000, 500 Neville Street, Beckley, WV 25801
Telephone: 304 256 2150 • Facsimile: 304 256 2153 • Cellular: 304 923 4169
mark.l.gunter@chase.com



5635346

dated September 18, 2009, issued in the original aggregate principal amount of $296,952 (the "Series 2009 B-2 Bonds" or the "Prior Bonds").

3. We understand that no official statement, prospectus, offering circular or other offering statement containing material information with respect to the Issuer or the Bonds is being issued, that the Bonds are unrated, and that in due diligence, we have made our own inquiry and analysis with respect to the Issuer, the Bonds and the security therefor, and other material factors affecting the security for and payment of the Bonds, and are relying solely on such inquiry and analysis in our purchase of the Bonds.

4. We acknowledge that during the course of the transaction and prior to the sale of the Bonds, we have requested or have had access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Bonds and the security therefor, so that as a reasonable investor, we have been able to make our decision to purchase the Bonds. No such information requested by us has been denied to us.

5. Because of our experience in financial and business matters, we feel that we are qualified to make the inquiry and analysis described in paragraph 3 and to understand fully the documents and information described in paragraph 4.

6. We understand that the Internal Revenue Code of 1986, as amended (the "Code"), prescribes satisfaction of several requirements in order that interest on the Bonds be and remain excludable from gross income for federal income tax purposes, some of which apply after issuance of the Bonds, and that noncompliance by the Issuer with certain of such requirements could cause interest on the Bonds to be includable in gross income for federal income tax purposes and thus, subject to federal income taxation retroactively to the date hereof. We also understand that under the Code, interest on obligations, such as the Bonds, which are not "private activity bonds," are not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations by Section 55 of the Code, but that a provision of the Code which is applicable to corporations (as defined for federal income tax purposes), and which would impose an alternative minimum tax on a portion of the excess of adjusted net book income over pre-book alternative minimum taxable income, could subject part of the interest on the Bonds received by corporations to such corporate alternative minimum tax. Additionally, we understand that for tax years beginning after 1986, interest on the Bonds earned by some corporations could be subject to the environmental tax imposed by Section 59A of the Code and enacted by the Superfund Revenue Act of 1986, and that for taxable years beginning after 1986, interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to the branch profits tax imposed by the Code.

7. We understand that the Bonds (a) are not being registered under the Securities Act of 1933, as amended, and are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed on any stock or other securities exchange, (c) will carry no rating from any rating service, and (d) may be resold only to purchasers who meet the criteria set forth herein and who, as a condition to such purchase, deliver an executed letter substantially in the form hereof to the Issuer and Steptoe & Johnson PLLC, Charleston, West Virginia.

8. We are purchasing the Bonds for investment in our own account and do not intend to divide the Bonds purchased by us nor to resell or otherwise dispose of all or any part of the Bonds purchased by us, except as permitted by law on a basis of full disclosure to any subsequent holder of the Bonds and subject to applicable securities laws and regulations thereunder.

9. We have had the opportunity to consult with and be advised by legal counsel as to the significance of this letter and we have satisfied ourselves that the Bonds are a lawful investment for us under all applicable laws.

Very truly yours,

JP MORGAN CHASE BANK, N.A.

By: Mark L Hunter
Its: Authorized Officer

12.10.10
059320.00007



5635346

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

# CLOSING MEMORANDUM

**To:** **Financing Team**

**From:** **John C. Stump, Esquire**

**Date:** **December 15, 2010**

**Re:** **City of Beckley**
**409 S. Kanawha Street, Beckley, WV 25801**
**Stormwater Revenue Bonds, Series 2010 A**

---

**DISBURSEMENTS FROM JP MORGAN CHASE BANK, N.A.**

| | |
|---|---|
| Payor: | JP Morgan Chase Bank, N.A. |
| Source: | Series 2010 A Bonds Proceeds |
| Amount: | $2,000,000 |
| Form: | Internal Transfer |
| Payee: | City of Beckley |
| Bank: | JP Morgan Chase Bank, N.A., 500 Neville Street, Beckley, WV 25801 |
| Account #: | 2957974054 |
| Contact: | Nancy Kissinger, 304.256.2157 |
| Account: | Series 2010 A Bonds Construction Trust Fund |

059320.00007

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information
(304) 353-8196 Phone
(304) 353-8181 Fax
John.Stump@steptoe-johnson.com

December 15, 2010

City of Beckley
Stormwater Revenue Bonds, Series 2010 A

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Internal Revenue Service
Internal Revenue Service Center
Ogden, Utah 84201

Ladies and Gentlemen:

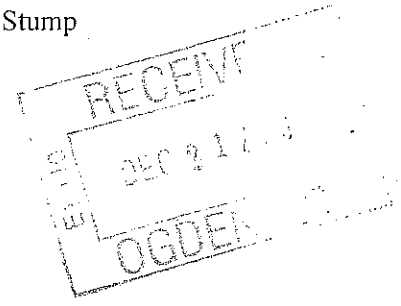
Enclosed herewith is a completed and executed Internal Revenue Service Form 8038 and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed envelope.

Thank you for your attention to this letter. If you have any questions regarding any of the issues set forth herein, or if I can be of any service, please do not hesitate to call.

My best regards.

Very truly yours,

John C. Stump




JCS/bsl
Enclosure
059320.00007

5656248



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FILE COPY

Form **8038-G** (Rev. May 2010)
Department of the Treasury
Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)
▶ See separate instructions.
Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

**Part I** Reporting Authority — If Amended Return, check here ▶ ☐

1 Issuer's name
City of Beckley

2 Issuer's employer identification number (EIN)
55 0624466

3 Number and street (or P.O. box if mail is not delivered to street address) — Room/suite
Post Office Box 2514

4 Report number *(For IRS Use Only)*
3

5 City, town, or post office, state, and ZIP code
Beckley, West Virginia 25801

6 Date of issue
12/15/2010

7 Name of issue
Stormwater Revenue Bonds, Series 2010 A

8 CUSIP number
NA

9 Name and title of officer of the issuer or other person whom the IRS may call for more information
Emmett S. Pugh, II, Mayor

10 Telephone number of officer or other person
( 304 ) 256.1750

**Part II** Type of Issue (enter the issue price) See instructions and attach schedule

| | | | |
|---|---|---|---|
| 11 | Education | 11 | |
| 12 | Health and hospital | 12 | |
| 13 | Transportation | 13 | |
| 14 | Public safety | 14 | |
| 15 | Environment (including sewage bonds) | 15 | 2,000,000 |
| 16 | Housing | 16 | |
| 17 | Utilities | 17 | |
| 18 | Other. Describe ▶ | 18 | |
| 19 | If obligations are TANs or RANs, check only box 19a ▶ ☐<br>If obligations are BANs, check only box 19b ▶ ☐ | | |
| 20 | If obligations are in the form of a lease or installment sale, check box ▶ ☐ | | |

**Part III** Description of Obligations. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|---|---|---|---|---|---|
| 21 | 01/31/2031 | $ 2,000,000 | $ 2,000,000 | 11.38063 years | 3.9156 % |

**Part IV** Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | | | | |
|---|---|---|---|---|---|
| 22 | Proceeds used for accrued interest | | | 22 | |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | | | 23 | 2,000,000 |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 | 12,500 | | |
| 25 | Proceeds used for credit enhancement | 25 | | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 | | | |
| 27 | Proceeds used to currently refund prior issues | 27 | | | |
| 28 | Proceeds used to advance refund prior issues | 28 | | | |
| 29 | Total (add lines 24 through 28) | | | 29 | 12,500 |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | | | 30 | 1,987,500 |

**Part V** Description of Refunded Bonds (Complete this part only for refunding bonds.)

| | | |
|---|---|---|
| 31 | Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ | years |
| 32 | Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ | years |
| 33 | Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) ▶ | |
| 34 | Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY) | |



RECEIVED
DEC 21 2010
IRS-OSC
E1-110
OGDEN, UT

**Part VI Miscellaneous**

| | | | |
|---|---|---|---|
| 35 | Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) | 35 | N/A |
| 36a | Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) | 36a | N/A |
| b | Enter the final maturity date of the GIC ▶ | | |
| 37 | Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units | 37a | N/A |

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . ▶ ☑

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . ▶ ☐

40 If the issuer has identified a hedge, check box . . . . ▶ ☐

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ _____ 12/15/12 ▶ Emmett S. Pugh, III, Mayor

Signature of issuer's authorized representative — Date — Type or print name and title

**Paid Preparer's Use Only**

| | | | |
|---|---|---|---|
| Preparer's signature ▶ | | Date 12/15/10 | Check if self-employed ☐ |
| Preparer's SSN or PTIN | P01236822 | | |
| Firm's name (or yours if self-employed), address, and ZIP code ▶ | Steptoe & Johnson PLLC<br>PO Box 1588, Charleston, WV 25326 | EIN 55 : 0286140<br>Phone no. ( 304 ) 353.8000 | |

WEST VIRGINIA
**Water Development Authority**
*Celebrating 36 Years of Service 1974 - 2010*

December 15, 2010

CITY OF BECKLEY

Stormwater Revenue Bonds, Series 2010 A

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Angie Vealey, CPA the independent certified public accountant and an opinion of Steptoe & Johnson PLLC, bond counsel, that the coverage and parity tests have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority (the "Authority"), the registered owner of the entire outstanding aggregate principal amount of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Stormwater Revenue Bonds, Series 2010 A in the original aggregate principal amount of $2,000,000 (the "Series 2010 A Bonds"), by the City of Beckley (the "Issuer"), under the terms of the ordinance authorizing the Series 2010 A Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA Green), dated September 18, 2009, issued in the original aggregate principal amount of $296,952 (the "Prior Bonds").

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: Carol A. Cummings
Its: Authorized Representative

059320.00007

180 Association Drive, Charleston, WV 25311-1217
Phone (304) 558-3612 / fax (304) 558-0299
www.wvwda.org

CITY OF BECKLEY

STORMWATER REVENUE BONDS, SERIES 2009 B-2
(WEST VIRGINIA SRF PROGRAM/ARRA GREEN)

BOND ORDINANCE

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CITY OF BECKLEY

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC STORMWATER DRAINAGE SYSTEM OF THE CITY OF BECKLEY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF STORMWATER REVENUE BONDS, SERIES 2009 B-2 (WEST VIRGINIA SRF PROGRAM/ARRA GREEN); 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 ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 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 Beckley, West Virginia (the "Issuer") now owns a stormwater drainage system (the "System").

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed improvements and extensions to the existing public stormwater drainage system of the Issuer, consisting of approximately 720 lf of dry swale and/or bio-retention areas; approximately sq ft of landscaped bio-infiltration; approximately 930 ft of corrugated HDPE storm pipe installation; approximately 520 ft of sanitary sewer upgrade/relocation (collectively, the "Project"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the issuer.

C. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Stormwater Revenue Bonds in an amount not to exceed $600,000, in one series being the Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA Green), (the "Series 2009 B-2 Bonds" or the "Series 2009 Bonds"), to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2009 Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 Bonds or the repayment of indebtedness incurred by the issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2009 Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA assistance agreements by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), the agreement in form satisfactory to the respective parties (the "ARRA Assistance Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are no outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds.

H. The estimated revenues to be derived in each year following completion of the Project 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, if any, on the Series 2009 Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the ARRA Assistance Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2009 Bonds, or will have so complied prior to issuance of any thereof.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 Bonds by those who shall be 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 Registered Owners, 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 Registered Owners of any and all of such Series 2009 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, 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 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP and the Council under the Act.

"Authorized Officer' means the Mayor of the Issuer.

"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 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 2009 Bonds and any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

"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 Council" shall mean the Common Council of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2009 Bonds for all or a portion of the proceeds of the Series 2009 Bonds from the Authority.

"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 MSES Consultants, Clarksburg, West Virginia and ESI WV, Beckley, West Virginia, or 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 I 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.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"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.

"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 City Council, 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" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof).

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

"Independent Certified Public Accountants" 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 Beckley, a municipal corporation organized and existing under the laws of the State of West Virginia in Raleigh County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 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, maintenance and operation 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, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, 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 from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which monies, 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; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any 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 2009 Bonds in the Supplemental Resolution.

"Project" means the Project as described in Section 1.02 hereof.

"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 or Federal Savings and Loan Insurance Corporation, 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 excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder/Treasurer of the Issuer.

"Registrar' means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code or any predecessor to the Code.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by Section 5.01 hereof.

"Reserve Accounts" means the reserve account established for the Series 2009 Bonds.

"Reserve Requirement" means the amount required to be on deposit in the Reserve Account of the Series 2009 Bonds, if any.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"Series 2009 Bonds" means the Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA Green), of the Issuer, authorized by this Ordinance.

"Series 2009 Bonds Construction Trust Fund" means the Series 2009 Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2009 Bonds Reserve Account" means the Series 2009 B-2 Bonds Reserve Account established by Section 5.02 hereof

"Series 2009 B-2 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2009 B-2 Bonds in the then current year or any succeeding year.

"Series 2009 B-2 Bonds Sinking Fund" means the Series 2009 B-2 Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means the Sinking Fund established for the Series 2009 Bonds.

"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 or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2009 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 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 2009 Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means the Issuer's stormwater drainage system as presently existing in its entirety or any integral part, and shall include the Project and any additions, improvements, and extensions constructed or acquired for said system from any source whatsoever.

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 AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition, Construction and Installation of the Project. There is hereby authorized and ordered the acquisition, construction and installation of the Project, at an estimated cost of not to exceed $600,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 Bonds hereby authorized shall be applied as provided in Article VI hereof The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority, the DEP and the Council.

The cost of the Project is estimated not to exceed $600,000, which will be obtained from proceeds of the Series 2009 Bonds.

## ARTICLE III

## AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF ARRA ASSISTANCE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest, if any, on the Series 2009 Bonds, funding the respective Reserve Accounts for the Series 2009 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2009 Bonds of the Issuer. The Series 2009 Bonds shall be issued in one series, as a single bond, designated as "Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia SRF Program/ARRA Green)," in the principal amount not to exceed $600,000, and shall have such terms as are set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalizing interest, if any, on the Series 2009 Bonds, if any, shall be deposited in or credited to the respective Bond Construction Trust Funds established by Section 5.01 hereof and applied as set forth in Article VI hereof

Section 3.02. Terms of Bonds. The Series 2009 Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, 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 the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the ARRA Assistance Agreement. The Series 2009 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 on the Series 2009 Bonds, if any, shall be paid by check or draft of the Paying 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.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2009 Bonds. The Series 2009 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.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall bear interest, if any, and shall be dated as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2009 Bonds shall cease to be such officer of the Issuer before the Series 2009 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2009 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. The Bond Registrar for the Series 2009 Bonds shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 2009 Bond 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 forms 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 2009 Bond 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 2009 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 2009 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 such Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Series 2009 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 Series 2009 Bonds or transferring the registered Series 2009 Bonds are exercised, all Series 2009 Bonds shall be

delivered in accordance with the provisions of this Bond Legislation. All Series 2009 Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2009 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 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2009 Bonds or, in the case of any proposed redemption of Series 2009 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 2009 Bond 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 cancelled 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 2009 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 Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2009 Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues: Lien Positions with Respect to Prior Bonds. The payments required by the Series 2009 Bonds shall be secured by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 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 2009 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 2009 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the ARRA Assistance Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2009 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 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 issuance thereof:

(FORM OF SERIES 2009 B-2 BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
STORMWATER REVENUE BONDS, SERIES 2009 B-2
(WEST VIRGINIA SRF PROGRAM/ARRA GREEN)

No. BR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: The _____ of _____, 2009 , that THE CITY OF BECKLEY, a municipal corporation organized and existing under the laws of the State of West Virginia in Raleigh 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 ($_____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December I of each year, commencing _____ 1, _____ to and including _____ 1, 20, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments, if any, 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 the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated _____, 2009.

This Bond is issued (i) to pay the costs of acquisition and construction of improvements and extensions to the existing public stormwater system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public stormwater system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted

by the Issuer on _____, 2009, and a Supplemental Resolution duly adopted by the Issuer on _____, 2009 (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.

THERE ARE NO OUTSTANDING OBLIGATIONS OF THE ISSUER PAYABLE FROM THE NET REVENUES OF THE SYSTEM.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 B-2 Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. 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, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B-2 Bonds Reserve Account and unexpended proceeds of the Bonds. 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, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Bonds; provided however, that so long as there exists in the Series 2009 B-2 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, 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 or junior to the 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. The Issuer shall make the payments into the Renewal and Replacement Fun as required by the Bond Legislation.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Inc., Charleston, West Virginia, as registrar (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.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

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 issuance 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 Net 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 payments required by the Bond Legislation.

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 BECKLEY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B-2 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: _____, 2009.

UNITED BANK, INC.,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $ | | (19) $ | |
| (2) $ | | (20) $ | |
| (3) $ | | (21) $ | |
| (4) $ | | (22) $ | |
| (5) $ | | (23) $ | |
| (6) $ | | (24) $ | |
| (7) $ | | (25) $ | |
| (8) $ | | (26) $ | |
| (9) $ | | (27) $ | |
| (10) $ | | (28) $ | |
| (11) $ | | (29) $ | |
| (12) $ | | (30) $ | |
| (13) $ | | (31) $ | |
| (14) $ | | (32) $ | |
| (15) $ | | (33) $ | |
| (16) $ | | (34) $ | |
| (17) $ | | (35) $ | |
| (18) $ | | (36) $ | |

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(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: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of ARRA Assistance Agreement. The Series 2009 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the ARRA Assistance Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the ARRA Assistance Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the ARRA Assistance Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The ARRA Assistance Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated into this Bond Legislation.

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 (or continued) and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

(1) Revenue Fund;

(2) Renewal and Replacement Fund; and

(3) Series 2009 Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Series 2009 B-2 Bonds Sinking Fund; and

(2) Series 2009 B-2 Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in 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 herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order of priority:

(1) The Issuer shall first, each month, pay from the monies in the Revenue Fund all current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 Bonds, for deposit in the Series 2009 B-2 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal, if any, which will mature and become due on the Series 2009 B-2 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 2009 B-2 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, commencing 4 months prior to the first date of payment of principal of the Series 2009 B-2 Bonds, if not fully funded upon issuance of the Series 2009 Bonds, for deposit in the Series 2009 B-2 Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 B-2 Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 B-2 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 2009 B-2 Bonds Reserve Requirement.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% 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 Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2009 B-2 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2009 Bonds, as the same shall become due. Monies in the Series 2009 B-2 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 Bonds as the same shall come due, when other monies in the Series 2009 B-2 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 B-2 Bonds Sinking Fund and the Series 2009 B-2 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2009 Bond Construction Trust Funds, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2009 Bonds and then to the next ensuing principal payment, if any, due thereon, all on a pro rata basis.

Any withdrawals from the Series 2009 B-2 Bonds Reserve Account which result in a reduction in the balance therein to below the respective Reserve Requirements shall be subsequently restored from the first Net 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 2009 Bonds are issued, provision shall be made for additional payments into the respective sinking funds

sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 B-2 Bonds Sinking Fund and the Series 2009 B-2 Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the Series 2009 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 B-2 Bonds Sinking Fund and the Series 2009 B-2 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. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2009 B-2 Bonds Sinking Fund and the Series 2009 B-2 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof

The Series 2009 B-2 Bonds Sinking Fund and the Series 2009 B-2 Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve account payments, if any, with respect to the Series 2009 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. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the ARRA Assistance Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore 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 law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. 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 respective parties shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, 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.

F. The monies in excess of the maximum amounts insured by FDIC in all 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.

G. 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 Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds: Pledge of Unexpended Proceeds. From the monies received from the sale of the Series 2009 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 B-2 Bonds, there shall first be deposited with the Commission in the Series 2009 B-2 Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 B-2 Bonds for the period commencing on the date of issuance of the Series 2009 B-2 Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2009 Bonds, there shall be deposited with the Commission in the Series 2009 B-2 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2009 B-2 Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2009 Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 Bonds shall be applied as directed by the DEP.

Section 6.02. Disbursements From the Bond Construction Trust Fund.

On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 2009 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments of all Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 Bonds Construction Trust Fund shall be made only after submission to and approval from the DEP, of a completed and signed "Payment Requisition Form," a form of which is attached to the ARRA Assistance Agreement for the Series 2009 Bonds, in compliance with the construction schedule.

Pending such application, monies in the Bond Construction Trust Funds shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## 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 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 2009 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 2009 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The payments required by the Series 2009 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payments required by the Series 2009 Bonds shall be secured by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Initial Schedule of 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 shall provide an opinion of counsel to the Issuer of such effect. Such rates and charges shall be sufficient to comply with the requirements of the ARRA Assistance Agreement and the Issuer shall supply a certificate of certified public accountant to such effect.

So long as the Series 2009 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 ARRA Assistance Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2009 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation 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 and the ARRA Assistance Agreement.

Section 7.05. Sale of the System. So long as the Series 2009 Bonds and the Prior Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP, the Authority and the Council, 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 2009 Bonds, immediately be remitted to the Commission for deposit in the Renewal and Replacement Fund, 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, if any, on the Series 2009 Bonds. Any balance remaining after the payment of the Series 2009 Bonds and interest, if any, 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 $10,000, the Issuer shall, by resolution duly adopted, 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 Renewal and Replacement 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 $10,000 but not in excess of $50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into said fund 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 $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any 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 2009 Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 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, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2009 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all finds and accounts set forth herein 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 2009 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2009 Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the DEP and the Authority 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, or any other obligations related to the Project or 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 Ordinance shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 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.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 Bonds.

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

No Parity Bonds shall be issued at any time, unless there has been procured and filed with the Secretary 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, if any, on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance 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 adopted by the Issuer, the time for appeal of which shall have expired 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 Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above 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 adopted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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 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 revenues of the System and their source of and security for payment from said 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 liens of the Series 2009 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 2009 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, 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.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the DEP and the Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the DEP, the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the DEP, the Authority and the Council, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer 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 Issuer. 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 Governing Body. The Governing Body 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 Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the DEP, the Authority, or any other original purchaser of the Series 2009 Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 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 outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with the applicable OMB Circular and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 Bonds, and shall submit said report to the DEP and the Authority, or any other original purchaser of the Series 2009 Bonds. Such audit report submitted to the DEP and the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the ARRA Assistance Agreement and this Bond Legislation and that 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 ARRA Assistance Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the DEP and the Authority, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the DEP and the Authority, 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 DEP and the Authority with respect to the System pursuant to the Act.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the ARRA Assistance Agreement for the Series 2009 Bonds or as promulgated from time to time.

Section 7.09. Rates. Prior to the issuance of the Series 2009 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 Secretary, 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, if any, on the Series 2009 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2009 Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2009 B-2 Bonds Reserve Account and the reserve accounts for obligations on a parity with or junior to the Series 2009 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 2009 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2009 Bonds, including the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer 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 and shall submit a copy of such budget to the DEP and the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the DEP and the Authority and to any Holder of any Bonds, within 30 days of adoption thereof, 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 DEP and the Authority and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the respective ARRA Assistance Agreements, and forward a copy of such report to the DEP and the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the ARRA Assistance

Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP and the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the DEP and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the DEP and the Authority, the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the ARRA Assistance Agreement for the Series 2009 Bonds as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the Site Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the ARRA Assistance Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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 Issuer 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 System and any services and facilities of the sewer or water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of any system until all delinquent charges for the services of the 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 water or sewer facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water and sewer providers, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. Except as required by law, the Issuer 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 any department, agency, instrumentality, officer or employee of the Issuer 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 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 and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Bonds remain Outstanding, the Issuer 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:

(I) 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 Issuer 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 Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and

all subcontractors as their respective interests may appear, in accordance with the ARRA Assistance Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer 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 from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, 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 the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the ARRA Assistance Agreement so requires, such

insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Reserved.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and 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 Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals, if required, from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project, the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall provide an opinion of counsel to such effect.

Section 7.18. Reserved.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 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 2009 Bonds.

Section 7.20. Compliance with ARRA Assistance Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the ARRA Assistance Agreement and the Act. Notwithstanding anything herein to the contrary, the issuer will provide the DEP and the Council with copies of all documents submitted to the Authority.

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

Section 7.21. Reserved.

Section 7.22. Contracts; Change Orders, Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds held in "contingency" as set forth in the respective schedules attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## 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 bath 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 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 Bath, 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 bond 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 2009 Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 Bonds as a condition to issuance of the Series 2009 Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 Bonds as may be necessary in order to maintain the status of the Series 2009 Bonds as public purpose 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 2009 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, the Council or the DEP, as the case may be, from which the proceeds of the Series 2009 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 2009 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 2009 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2009 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 2009 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 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, Registrar or any other Paying Agent or a Holder of a Bond; or

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

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.

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, including, the completion of the Project 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 or to complete the acquisition and construction of the Project 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 exercise.

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 completion of the Project and 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 the 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 2009 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 Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 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 2009 Bonds from gross income for federal income tax purposes.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 Bonds, no material modification or amendment of this Ordinance, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 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, if any, out of the funds herein respectively pledged therefore 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 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 exclusion of interest, if any, on the Series 2009 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 Series 2009 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 2009 Bonds.

Section 11.04. Headings. 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. All orders or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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 Chairman, Secretary and members of the Governing Body 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. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Register Herald, a qualified newspaper published and of general circulation in the City of Beckley, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 Bonds, and that any person interested may appear before the Council upon a certain date, not less than 10 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 Issuer for review by interested persons during office hours of the Issuer. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading.

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|---|---|
| First Reading: | July 28, 2009 |
| Second Reading | August 11, 2009 |
| Final Reading/Public Hearing: | August 25, 2009 |

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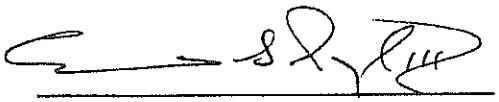
Enacted this 25th day of August, 2009.



Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly adopted by the Common Council of CITY OF BECKLEY on the 25th day of August, 2009.

Dated: September 18, 2009.

[SEAL]

Recorder

EXHIBIT A

ARRA Assistance Agreement included in bond transcript as Tab No. 8.

EXHIBIT B

CITY OF BECKLEY, WEST VIRGINIA

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on August 11, 2009, the Common Council of the City of Beckley, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing stormwater drainage system (the "System"), the permanent financing of such costs thereof through the issuance of not more than $600,000 in aggregate principal amount of Stormwater Revenue Bonds (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the creation of the revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of a sinking fund and a reserve account for the Bonds and creation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to such Net Revenues; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of Beckley at a regular meeting on August 25, 2009, at 7:30 p.m., in the Council Chambers, City Hall, Beckley, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on August 11, 2009, is on file with the City Recorder for review by interested persons at the City Hall during regular office hours, to-wit: 8:30 a.m. to 4:30 p.m., Monday through Friday.

/s/ Gary Sutphin
City Recorder/Treasurer of the City of Beckley, West Virginia

CITY OF BECKLEY
STORMWATER REVENUE BONDS, SERIES 2009 B-2
(WEST VIRGINIA CWSRF PROGRAM/ARRA GREEN)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE STORMWATER REVENUE BONDS, SERIES 2009 B-2 (WEST VIRGINIA CWSRF PROGRAM/ARRA GREEN), OF THE CITY OF BECKLEY; APPROVING AND RATIFYING THE ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Common Council (the "Governing Body") of City of Beckley (the "Issuer") has duly and officially passed a bond ordinance on August 11, 2009, effective August 25, 2009 (the "Bond Ordinance" or the "Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC STORMWATER DRAINAGE SYSTEM OF THE CITY OF BECKLEY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $600,000 IN AGGREGATE PRINCIPAL AMOUNT OF STORMWATER REVENUE BONDS, SERIES 2009 B-2 (WEST VIRGINIA SRF PROGRAM/ARRA GREEN); 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

ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Stormwater Revenue Bonds, Series 2009 B-2 (West Virginia CWSRF Program/ARRA Green), of the Issuer (the "Bonds" or the "Series 2009 B-2 Bonds"), in the aggregate principal amount not to exceed $600,000, and has authorized the execution and delivery of the ARRA assistance agreements relating to the Series 2009 B-2 Bonds, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "ARRA Assistance Agreement"), all in accordance with Chapter 16, Article I3, and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the ARRA Assistance Agreements and the exact principal amounts, dates, maturity dates, redemption provisions, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the ARRA Assistance Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the ARRA Assistance Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the ARRA Assistance Agreement be approved and ratified by the Issuer, that the exact principal amounts, the dates, the maturity dates, the redemption provisions, the interest rates, the interest and principal payment dates, the sale prices and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BECKLEY:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in The Register Herald, a qualified newspaper of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder/Treasurer has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, Beckley, West Virginia, on August 25, 2009, at 7:30 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued: Sewer Revenue Bonds, Series 2009 B-2 (West Virginia CWSRF Program/ARRA Green), of the Issuer, originally represented by a single Bond, numbered B2R-1, in the principal amount of $296,952. The Series 2009 B-2 Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2020, and shall bear no interest. The principal of the Series 2009 B-2 Bonds shall be payable by forgiveness quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2010, to and including March 1, 2020, and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2009 B-2 Bonds. The Series 2009 B-2 Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2009 B-2 Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Issuer does hereby authorize, approve, ratify and accept the ARRA Assistance Agreement, copies of which are incorporated herein by reference, and the execution and delivery of the ARRA Assistance Agreements by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the ARRA Assistance Agreement and in the applications to the DEP, the Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer does hereby appoint and designate United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 6. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 7. The Issuer does hereby appoint and designate JPMorgan Chase Bank NA, Beckley, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 2009 B-2 Bonds proceeds in the amount of $-0- shall be deposited in the Series 2009 B-2 Bonds Sinking Fund, as capitalized interest.

Section 9. Series 2009 B-2 Bonds proceeds in the amount of $-0- shall be deposited in the Series 2009 B-2 Bonds Reserve Account to fund the Series 2009 B-2 Bonds Reserve Account.

Section 10. The balance of the proceeds of the Series 2009 B-2 Bonds shall be deposited in or credited to the Bond Construction Trust Fund for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2009 B-2 Bonds and related costs.

Section 11. The Mayor and Recorder/Treasurer are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds to be issued hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about September 18, 2009, to the Authority pursuant to the ARRA Assistance Agreement.

Section 14. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 15. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Moneys in the Sinking Funds and the Reserve Accounts shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 16. The Issuer shall serve the additional customers at the location(s) as set forth in the Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the Project without the prior written approval of the Board of the Authority. Following completion of the Project, the Issuer shall certify to the Authority the number of customers added to the System.

Section 17. The Issuer shall perform an annual maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 18. The Special Conditions of the ARRA Assistance Agreement are attached as Exhibit A and are incorporated into this Supplemental Resolution.

Section 19. This Supplemental Resolution shall be effective immediately following adoption hereof

Adopted this 8th day of September, 2009.

CITY OF BECKLEY

By: _____
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Common Council of the City of Beckley on the 8th day of September, 2009.

Dated: September 18, 2009.

[SEAL]

Recorder/Treasurer

EXHIBIT A

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section

6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of

Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

B-2R-1

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
STORMWATER REVENUE BONDS, SERIES 2009 B-2
(WEST VIRGINIA SRF PROGRAM/ARRA GREEN)

No. B-2R-1 $296,952

KNOW ALL MEN BY THESE PRESENTS: The 18th of September, 2009, that THE CITY OF BECKLEY, a municipal corporation organized and existing under the laws of the State of West Virginia in Raleigh 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 TWO HUNDRED NINETY-SIX THOUSAND NINE HUNDRED FIFTY-TWO DOLLARS ($296,952), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December I of each year, commencing June 1, 2010 to and including March 1, 2020, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments, if any, 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 the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated September 18, 2009.

SPECIMEN

This Bond is issued (i) to pay the costs of acquisition and construction of improvements and extensions to the existing public stormwater system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public stormwater system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on August 25, 2009, and a Supplemental Resolution duly adopted by the Issuer on September 8, 2009 (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.

THERE ARE NO OUTSTANDING OBLIGATIONS OF THE ISSUER PAYABLE FROM THE NET REVENUES OF THE SYSTEM.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 B-2 Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. 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, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B-2 Bonds Reserve Account and unexpended proceeds of the Bonds. 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, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Bonds; provided however, that so long as there exists in the Series 2009 B-2 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, 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 or junior to the Bonds, an amount at least equal to the requirement therefor, such

SPECIMEN

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. The Issuer shall make the payments into the Renewal and Replacement Fun as required by the Bond Legislation.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Inc., Charleston, West Virginia, as registrar (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.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

[Remainder of Page Intentionally Blank]

SPECIMEN

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 issuance 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 Net 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 payments required by the Bond Legislation.

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 BECKLEY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above.

[SEAL]

SPECIMEN

Mayor

ATTEST:

SPECIMEN

Recorder

B-2R-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B-2 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: September 18, 2009.

UNITED BANK, INC.,
as Registrar

SPECIMEN

Authorized Officer

NUMBER

B-2R-1

EXHIBIT A

SPECIMEN

RECORD OF ADVANCES

| | AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|---|
| (1) $ | 52,016 | 09/18/09 | (19) $ | |
| (2) $ | | | (20) $ | |
| (3) $ | | | (21) $ | |
| (4) $ | | | (22) $ | |
| (5) $ | | | (23) $ | |
| (6) $ | | | (24) $ | |
| (7) $ | | | (25) $ | |
| (8) $ | | | (26) $ | |
| (9) $ | | | (27) $ | |
| (10) $ | | | (28) $ | |
| (11) $ | | | (29) $ | |
| (12) $ | | | (30) $ | |
| (13) $ | | | (31) $ | |
| (14) $ | | | (32) $ | |
| (15) $ | | | (33) $ | |
| (16) $ | | | (34) $ | |
| (17) $ | | | (35) $ | |
| (18) $ | | | (36) $ | |

TOTAL $_____

B-2R-1

SPECIMEN

# EXHIBIT B
# DEBT SERVICE SCHEDULE

| | City of Beckley | | |
|---|---|---|---|
| | 10 Years | | |
| | Dated Date | | 9/18/09 |
| | Delivery Date | | 9/18/09 |
| | | | Series B-2 |
| **Period Ending** | **Debt Service** | | **Principal Forgiveness** |
| 9/18/09 | | | |
| 6/1/10 | -7,424 | | -7,424 |
| 9/1/10 | -7,424 | | -7,424 |
| 12/1/10 | -7,424 | | -7,424 |
| 3/1/11 | -7,424 | | -7,424 |
| 6/1/11 | -7,424 | | -7,424 |
| 9/1/11 | -7,424 | | -7,424 |
| 12/1/11 | -7,424 | | -7,424 |
| 3/1/12 | -7,424 | | -7,424 |
| 6/1/12 | -7,424 | | -7,424 |
| 9/1/12 | -7,424 | | -7,424 |
| 12/1/12 | -7,424 | | -7,424 |
| 3/1/13 | -7,424 | | -7,424 |
| 6/1/13 | -7,424 | | -7,424 |
| 9/1/13 | -7,424 | | -7,424 |
| 12/1/13 | -7,424 | | -7,424 |
| 3/1/14 | -7,424 | | -7,424 |
| 6/1/14 | -7,424 | | -7,424 |
| 9/1/14 | -7,424 | | -7,424 |
| 12/1/14 | -7,424 | | -7,424 |
| 3/1/15 | -7,424 | | -7,424 |
| 6/1/15 | -7,424 | | -7,424 |
| 9/1/15 | -7,424 | | -7,424 |
| 12/1/15 | -7,424 | | -7,424 |
| 3/1/16 | -7,424 | | -7,424 |
| 6/1/16 | -7,424 | | -7,424 |
| 9/1/16 | -7,424 | | -7,424 |
| 12/1/16 | -7,424 | | -7,424 |
| 3/1/17 | -7,424 | | -7,424 |
| 6/1/17 | -7,424 | | -7,424 |
| 9/1/17 | -7,424 | | -7,424 |
| 12/1/17 | -7,424 | | -7,424 |
| 3/1/18 | -7,423 | | -7,423 |
| 6/1/18 | -7,423 | | -7,423 |
| 9/1/18 | -7,423 | | -7,423 |
| 12/1/18 | -7,423 | | -7,423 |
| 3/1/19 | -7,423 | | -7,423 |
| 6/1/19 | -7,423 | | -7,423 |
| 9/1/19 | -7,423 | | -7,423 |
| 12/1/19 | -7,423 | | -7,423 |
| 3/1/20 | -7,424 | | -7,424 |
| | **-296,952** | | **-296,952** |

B-2R-1

(Form of) SPECIMEN

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: _____, _____.

_____

In the presence of:

_____