

CITY OF BENWOOD

**Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)**

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CITY OF BENWOOD

WATER REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

BOND ORDINANCE

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CITY OF BENWOOD

BOND ORDINANCE

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF BENWOOD AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$2,050,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND), 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 A LOAN AGREEMENT 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 COUNCIL OF THE CITY OF BENWOOD:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 19 and Chapter 31, Article 15A 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 Benwood (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marshall County of said State.

B. The Issuer presently owns and operates a public Waterworks system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing public waterworks facilities of the Issuer to construct additions and improvements to its waterworks

distribution system, consisting of installation of water line; replacement of gate valves and meter settings; cleaning the North Tank; clean, repair and paint the South Tank; enclose the South Tank with fencing; and install a 250 gallon per minute booster emergency pump station with a 3-inch turbine meter station, with all necessary appurtenances (the "Project") (the existing public waterworks 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 Clerk of 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"), which administers the West Virginia Infrastructure Fund (the "Infrastructure Fund") for the West Virginia Infrastructure and Jobs Development Council (the "Council") pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund) in the total aggregate principal amount of not more than \$2,050,000 as a single bond (the "Series 2011 A Bonds"), to permanently finance the costs of acquisition and construction of the Project. Such 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 2011 A Bonds prior to and during acquisition and construction 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 Account (as hereinafter defined) for the Series 2011 A Bonds; 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 2011 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 2011 A 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 2011 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the Council, in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

G. The Issuer has the following outstanding obligations: (i) Water Revenue Bonds, Series 1992 A (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$510,000 (the "Series 1992 A Bonds"); and (ii) Water Revenue Bonds, Series 1992 B (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$90,000 (the "Series 1992 B Bonds") (collectively, the "Prior Bonds").

The Series 2011 A Bonds shall be issued on a parity with the Prior Bonds. Prior to the issuance of the Series 2011 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2011 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Issuer's Prior Bonds and the Series 2011 A 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, the Loan Agreement (hereinafter defined) relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2011 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2011 A Bonds or such final order will not be subject to appeal.

J. The Project has been reviewed and determined to be technically and financially feasible by the Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended. That, unless it qualifies for an exception, the Issuer shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2011 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2011 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 8, Article 19 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2011 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

"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 2011 A Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond 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.

"Clerk" means the Clerk of the Issuer

"Closing Date" means the date upon which there is an exchange of the Series 2011 A Bonds for all or a portion of the proceeds of the Series 2011 A 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 Dunn Engineers, Inc., Charleston, 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 1.02D hereof to be a part of the costs of acquisition and construction of the Project.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

"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 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.

"Grants" means any grants committed to the Project.

"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.

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

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered into, by and between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2011 A Bonds, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2011 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2011 A Bonds Reserve Account.

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

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

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which 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; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

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

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority and the Council.

"Prior Bonds" means the Series 1992 A Bonds and the Series 1992 B Bonds.

"Prior Ordinance" means the ordinances of the Issuer, as supplemented by the supplemental resolutions of the Issuer, authorizing the Prior Bonds.

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

"Qualified Investments" means and includes 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 or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or 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, including, without limitation, authorized pools of investments operated by such State Board of Investments; 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.

"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 established by the Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 2011 A Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinance and continued hereby.

"Series 1992 A Bonds" means the Issuer's Water Revenue Bonds, Series 1992 A (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$510,000.

"Series 1992 B Bonds" means the Issuer's Water Revenue Bonds, Series 1992 B (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$90,000.

"Series 2011 A Bonds" means the Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Ordinance.

"Series 2011 A Bonds Construction Trust Fund" means the Series 2011 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2011 A Bonds Reserve Account" means the Series 2011 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2011 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2011 A Bonds in the then current or any succeeding year.

"Series 2011 A Bonds Sinking Fund" means the Series 2011 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 2011 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 2011 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2011 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 or the Prior Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

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

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

"West Virginia Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF THE PROJECT

Section 2.01. Authorization of the 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 \$2,050,000, of which a portion will be paid from proceeds of the Series 2011 A Bonds, 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 2011 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 in an amount compatible with the financing plan submitted to the Council and the Authority.

The estimated maximum cost of the acquisition and construction of the Project is \$2,050,000, which will be obtained from the proceeds of the Series 2011 A Bonds.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS, AUTHORIZATION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2011 A Bonds, funding the reserve account for the Series 2011 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2011 A 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 the negotiable Series 2011 A Bonds of the Issuer. The Series 2011 A Bonds shall be issued as a single bond, designated as "Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund)", in the principal amount of not more than \$2,050,000, and shall have such terms as are set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2011 A Bonds remaining after funding of the Series 2011 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2011 A Bonds Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2011 A Bonds shall be issued in such principal amount; shall bear interest, if any, 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 or as specifically provided in the Loan Agreement. The Series 2011 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, if any, on the Series 2011 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 Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2011 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of the Series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2011 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 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 be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2011 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 Clerk. In case any one or more of the officers who shall have signed or sealed the

Series 2011 A Bonds shall cease to be such officer of the Issuer before the Series 2011 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 2011 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 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 2011 A Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2011 A Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2011 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 2011 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 2011 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2011 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 or transferring the registered Series 2011 A Bonds are exercised, all Series 2011 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2011 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 2011 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 any Series 2011 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on

the Series 2011 A Bonds or, in the case of any proposed redemption of such 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 2011 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be 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 2011 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 Gross Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2011 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2011 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2011 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, 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 2011 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2011 A 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 2011 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 2011 A Bonds to the original purchasers;

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

- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinions of bond counsel on the Series 2011 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2011 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 2011 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BENWOOD
WATER REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this the ____ day of _____, 2011, the City of Benwood, a municipal corporation and political subdivision of the State of West Virginia in Marshall 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 installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20__ 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 of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2011.

This Bond is issued (i) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, 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 8, Article 19 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 2011, and a Supplemental Resolution duly adopted by the Issuer on _____, 2011 (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 WATER REVENUE BONDS, SERIES 1992 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 17, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$510,000 (THE "SERIES 1992 A BONDS"); AND (II) WATER REVENUE BONDS, SERIES 1992 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 17, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$90,000 (THE "SERIES 1992 B BONDS"), (COLLECTIVELY, THE "PRIOR BONDS")

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2011 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute 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 hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2011 A 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds; provided however, that, so long as there exists in the Series 2011 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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 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 in 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

Mayor

ATTEST:

Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 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: _____, 2011.

THE HUNTINGTON NATIONAL BANK,
as Registrar

By: _____
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|-------------|---------------|-------------|
| (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: _____, 20__.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2011 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Clerk is directed to affix the seal of the Issuer, attest the same and deliver them to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, and is hereby approved and incorporated in this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Council and the Authority a schedule for the Series 2011 A Bonds, the form of which will be provided by the Authority and the Council, setting forth the actual costs of the Project and sources of funds therefor.

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 or the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinance);
- (2) Renewal and Replacement Fund (established by the Prior Ordinance as Depreciation Reserve and hereby renamed and continued);
- (3) Series 1992 Bonds Reserve Fund (established by Prior Ordinance);
and
- (4) Series 2011 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 and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2011 A Bonds Sinking Fund; and

- (2) Series 2011 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.

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

- (1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund to the National Finance Office the amount required by the Prior Ordinance to pay interest on the Prior Bonds.

- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the National Finance Office the amount required by Prior Ordinance to pay principal on the Prior Bonds; and (ii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2011 A Bonds, for deposit in the Series 2011 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2011 A 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 2011 A Bonds Sinking Fund and the next quarterly principal payment date is less than 4 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 (i) remit to the Depository Bank for deposit in the reserve accounts for the Prior Bonds, the amounts required by the Prior Ordinance to be deposited therein; and (ii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2011 A Bonds, if not fully funded upon issuance of the Series 2011 A Bonds, for deposit in the Series 2011 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2011 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2011 A 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 2011 A Bonds Reserve Requirement.

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

(5) The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, transfer to 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 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 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 2011 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2011 A Bonds, as the same shall become due. Monies in the Series 2011 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2011 A Bonds, as the same shall come due, when other monies in the Series 2011 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2011 A Bonds Sinking Fund and the Series 2011 A 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 2011 A Bonds Construction Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2011 A Bonds.

Any withdrawals from the Series 2011 A Bonds Reserve Account, which result in a reduction in the balance of such accounts to below the Reserve Requirements thereof, shall be restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2011 A 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 respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2011 A Bonds Sinking Fund or the Series 2011 A Bonds Reserve Account when the aggregate amount of funds

therein are at least equal to the aggregate principal amount of the Series 2011 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2011 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2011 A Bonds Sinking Fund and the Series 2011 A 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. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. 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 2011 A Bonds Sinking Fund and the Series 2011 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2011 A Bonds Sinking Fund and the Series 2011 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2011 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 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 payments with respect to the Series 2011 A 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.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan 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.

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 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. 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 Government Obligations or by other 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 herein above 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 Gross 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

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds.
From the monies received from the sale of the Series 2011 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2011 A Bonds, there shall first be deposited with the Commission in the Series 2011 A 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 2011 A Bonds for the period commencing on the date of issuance of the Series 2011 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2011 A Bonds, there shall be deposited with the Commission in the Series 2011 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2011 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2011 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2011 A Bonds Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2011 A Bonds.

D. After completion of the construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2011 A Bonds shall be expended as directed by the Council.

Section 6.02. Disbursements of Bond Proceeds. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2011 A Bonds from the Series 2011 A Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Council, of a certificate, signed by an Authorized Officer stating that:

- (A) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (C) Each of such costs has been otherwise properly incurred; and
- (D) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2011 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

The Issuer shall expend all proceeds of the Series 2011 A Bonds within 3 years of the date of issuance of the Council's bonds, the proceeds of which were used to make the loan to the Issuer, if applicable.

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 2011 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 2011 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 2011 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2011 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 the Series 2011 A Bonds

shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2011 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2011 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with each other and with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted June 8, 2010 which rates are incorporated herein by reference as a part hereof.

So long as the Series 2011 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 Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2011 A Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation and the Loan 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 and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority and the Council.

So long as the Series 2011 A Bonds are outstanding and except as otherwise required by law or with the written consent of 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 immediately be remitted to the Commission for deposit in the Series 2011 A Bonds Sinking Fund, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2011 A Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Series 2011 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer 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 shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Governing Body may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund by other provisions of the Prior Ordinance and 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 source fiscal year for such sales, leases or other dispositions of such properties, shall be in excess of \$200,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the 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 for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2011 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2011 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 2011 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds 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 2011 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2011 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, 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 additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2011 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the Council and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

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

So long as the Series 1992 A Bonds or the Series 1992 B Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Clerk a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

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

The foregoing limitation may be waived or modified by the written consent of the Holders of the Prior Bonds, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the Prior Bonds are no longer Outstanding, the following requirement shall be met:

So long as the Series 2011 A Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustment hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115%, of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of 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 Clerk 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, 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.

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

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 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 the lien on and source of and security for payment from such revenues, with the Bonds.

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

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 Authority and the Council, 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 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 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 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 Issuer 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 Governing Body shall direct.

The Issuer shall file with the Authority and the Council, or any other original purchaser of the Series 2011 A Bonds and shall mail in each year to any Holder or Holders of the Series 2011 A 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, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2011 A Bonds and shall submit the report to the Authority and the Council, or any other original purchaser of the Series 2011 A Bonds. Such audit report submitted to the Authority and the Council shall include a statement that notes whether the results of test disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer or 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 Authority or the Council, 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 and commencement of operation of the Project, the Issuer shall also provide the Authority and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2011 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy 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 and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, 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 required in any year for payment of principal of and interest on the Series 2011 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2011 A Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Series 2011 A Bonds Reserve Account and any reserve accounts for obligations on a parity with the Series 2011 A Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2011 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2011 A

Bonds. 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.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.10. Operating Budget and Monthly Financial Report. The 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 Authority and the Council 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 registered 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 registered 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 Authority, the Council and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, 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 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 2 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 Loan Agreement, and forward a copy of such report to the Authority and the Council 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 Loan 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 Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council 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 Authority and the Council 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 Authority, the Council and 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 serve the additional customers at the location(s) as set forth in 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 Water Development Authority (the "Authority"). Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

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

Section 7.13. Enforcement of Collections. The 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 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 the System or the water 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 system is not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the 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 thereof.

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 either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, 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 2011 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 Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan 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 prime contractor 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 OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of

any construction contract and to be required of each contractor dealing directly with the 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 any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

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

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

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

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 Council. In the event the Loan 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. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the acquisition and construction of 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 will obtain all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project and the operation

of the System and all approvals of issuance of the Series 2011 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal and shall supply an opinion of counsel to such effect.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide 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 Authority, the Council 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.

The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 7.19. [RESERVED]

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

Section 7.21. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2011 A 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 Council for written approval. The Issuer shall obtain the written approval of the Council before expending any proceeds of the Series 2011 A Bonds held in "contingency" as set forth in the Schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council before expending any proceeds of the Series 2011 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the Council 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; USE OF PROCEEDS

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Resolution, 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 Resolution, 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 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 2011 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2011 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate and 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 2011 A Bonds as a condition to issuance of the Series 2011 A 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 2011 A Bonds as may be necessary in order to maintain the status of the Series 2011 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2011 A Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the Council, as the case may be, from which the proceeds of the Series 2011 A 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 Council, 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 Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2011 A 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 2011 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2011 A Bonds; or

(2) If default occurs in the Issuer or the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2011 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2011 A Bonds, and such default shall have continued for a period of 30 days after the Issuer or Issuer, as appropriate, shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer or 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 or Bondholder 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 or Bondholders 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 or Bondholders 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 2011 A Bonds shall be on a parity with those of the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, 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 or the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers herein above 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 Series 2011 A Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2011 A Bonds, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other 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 2011 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2011 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2011 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 2011 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2011 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2011 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2011 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 excludability of interest on the Series 2011 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 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 2011 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; 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 Clerk and members of the Governing Body and the Issuer 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 *Moundsville Echo* a qualified newspaper published and of general circulation in the City of Benwood, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2011 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.

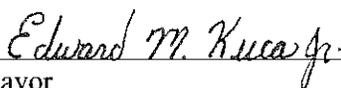
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Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Passed on First Reading: January 25, 2011

Passed on Second Reading: February 22, 2011

Passed on Final Reading
Following Public Hearing: March 8, 2011



Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Governing Body of the City of Benwood on the 8th day of March, 2011.

Dated: March 17, 2011.

[SEAL]

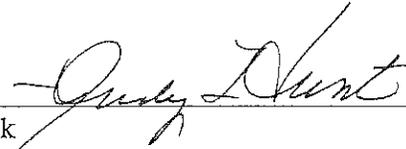

Clerk

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

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 WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE CITY OF BENWOOD; RATIFYING AND APPROVING A LOAN AGREEMENT 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; APPROVING A BOND ORDINANCE; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Benwood (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective March 8, 2011 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF BENWOOD AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$2,050,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND), 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 A LOAN AGREEMENT 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 the Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, in the aggregate principal amount not to exceed \$2,050,000 (the "Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 8, Article 19 and Chapter 31, Article 15A 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 Loan Agreement and 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, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and entered into by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provisions, 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 BENWOOD:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$1,550,000. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2051, and shall bear no interest. The principal of the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2012, to and including March 1, 2051, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of a redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds.

Section 2. 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 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement 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 Loan Agreement and in the applications to 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 4. The Issuer does hereby appoint and designate The Huntington National Bank, 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 5. 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 6. The Issuer does hereby appoint and designate WesBanco Bank, Inc., McMechen, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2011 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2011 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2011 A Bonds proceeds in the amount of \$40,000 shall be deposited in the Series 2011 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Bonds shall be deposited in or credited to the Series 2011 A Bonds Construction Trust Fund as received from the Council from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor and the Clerk are hereby authorized and directed to execute and deliver such other documents, agreements, instruments 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 March 17, 2011, to the Authority pursuant to the Loan Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 13. 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. Monies in the Series 2011 A Bonds Sinking Fund, including the Series 2011 A Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia

Consolidated Fund.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

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Adopted this 8th day of March, 2011.

Edward M. Kuca, Jr.
Mayor

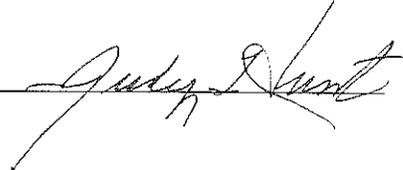
CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Benwood on the 8th day of March, 2011.

Dated: March 17, 2011.

[SEAL]

Clerk

A handwritten signature in cursive script, appearing to read "Judy Hunt", written over a horizontal line.

03.02.11
066650.00004

IC-1
(08/09)

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the governmental agency designated below (the "Governmental Agency").

CITY OF BENWOOD
(2007W-976)

(Governmental Agency)

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an

Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency 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 for the Governmental Agency by the Consulting Engineers.

2.3 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 Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time 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.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (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 and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent

(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 Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Council 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 Authority, the Council and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority and Council.

2.13 The Governmental Agency shall serve the additional customers at the location(s) as set forth in Schedule X. The Governmental Agency shall not reduce the amount of additional customers served by the project without the prior written approval of the WDA Board. Following completion of the Project the Governmental Agency shall certify to the Authority the number of customers added to the System.

2.14 The Governmental Agency shall perform an annual maintenance audit which maintenance audit shall be submitted to the WDA and the Public Service Commission of West Virginia.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and the Council shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority and the Council, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of projects and satisfactory to the Authority and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority, the Council or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

Local Bonds; Security for Loan;
Repayment of Loan; Interest on Loan;
Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall be used monthly, in the order of priority listed below:

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the

principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and

the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt 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 Authority and the Council within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and the Council, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xvii) That the Governmental Agency 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 interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month. When required by the Authority, the Local Entity shall make monthly payments to the Commission by electronic transfer;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council 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;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before making any changes to the final Schedule B and also before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council 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 groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Council and the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (IV) the Governmental Agency will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the

Governmental Agency: Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

ARTICLE V

Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Governmental Agency 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 (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority and the Council upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule B to the Application, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.5 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.6 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.7 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.10 This Loan Agreement shall terminate upon the earlier of:

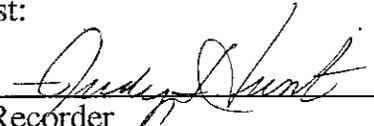
- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

CITY OF BENWOOD

(SEAL)

Attest:



Its: Recorder

By: Edward M. KUCA, Jr.
Its: Mayor
Date: March 17, 2011

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

(SEAL)

Attest:



Its: Authorized Officer

By: 

Its: Executive Director
Date: March 17, 2011

{C1978613.1}

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers, _____, _____ hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least ___ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and my firm¹ has ascertained that all

¹If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____,

successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, ²the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

[SEAL]

By: _____
West Virginia License No. _____

Esq.] and delete "my firm has ascertained that".

²If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the
“Governmental Agency”), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the “Loan Agreement”), between the Governmental Agency and the West Virginia Water Development Authority (the “Authority”), on behalf of the West Virginia Infrastructure and Jobs Development Council (the “Council”), and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, (the “Local Bonds”), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$_____, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning _____, 1, _____, and ending _____, 1, _____, as set forth in the “Schedule Y” attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and
(ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the “Local Statute”), and the bond _____ duly adopted or enacted by the Governmental Agency on _____, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on _____ (collectively, the “Local Act”), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior

to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

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

Very truly yours,

EXHIBIT C

MONTHLY FINANCIAL REPORT

Name of Governmental Agency _____
 Name of Bond Issue(s) _____
 Type of Project _____ Water _____ Wastewater _____
 Fiscal Year _____ Report Month _____

| <u>Item</u> | <u>Current Month</u> | <u>Total Year To Date</u> | <u>Budget Year To Date</u> | <u>Budget Year To Date Minus Total Year To Date</u> |
|--|----------------------|---------------------------|----------------------------|---|
| 1. Gross Revenues | _____ | _____ | _____ | _____ |
| 2. Operating Expenses | _____ | _____ | _____ | _____ |
| 3. Bond Payments: | | | | |
| <u>Type of Issue</u> | | | | |
| Clean Water SRF | _____ | _____ | _____ | _____ |
| Drinking Water TRF | _____ | _____ | _____ | _____ |
| Infrastructure Fund | _____ | _____ | _____ | _____ |
| Water Development Authority | _____ | _____ | _____ | _____ |
| Rural Utilities Service | _____ | _____ | _____ | _____ |
| Economic Development Administration | _____ | _____ | _____ | _____ |
| Other (Identify) | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| 4. Renewal and Replacement Fund Deposits | _____ | _____ | _____ | _____ |

 Name of Person Completing Form

 Address

 Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ($\$1,200/12$). This is the incremental amount for the Budget Year-to-Date column.
- Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ($\$900/12$). This is the incremental amount for the Budget Year-to-Date column.
- Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

| | |
|------------------|----|
| Interest | \$ |
| Principal | \$ |
| Total: | \$ |
| Reserve Account: | \$ |

Witness my signature this ____ day of _____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$1,550,000

Purchase Price of Local Bonds \$1,550,000

The Local Bonds shall bear no interest. Commencing September 1, 2012, principal on the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall authorize the Commission to electronically debit its monthly payments. The Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interests and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

- (i) City of Benwood Water Revenue Bonds, Series 1992 A (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$510,000; and
- (ii) City of Benwood Water Revenue Bonds, Series 1992 B (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$90,000.

Number of New Customers to Be Served: 0

Location: N/A

**SCHEDULE Y
DEBT SERVICE SCHEDULE**

| BOND DEBT SERVICE | | | |
|----------------------------|-----------|----------|---------|
| \$1,550,000 | | | |
| City of Benwood | | | |
| IF | | | |
| 0% Interest Rate | | | |
| 40 Years from Closing Date | | | |
| Dated | | | |
| Date | | 3/17/11 | |
| Delivery | | | |
| Date | | 3/17/11 | |
| Period | Principal | Interest | Debt |
| Ending | | | Service |
| 9/1/12 | 10,000 | | 10,000 |
| 12/1/12 | 10,000 | | 10,000 |
| 3/1/13 | 10,000 | | 10,000 |
| 6/1/13 | 10,000 | | 10,000 |
| 9/1/13 | 10,000 | | 10,000 |
| 12/1/13 | 10,000 | | 10,000 |
| 3/1/14 | 10,000 | | 10,000 |
| 6/1/14 | 10,000 | | 10,000 |
| 9/1/14 | 10,000 | | 10,000 |
| 12/1/14 | 10,000 | | 10,000 |
| 3/1/15 | 10,000 | | 10,000 |
| 6/1/15 | 10,000 | | 10,000 |
| 9/1/15 | 10,000 | | 10,000 |
| 12/1/15 | 10,000 | | 10,000 |
| 3/1/16 | 10,000 | | 10,000 |
| 6/1/16 | 10,000 | | 10,000 |
| 9/1/16 | 10,000 | | 10,000 |
| 12/1/16 | 10,000 | | 10,000 |
| 3/1/17 | 10,000 | | 10,000 |
| 6/1/17 | 10,000 | | 10,000 |
| 9/1/17 | 10,000 | | 10,000 |
| 12/1/17 | 10,000 | | 10,000 |
| 3/1/18 | 10,000 | | 10,000 |
| 6/1/18 | 10,000 | | 10,000 |
| 9/1/18 | 10,000 | | 10,000 |
| 12/1/18 | 10,000 | | 10,000 |
| 3/1/19 | 10,000 | | 10,000 |
| 6/1/19 | 10,000 | | 10,000 |
| 9/1/19 | 10,000 | | 10,000 |
| 12/1/19 | 10,000 | | 10,000 |
| 3/1/20 | 10,000 | | 10,000 |
| 6/1/20 | 10,000 | | 10,000 |
| 9/1/20 | 10,000 | | 10,000 |
| 12/1/20 | 10,000 | | 10,000 |
| 3/1/21 | 10,000 | | 10,000 |
| 6/1/21 | 10,000 | | 10,000 |
| 9/1/21 | 10,000 | | 10,000 |
| 12/1/21 | 10,000 | | 10,000 |
| 3/1/22 | 10,000 | | 10,000 |
| 6/1/22 | 10,000 | | 10,000 |
| 9/1/22 | 10,000 | | 10,000 |
| 12/1/22 | 10,000 | | 10,000 |
| 3/1/23 | 10,000 | | 10,000 |

| BOND DEBT SERVICE | | | |
|-----------------------------------|------------------|-----------------|---------------------|
| \$1,550,000 | | | |
| City of Benwood | | | |
| IF | | | |
| 0% Interest Rate | | | |
| 40 Years from Closing Date | | | |
| Period | Principal | Interest | Debt Service |
| Ending | | | |
| 6/1/23 | 10,000 | | 10,000 |
| 9/1/23 | 10,000 | | 10,000 |
| 12/1/23 | 10,000 | | 10,000 |
| 3/1/24 | 10,000 | | 10,000 |
| 6/1/24 | 10,000 | | 10,000 |
| 9/1/24 | 10,000 | | 10,000 |
| 12/1/24 | 10,000 | | 10,000 |
| 3/1/25 | 10,000 | | 10,000 |
| 6/1/25 | 10,000 | | 10,000 |
| 9/1/25 | 10,000 | | 10,000 |
| 12/1/25 | 10,000 | | 10,000 |
| 3/1/26 | 10,000 | | 10,000 |
| 6/1/26 | 10,000 | | 10,000 |
| 9/1/26 | 10,000 | | 10,000 |
| 12/1/26 | 10,000 | | 10,000 |
| 3/1/27 | 10,000 | | 10,000 |
| 6/1/27 | 10,000 | | 10,000 |
| 9/1/27 | 10,000 | | 10,000 |
| 12/1/27 | 10,000 | | 10,000 |
| 3/1/28 | 10,000 | | 10,000 |
| 6/1/28 | 10,000 | | 10,000 |
| 9/1/28 | 10,000 | | 10,000 |
| 12/1/28 | 10,000 | | 10,000 |
| 3/1/29 | 10,000 | | 10,000 |
| 6/1/29 | 10,000 | | 10,000 |
| 9/1/29 | 10,000 | | 10,000 |
| 12/1/29 | 10,000 | | 10,000 |
| 3/1/30 | 10,000 | | 10,000 |
| 6/1/30 | 10,000 | | 10,000 |
| 9/1/30 | 10,000 | | 10,000 |
| 12/1/30 | 10,000 | | 10,000 |
| 3/1/31 | 10,000 | | 10,000 |
| 6/1/31 | 10,000 | | 10,000 |
| 9/1/31 | 10,000 | | 10,000 |
| 12/1/31 | 10,000 | | 10,000 |
| 3/1/32 | 10,000 | | 10,000 |
| 6/1/32 | 10,000 | | 10,000 |
| 9/1/32 | 10,000 | | 10,000 |
| 12/1/32 | 10,000 | | 10,000 |
| 3/1/33 | 10,000 | | 10,000 |
| 6/1/33 | 10,000 | | 10,000 |
| 9/1/33 | 10,000 | | 10,000 |
| 12/1/33 | 10,000 | | 10,000 |
| 3/1/34 | 10,000 | | 10,000 |
| 6/1/34 | 10,000 | | 10,000 |
| 9/1/34 | 10,000 | | 10,000 |
| 12/1/34 | 10,000 | | 10,000 |

BOND DEBT SERVICE

\$1,550,000

City of Benwood

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|--------------------------|------------------|-----------------|-------------------------|
| 3/1/35 | 10,000 | | 10,000 |
| 6/1/35 | 10,000 | | 10,000 |
| 9/1/35 | 10,000 | | 10,000 |
| 12/1/35 | 10,000 | | 10,000 |
| 3/1/36 | 10,000 | | 10,000 |
| 6/1/36 | 10,000 | | 10,000 |
| 9/1/36 | 10,000 | | 10,000 |
| 12/1/36 | 10,000 | | 10,000 |
| 3/1/37 | 10,000 | | 10,000 |
| 6/1/37 | 10,000 | | 10,000 |
| 9/1/37 | 10,000 | | 10,000 |
| 12/1/37 | 10,000 | | 10,000 |
| 3/1/38 | 10,000 | | 10,000 |
| 6/1/38 | 10,000 | | 10,000 |
| 9/1/38 | 10,000 | | 10,000 |
| 12/1/38 | 10,000 | | 10,000 |
| 3/1/39 | 10,000 | | 10,000 |
| 6/1/39 | 10,000 | | 10,000 |
| 9/1/39 | 10,000 | | 10,000 |
| 12/1/39 | 10,000 | | 10,000 |
| 3/1/40 | 10,000 | | 10,000 |
| 6/1/40 | 10,000 | | 10,000 |
| 9/1/40 | 10,000 | | 10,000 |
| 12/1/40 | 10,000 | | 10,000 |
| 3/1/41 | 10,000 | | 10,000 |
| 6/1/41 | 10,000 | | 10,000 |
| 9/1/41 | 10,000 | | 10,000 |
| 12/1/41 | 10,000 | | 10,000 |
| 3/1/42 | 10,000 | | 10,000 |
| 6/1/42 | 10,000 | | 10,000 |
| 9/1/42 | 10,000 | | 10,000 |
| 12/1/42 | 10,000 | | 10,000 |
| 3/1/43 | 10,000 | | 10,000 |
| 6/1/43 | 10,000 | | 10,000 |
| 9/1/43 | 10,000 | | 10,000 |
| 12/1/43 | 10,000 | | 10,000 |
| 3/1/44 | 10,000 | | 10,000 |
| 6/1/44 | 10,000 | | 10,000 |
| 9/1/44 | 10,000 | | 10,000 |
| 12/1/44 | 10,000 | | 10,000 |
| 3/1/45 | 10,000 | | 10,000 |
| 6/1/45 | 10,000 | | 10,000 |
| 9/1/45 | 10,000 | | 10,000 |
| 12/1/45 | 10,000 | | 10,000 |
| 3/1/46 | 10,000 | | 10,000 |
| 6/1/46 | 10,000 | | 10,000 |
| 9/1/46 | 10,000 | | 10,000 |

BOND DEBT SERVICE

\$1,550,000

City of Benwood

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|--------------------------|------------------|-----------------|-------------------------|
| 12/1/46 | 10,000 | | 10,000 |
| 3/1/47 | 10,000 | | 10,000 |
| 6/1/47 | 10,000 | | 10,000 |
| 9/1/47 | 10,000 | | 10,000 |
| 12/1/47 | 10,000 | | 10,000 |
| 3/1/48 | 10,000 | | 10,000 |
| 6/1/48 | 10,000 | | 10,000 |
| 9/1/48 | 10,000 | | 10,000 |
| 12/1/48 | 10,000 | | 10,000 |
| 3/1/49 | 10,000 | | 10,000 |
| 6/1/49 | 10,000 | | 10,000 |
| 9/1/49 | 10,000 | | 10,000 |
| 12/1/49 | 10,000 | | 10,000 |
| 3/1/50 | 10,000 | | 10,000 |
| 6/1/50 | 10,000 | | 10,000 |
| 9/1/50 | 10,000 | | 10,000 |
| 12/1/50 | 10,000 | | 10,000 |
| 3/1/51 | 10,000 | | 10,000 |
| | 1,550,000 | | 1,550,000 |

SCHEDULE Z

None.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: November 17, 2010

FINAL

12/7/2010

CASE NO. 10-1200-W-CN

CITY OF BENWOOD,
a municipality, Marshall County.

Application for a certificate of convenience
and necessity to construct certain additions and
improvements to its existing waterworks system;
and for approval of the financing thereof.

RECOMMENDED DECISION

On July 30, 2010, the City of Benwood (City) filed an application for a certificate of convenience and necessity to construct certain improvements to its waterworks system. The City estimated that the total cost of the project would not exceed \$1,550,000. The project was approved by the West Virginia Infrastructure and Jobs Development Council (WVIJDC) and was to be funded with a WVIJDC loan in the amount of \$1,550,000 for a term of 40 years at 0% interest. The City adopted a three-phase water rate increase on June 8, 2010.

By Commission Order dated July 30, 2010, the City was required to publish the Notice of Filing of its application once in a qualified newspaper as provided in West Virginia Code §59-3-1 et seq., published and of general circulation in Marshall County, providing a 30-day protest period. The Notice of Filing also provided that, if no protests were received within the 30-day protest period, the Commission might waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application.

By Commission Order dated August 10, 2010, the proceeding was referred to the Division of Administrative Law Judges with a decision due date of on or before December 13, 2010, if there had been no substantial protest to the application within 30 days after the required notice had been provided, or on or before January 12, 2011, if substantial protest had been received within 30 days after the required notice had been provided.

On August 27, 2010, the City filed a publication affidavit showing that the Notice of Filing was published on August 20, 2010, in the Moundsville Daily Echo, a newspaper published and generally circulated in Marshall County.

On September 2, 2010, Staff Attorney Lisa Wansley filed the Initial Joint Staff Memorandum to which was attached the August 24, 2010 Initial Joint Memorandum prepared by James Boggess, Utilities Analyst II, Utilities Division, and John Mottesheard, Engineering Technician, Engineering Division. Staff reported on the City's application. The City proposed to install approximately 1,818 linear feet of 6-inch line and 245 feet of 2-inch line; replace gate valves and meter settings; clean the North Tank; clean, repair and paint the South Tank; enclose the South Tank with a fence and gate that could be locked; and install a 250-gallon per minute duplex booster emergency pump station with a 3-inch turbine meter station. The project was to be financed with a WVIJDC loan in the amount of \$1,550,000 for 40 years at 0% interest. The annual debt service would be \$40,784. No net increase in operation and maintenance expenses was proposed. Rate case expense in the amount of \$39,000 was amortized over a 3-year period. The City passed an ordinance with a 15% across-the-board increase. The proposed rate increase was adopted June 8, 2010. Staff discovered a discrepancy in the project cost estimates. Contracts 1 and 2 totaled \$1,653,734 in the engineering report. The engineering report also did not reference O&M.

Legal Staff discussed notice requirements and requested that the City file a written explanation of project cost and operating and maintenance expenses within ten (10) days.

On September 10, 2010, the City filed the following: (a) documentation of notice provided by the City regarding the municipal rate change; (b) explanation of the operation and maintenance expense associated with the project; and (c) explanation of project costs and an updated budget.

On October 28, 2010, Staff Attorney Wansley filed the Final Joint Staff Memorandum to which was attached the October 21, 2010 Utilities Division and Engineering Division Final Recommendation prepared by Mr. Mottesheard and Mr. Boggess. Staff reported that the City serves approximately 690 customers, 56 of which are commercial or industrial. The project will make improvements to the treatment plant and distribution system. Improvements were needed to reduce the high levels of unaccounted-for water, i.e. lost water, and to meet current Safe Drinking Water Act and Homeland Security requirements. Well #2 would be refurbished and returned to service. Chemical feed equipment would be replaced and the master meter re-calibrated. Lead service lines and meters would be replaced. New isolation valves would be installed. Watch valves would be put in at existing fire hydrants. Improvements, including new telemetry, would also be made to the existing storage tanks. The estimated project cost was \$1,550,000, of which the cost of construction will be \$1,119,000. Staff opined that the engineering fees were reasonable. Staff opined that there were no alternatives for the project. Over time, the project will cause overall expenses to decrease due to reduced pumping and fewer line repairs. Staff's review of the plans, specifications and other technical documents provided by the City found no conflict with the Commission's Rules and Regulations for the Government of Water Utilities. Although it appeared that all necessary permits had been received, construction could not begin prior to approval of the required permits. Engineering Staff recommended approval of the project, contingent upon the receipt of all necessary permits, without specifically approving the project plans and specifications.

Financial Staff reported that the estimated cost of the project, \$1,550,000, was to be financed by a WVIJDC loan for 40 years at 0% interest. The funding letter was filed with the City's application. Annual debt service for the loan was \$40,784.

The City adopted a three-phase rate ordinance on June 8, 2010. Schedule 2 becomes effective six (6) months after the effective date of Schedule 1. Schedule 3 becomes effective upon the initiation of debt service associated with the water improvement project. The three-phase water rate increase will result in a 29% overall increase. Staff opined that the project's pro forma rates provide adequate revenues for operation and maintenance expenses, taxes, current debt and the project loan. The rates are expected to provide debt coverage of 192.89% and a surplus for capital additions of approximately \$70,000.

In summation, Staff recommended the following: (a) the City of Benwood be granted a certificate of convenience and necessity to construct water system improvements with an estimated cost of \$1,550,000 and as more fully defined in the filed engineering plans and contract documents; (b) the granting of the certificate of convenience and necessity be contingent upon the City of Benwood's receipt of all necessary federal, state and local permits and approvals for the proposed construction. Specifically, the City must forward to the Commission all NPDES permits and a copy of the letter from the West Virginia Department of Environmental Protection which authorizes bidding before the project can proceed to bidding; (c) the City of Benwood be required to file copies of the executed "Certificate of Substantial Completion" for all contracts or vendor bids associated with this project within ten (10) days of the issuance of such documents; and (d) if any changes occur in the plans or scope of the project, the City of Benwood be required to seek Commission approval. Further, if there are changes in project costs or financing which do not change project-related rates, the City be required to file an affidavit executed by its accountant which verifies that the project-related charges are not affected.

On November 8, 2010, the City filed a letter which indicated no objection to Staff's final recommendations. The City supported Staff's request that an Order be entered which incorporated the recommendations.

As of the date of this Order, no protests have been filed with the Public Service Commission.

Upon consideration of all of the above, a certificate of convenience and necessity should be granted to the City of Benwood to construct certain additions and improvements to its existing waterworks system. Improvements are needed to reduce the high levels of unaccounted-for water and to meet current Safe Drinking Water Act and Homeland Security requirements. The project is economically feasible and financially viable because it is funded by a 0% loan and the City has passed a three-phase rate ordinance which will produce adequate revenues for operation and maintenance expenses, taxes, current debt and the project loan. The project's pro forma rates are expected to provide debt coverage of 192.89% and a surplus for capital additions of approximately \$70,000. All necessary permits appear to have been received. Staff's review of the plans, specifications and other technical documents provided by the City found no conflict with the Commission's Water Rules. Finally, the

City gave proper notice of its application and no protests have been filed with the Public Service Commission.

FINDINGS OF FACT

1. The City of Benwood filed an application with the Commission under West Virginia Code S24-2-11 for a certificate of convenience and necessity to construct certain additions and improvements to its existing waterworks system, and for approval of the financing of the project. The project was later modified to match funding available for the project. (See, July 30, 2010 application; September 10, 2010 filing).

2. The City estimated that the total cost of the project would not exceed \$1,550,000 and would be funded by a loan from the West Virginia Infrastructure and Jobs Development Council in the amount of \$1,550,000, with a term of 40 years and a 0% interest rate. A letter of commitment for the funding was filed with the application. (See, application filed July 30, 2010; Final Joint Staff Memorandum with attachment filed October 28, 2010).

3. By Commission Order dated July 30, 2010, the City was directed to give notice of the filing of its application by publishing the Notice of Filing attached to the Order. The City published the Notice of Filing in the Moundsville Daily Echo on August 20, 2010, a qualified newspaper as provided in West Virginia Code §§59-3-1 et seq., published and of general circulation in Marshall County. No protests have been received to the application either within the 30-day protest period or as of the date of this Order. (See, affidavit of publication filed August 20, 2010; case file generally).

4. The project will make improvements to the City's water treatment plant and distribution system. Improvements are needed to reduce the high levels of unaccounted-for water and to meet current Safe Drinking Water Act and Homeland Security requirements. (See, Final Joint Staff Memorandum with attachment filed October 28, 2010).

5. Commission Staff has received the project's plans, specifications and other technical documents provided by the City and has found no conflict with the Commission's Water Rules. (See, Final Joint Staff Memorandum and attachment filed October 28, 2010).

6. Commission Staff recommended that the application be granted and that the project be certificated. (See, Final Joint Staff Memorandum and attachment filed October 28, 2010).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the proposed project.

2. The proposed project is financially feasible and economically viable, since it is fully funded with a 0% loan and the City has previously enacted a three-phase municipal rate ordinance, which will

fully cover all increased operation and maintenance expenses generated by the project and provide a reasonable surplus.

3. A certificate of public convenience and necessity should be granted to the City of Benwood for the construction of certain additions and improvements to the City's existing waterworks system, as described in the application filed on July 30, 2010, and modified by the City's filing dated September 10, 2010.

4. The certificate can be granted without hearing since the project was properly published, with no protests having been filed in response thereto, and since Commission Staff has recommended approval of the project.

5. Should the scope, plans or financing for the project change, the City must obtain prior Commission approval before commencing construction. Changes in project costs do not require separate approval if those changes do not affect rates and the City submits an affidavit from a certified public accountant verifying that the rates will not be affected by such changes.

6. The City must obtain and furnish to the Commission a copy of all governmental and other permits required for the project prior to commencing construction.

ORDER

IT IS, THEREFORE, ORDERED that the application, as modified, for a certificate of public convenience and necessity filed with the Commission on July 30, 2010, by the City of Benwood, pursuant to West Virginia Code §24-2-11, for the construction, operation and maintenance of additions and improvements to the City's existing waterworks system, at a total cost of \$1,550,000, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a \$1,550,000 loan from the West Virginia Infrastructure and Jobs Development Council, at zero percent (0%) interest for a term of forty (40) years, be, and hereby is, approved.

IT IS FURTHER ORDERED that, should the scope, plans or financing for the project change, the City of Benwood must obtain prior Commission approval before commencing construction. Changes in project cost do not require separate approval if those changes do not affect rates and the City submits an affidavit from a certified public accountant to this effect.

IT IS FURTHER ORDERED that, within ten (10) days from the date the bids are tabulated, the City of Benwood submit a copy to the Commission of the project bids for all contracts or vendor bids associated with the project, making the bids a part of the Commission's file in this case.

IT IS FURTHER ORDERED that, prior to commencing construction, the City of Benwood file a copy with the Commission of all permits, certificates and other documentation required from other governmental agencies and authorities.

IT IS FURTHER ORDERED that, within ten (10) days of receipt of the certificate of substantial completion, the City of Benwood notify the Commission when the project engineer has performed the substantial completion inspection and file with the Commission a copy of the certificate of substantial completion for all contracts or vendor bids associated with the project.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, the City of Benwood comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, upon all parties of record who have not filed an e-service agreement with the Commission.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Deborah Yost VanDervort

Deborah Yost VanDervort
Administrative Law Judge

DYV:s:cdk
101200a.wpd



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) 353-8148 -- Telephone
(304) 353-8180 -- Facsimile
todd.swanson@steptoe-johnson.com
WVSB No. 10509

August 27, 2010

VIA HAND DELIVERY

Sandra Squire, *Executive Secretary*
Public Service Commission of West Virginia
201 Brooks Street
Charleston, West Virginia 25323

03:24 PM AUG 27 2010 PSC EXEC SEC DIV

Re: **CASE NO.: 10-1200-W-CN**
CITY OF BENWOOD,
MARSHALL COUNTY, WEST VIRGINIA

Application for a certificate of convenience and necessity to construct certain additions and improvements to its existing waterworks system; and for approval of the financing thereof.

Dear Ms. Squire:

Enclosed herein for filing on behalf of the City of Benwood, please find the original and twelve (12) copies of an Affidavit of Publication evidencing publication of the Notice of Filing in the *Moundsville Daily Echo* on August 20, 2010.

A copy of this filing has been served upon all parties to this proceeding, as evidenced by the attached Certificate of Service.

I ask that you please file the enclosed affidavit and distribute the additional copies to the appropriate parties at the Commission. Additionally, please date stamp the file copy provided and return it with our messenger.

Thank you in advance for your attention to this matter, and please contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'T M Swanson', with a horizontal line extending to the right.

Todd M. Swanson

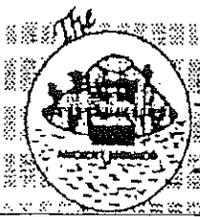
Sandra Squire, *Executive Secretary*
August 27, 2010
Page 2

TMS

Enclosures

cc: Judy Hunt, Recorder (w/ enclosure)
Lisa Wansley, Esq. (w/ enclosure)
Michael D. Griffith, CPA (w/o enclosure)
Frederick L. Hypes, P.E. (w/o enclosure)

066650.00003



**MOUNDSVILLE
DAILY
ECHO**

SINCE 1891

(304) 845-2660
P.O. BOX 369
MOUNDSVILLE
WEST VIRGINIA
26041

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF MARSHALL, to wit:

I, Marian Walton, being first duly sworn upon my oath, do depose and say:

- that I am Co-Publisher of the MOUNDSVILLE DAILY ECHO, a Republican newspaper;
- that I have been duly authorized to execute this affidavit;
- that such newspaper has been published for over 103 years, is regularly published afternoons daily except Sundays, for at least fifty weeks during the calendar year, in the municipality of Moundsville, Marshall County, West Virginia.
- that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Moundsville and Marshall 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 or consideration;
- that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

PARTY(ies)

City of Benwood

NATURE (and agency if heard before one)

PSC filing

CERTIF-BILL TO

STEPTOE & JOHNSON
 Tammy Mollohan
 POB 1588
 Charleston WV 25326

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

| TIMES | DATES |
|-------|-----------------|
| one | August 20, 2010 |

| BY WORDS | PUBLICATION CHARGES |
|-----------|---------------------|
| 4223@.115 | \$485.64 |

(signed) Marian L. Walton

NOTARIZATION

Taken, sworn to and subscribed before me this 25th day of August, 2010.

OFFICIAL SEAL
 NOTARY PUBLIC
 STATE OF WEST VIRGINIA
 AMY McCLUMPHY
 Moundsville Daily Echo
 P. O. Box 369
 Moundsville, West Virginia 26041
 My Commission Expires Aug. 29, 2013

Notary public

LEGAL ADVERTISEMENT

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA CHARLESTON
CASE NO. 10-1200-W-CN
CITY OF BENWOOD,
MARSHALL COUNTY, WEST
VIRGINIA

Application for a certificate of convenience and necessity to construct certain additions and improvements to its existing waterworks system; and for approval of the financing thereof.

NOTICE OF FILING

On July 30, 2010, the City of Benwood (City) filed a verified application for a Certificate to construct certain additions and improvements to its existing waterworks system in Marshall County.

The City proposes to construct certain additions, betterments and improvements to its existing waterworks facilities consisting of the installation of approximately 1,818 linear feet of 6" and 245 linear feet of 2" water line of gate valves, replacement of meter settings, cleaning the North Tank, cleaning, repairing and painting the South Tank, enclosing the South Tank with a fence and lockable gate, installation of a 250 gallon per minute duplex booster emergency pump station with a 3" turbine meter station, and appurtenances relating thereto (Project).

The application is on file with and available for public inspection, at the Public Service Commission, 201 Brooks Street, Charleston, West Virginia.

The City estimates that the Project will cost approximately \$1,550,000.00. It is proposed that the construction be financed by a loan from the West Virginia Infrastructure and Jobs Development Council in the amount of \$1,550,000.00.

The City anticipates charging the following increased water rates for its customers;

SCHEDULE 1

Ordinance adopted on June 8, 2010.
Effective July 23, 2010.

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service and resale water service.

RATES (Customers with metered water supply).

First 25,000 gallons used per month, \$7.84 per 1,000 gallons

All Over 25,000 gallons used per month, \$4.93 per 1,000 gallons

MINIMUM CHARGE

No minimum bill shall be rendered for less than \$15.68 per month which is the equivalent of 2,000 gallons:

3/8 inch meter, \$15.08; Equivalent Gallons, 2,000

3/4 inch meter, \$23.55; Equivalent Gallons, 3,004

1 inch meter, \$39.20; Equivalent Gallons, 5,000

1-1/2 inch meter, \$78.40; Equivalent Gallons, 10,000

2 inch meter, \$125.45; Equivalent Gallons, 16,001

3 inch meter, \$235.20; Equivalent Gallons, 32,951

4 inch meter, \$392.00; Equivalent Gallons, 64,757

6 inch meter, \$784.00; Equivalent Gallons, 144,720

8 inch meter, \$1,254.40; Equivalent Gallons, 239,686

UNMETERED RATE

In the event the water supply (residential) is unmetered or otherwise unmeasurable by the City, the unmetered rate shall be charged. (Based on 4,500 gallons used per month.)

LATEST PAY DATE

The last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty shall be stated on the face of the bill.

DELINQUENT BILL

Any bill issued by the City that is not paid within thirty (30) days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill.

RETURNED CHECKS CHARGE

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank for any reason.

EFT, CREDIT CARD, ACH AND DROP BOX PAYMENTS

A service charge will be imposed on EFT, Credit Card, ACH or Drop Box Payments. The amount shall be equal to the actual charges to the utility from

the financial institution for processing payment.

DELAYED PAYMENT CHARGE

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

DEPOSIT FOR WATER UTILITY SERVICE

A deposit of \$50.00 will be required for new water utility service and a \$50.00 deposit will be required for new sewage utility service prior to these utilities services being connected.

SERVICE CONNECTION CHARGE

A tap fee of \$500.00, or the actual cost of connection (solely deter-

mined by the City), whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

WATER DISCONNECT-RECONNECT-ADMINISTRATION

Whenever water service has been disconnected for any reason, a disconnection fee of \$50.00 shall be charged; or in the event the delinquent water bill is collected in the field, an administrative fee of \$50.00 shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a reconnection fee of \$50.00 shall be charged.

LEAK ADJUSTMENT

\$4.93 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

LEAKS ON THE CUSTOMER'S SIDE OF THE METER

The City shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the City Clerk's office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for public and private fire protection service.

PRIVATE RATES

Where connections, hydrants, sprinklers, etc., on property are maintained by customers:

2 inch service lines with hydrants, sprinklers, and/or connections, \$6.25 per month

3 inch service lines with hydrants, sprinklers, and/or connections, \$12.50 per month

4 inch service lines with hydrants, sprinklers, and/or connections, \$22.92 per month

6 inch service lines with hydrants, sprinklers, and/or connections, \$58.33 per month

8 inch service lines with hydrants, sprinklers, and/or connections, \$100.00 per month

10 inch service lines with hydrants, sprinklers, and/or connections, \$166.67 per month

12 inch service lines with hydrants, sprinklers, and/or connections, \$229.17 per month

PERIODIC BILLING

The schedule of rates and charges above may be applied on a bi-monthly, quarterly, semi-annual basis, provided no lower charges apply.

PUBLIC RATES

An annual fee of \$25.00 per fire hydrant is assessed by the City of Benwood and/or other municipal corporations where hydrants are located.

TAX SCHEDULE

The water utility is required to collect a utility tax pursuant to West Virginia Code Section § 8-13-5a. Customers receiving water service within the corporation limits of the City of Benwood shall pay a local surcharge tax of two percent (2%).

SCHEDULE 2

Effective 6 Months After Schedule 1 Becomes Effective

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service and resale water service.

RATES (Customers with metered water supply)

First 25,000 gallons used per month: \$8.78 per 1,000 gallons

All Over 25,000 gallons used per month: \$5.52 per 1,000 gallons

MINIMUM CHARGE

No minimum bill shall be rendered for less than \$17.56 per month which is the equivalent of 2,000 gallons:

5/8 inch meter, \$17.56; Equivalent Gallons, 2,000

3/4 inch meter, \$26.35; Equivalent Gallons, 3,000

1 inch meter, \$43.90; Equivalent Gallons, 5,000

1-1/2 inch meter, \$87.80; Equivalent Gallons, 10,000

2 inch meter, \$140.50; Equivalent Gallons, 16,000

3 inch meter, \$263.40; Equivalent Gallons, 32,953

4 inch meter, \$439.00; Equivalent Gallons, 64,764

6 inch meter, \$878.00; Equivalent Gallons, 144,291

8 inch meter, \$1,404.80; Equivalent Gallons, 239,724

UNMETERED RATE

In the event the water supply (residential) is unmetered or otherwise unmeasurable by the City, the unmetered rate shall be charged. (Base

The last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty shall be stated on the face of the bill.

DELINQUENT BILL

Any bill issued by the City that is not paid within thirty (30) days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill.

RETURNED CHECKS CHARGE

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank for any reason.

EFT, CREDIT CARD, ACH AND DROP BOX PAYMENTS

A service charge will be imposed on EFT, Credit Card, ACH or Drop Box Payments. The amount shall be equal to the actual charges to the utility from the financial institution for processing payment.

DELAYED PAYMENT CHARGE

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

DEPOSIT FOR WATER UTILITY SERVICE

A deposit of \$50.00 will be required for new water utility service and a \$50.00 deposit will be required for new sewage utility service prior to these utilities services being connected.

SERVICE CONNECTION CHARGE

A tap fee of \$500.00, or the actual cost of the connection (solely determined by the City), whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

WATER DISCONNECT-RECONNECT-ADMINISTRATION

Whenever water service has been disconnected for any reason, a disconnection fee of \$50.00 shall be charged; or in the event the delinquent water bill is collected in the field, an administrative fee of \$50.00 shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a reconnection fee of \$50.00 shall be charged.

LEAK ADJUSTMENT

\$5.52 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

LEAKS ON THE CUSTOMER'S SIDE OF THE METER

The City shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the City Clerk's office for inspection by the Public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for public and private fire protection service.

PRIVATE RATES

Where connections, hydrants, sprinklers, etc., on property are maintained by customers:

2 inch service lines with hydrants, sprinklers, and/or connections, \$6.25 per month

3 inch service lines with hydrants, sprinklers, and/or connections, \$12.50 per month

4 inch service lines with hydrants, sprinklers, and/or connections, \$22.92 per month

6 inch service lines with hydrants, sprinklers, and/or connections, \$58.33 per month

8 inch service lines with hydrants, sprinklers, and/or connections, \$100.00 per month

10 inch service lines with hydrants, sprinklers, and/or connections, \$166.67 per month

12 inch service lines with hydrants, sprinklers, and/or connections, \$229.17 per month

PERIODIC BILLING

The schedule of rates and charges above may be applied on a bi-monthly, quarterly, semi-annual basis, provided no lower charges apply.

PUBLIC RATES

An annual fee of \$25.00 per fire hydrant is assessed by the City of Benwood and/or other municipal corporations where hydrants are located.

TAX SCHEDULE

The water utility is required to collect a utility tax pursuant to West Virginia Code § 8-13-5a. Customers receiving water service within the cor-

shall pay a local surcharge tax of two percent (2%).

SCHEDULE 3

Effective Upon Initiating of Debt Service Associated with Water Improvement Project

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service and resale water service.

RATES (Customers with metered water supply)

First 25,000 gallons used per month, \$10.10 per 1,000 gallons

All Over 25,000 gallons used per month, \$6.35 per 1,000 gallons

MINIMUM CHARGE

No minimum bill shall be rendered for less than \$20.20 per month which is the equivalent of 2,000 gallons:

5/8 inch meter, \$20.20; Equivalent Gallons, 2,000

3/4 inch meter, \$30.30; Equivalent Gallons, 3,000

1 inch meter, \$50.50; Equivalent Gallons, 5,000

1-1/2 inch meter, \$101.00; Equivalent Gallons, 10,000

2 inch meter, \$161.60; Equivalent Gallons, 16,000

3 inch meter, \$303.00; Equivalent Gallons, 32,953

4 inch meter, \$505.00; Equivalent Gallons, 64,764

6 inch meter, \$1,010.00; Equivalent Gallons, 144,291

8 inch meter, \$1,616.00; Equivalent Gallons, 239,724

UNMETERED RATE

In the event the water supply (residential) is unmetered or otherwise unmeasurable by the City, the unmetered rate shall be charged. (Base on 4,500 gallons used per month.)

LATEST PAY DATE

The last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty shall be stated on the face of the bill.

DELINQUENT BILL

Any bill issued by the City that is not paid within thirty (30) days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill.

RETURNED CHECKS CHARGE

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank for any reason.

EFT, CREDIT CARD, ACH AND DROP BOX PAYMENTS

A service charge will be imposed on EFT, Credit Card, ACH or Drop Box

Payments. The amount shall be equal to the actual charges to the utility from the financial institution for processing payment.

DELAYED PAYMENT CHARGE

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

DEPOSIT FOR WATER UTILITY SERVICE

A deposit of \$50.00 will be required for new water utility service and a \$50.00 deposit will be required for new sewage utility service prior to these utilities services being connected.

SERVICE CONNECTION CHARGE

A tap fee of \$500.00, or the actual cost of the connection (solely determined by the City); whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

WATER DISCONNECT-RECONNECT ADMINISTRATION

Whenever water service has been disconnected for any reason, a disconnection fee of \$50.00 shall be charged, or in the event the delinquent water bill is collected in the field, an administrative fee of \$50.00 shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a reconnection fee of \$50.00 shall be charged.

LEAK ADJUSTMENT

\$6.35 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

LEAKS ON THE CUSTOMER'S SIDE OF THE METER

The City shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the City Clerk's office for inspection by the Public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for public and private fire protection service.

PRIVATE RATES

Where connections, hydrants, sprinklers, etc., on property are maintained by customers:

2 inch service lines with hydrants, sprinklers, and/or connections, \$6.25 per month

3 inch service lines with hydrants, sprinklers, and/or connections, \$12.50 per month

4 inch service lines with hydrants, sprinklers, and/or connections, \$22.92 per month

6 inch service lines with hydrants, sprinklers, and/or connections, \$58.33 per month

8 inch service lines with hydrants, sprinklers, and/or connections, \$100.00 per month

10 inch service lines with hydrants, sprinklers, and/or connections, \$166.67 per month

12 inch service lines with hydrants, sprinklers, and/or connections, \$229.17 per month

PERIODIC BILLING

The schedule of rates and charges above may be applied on a bi-monthly, quarterly, semi-annual basis, provided no lower charges apply.

PUBLIC RATES

An annual fee of \$25.00 per fire hydrant is assessed by the City of Benwood and/or other municipal corporations where hydrants are located.

TAX SCHEDULE

The water utility is required to collect a utility tax pursuant to West Virginia Code § 8-13-5a. Customers receiving water service within the corporate limits of the City of Benwood shall pay a local surcharge tax of two percent (2%).

These rates represent the following project-related increases:

PHASE 1

Residential (4,000 gallons)—(\$)
INCREASE - \$3.36; (%) INCREASE - 12%

Commercial (10,000 gallons)—(\$)
INCREASE - \$8.40; (%) INCREASE - 12%

Industrial (100,000 gallons)—(\$)
INCREASE - \$60.75; (%) INCREASE - 12%

PHASE 2

Residential (4,000 gallons)—(\$)
INCREASE - \$3.76; (%) INCREASE -

12%

Commercial (10,000 gallons)—(\$)
INCREASE - \$9.40; (%) INCREASE - 12%

Industrial (100,000 gallons)—(\$)
INCREASE - \$67.75; (%) INCREASE - 12%

PHASE 3

Residential (4,000 gallons)—(\$)
INCREASE - \$5.28; (%) INCREASE - 15%

Commercial (10,000 gallons)—(\$)
INCREASE - \$13.20; (%) INCREASE - 15%

Industrial (100,000 gallons)—(\$)
INCREASE - \$95.25; (%) INCREASE - 15%

The foregoing rate changes will be enacted by the City in accordance with the Public Service Commission's rules for municipal rate change.

The City has no resale customers.

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges among the various classes of customers are only a proposal and are subject to change

(increases or decreases) by the Public Service Commission in its review of this filing.

Anyone desiring to protest or intervene should file a written protest or notice of intervention within thirty (30) days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P.O. Box 812, Charleston, West Virginia 25323.

In the absence of substantial protest received within thirty (30) days of this publication, the Commission may waive formal hearing and grant the application based on the Commission's review of the evidence with the application.

CITY OF BENWOOD

PUBLISH: August 20, 2010.

CERTIFICATE OF SERVICE

I, Todd M. Swanson, one of the counsel for the City of Benwood, do hereby certify that a copy of the foregoing Letter Filing an Affidavit of Publication has been served upon the following by first class mail, postage prepaid this 27th day of August, 2010, addressed as follows:

VIA HAND DELIVERY

Lisa Wansley, Staff Attorney
Legal Division
Public Service Commission of West Virginia
201 Brooks Street
Charleston, West Virginia 25301

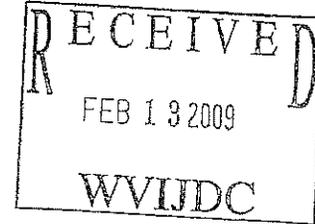


Todd M. Swanson (WVSB No. 10509)



WEST VIRGINIA

Infrastructure & Jobs Development Council



Gov. Joe Manchin, III
Chairman

January 26, 2009

Kenneth Lowe, Jr.
Public Member

The Honorable Edward Kuca, Jr.
Mayor, City of Benwood
430 Main Street
Benwood, WV 26031

Dwight Calhoun
Public Member

David "Bones" McComas
Public Member

Re: City of Benwood
2007W-976 Binding Commitment
(Action Required by February 28, 2009)

Ron Justice
Public Member

Dear Mayor Kuca:

Barbara J. Pauley
Administrative Secretary

The West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) provides this binding offer of an Infrastructure Fund loan of approximately \$1,550,000 (Loan) to the City of Benwood (City) for the above referenced water project (Project). The Loan will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final Loan amount will be established after the City has received acceptable bids for the Project. The Infrastructure Council will set aside a portion of the Infrastructure Fund to make the Loan upon the City's compliance with the program requirements.

This commitment is contingent upon the Project meeting the following schedule:

- A. Submit Plans and Specifications to the Bureau for Public Health no later than November 1, 2009;
- B. File a Certificate Case with the Public Service Commission no later than November 15, 2009;
- C. Prepare and submit the title opinion no later than November 15, 2009;
- C. Advertise for bids no later than March 1, 2010.

(The City must receive authority from the Infrastructure Council before bidding the project. A pre-bid checklist is attached.)

The Infrastructure Council reserves the right to withdraw this Loan commitment if any of the above schedule dates are not met. The Infrastructure Council may, when justifiable circumstances occur, offer to modify the schedule. Any decision to modify the schedule is at the sole discretion of the Infrastructure Council.

If the City becomes aware that it will not meet one or more of the above schedule dates, the City should immediately notify the Infrastructure Council of this fact and the circumstances which have caused or will cause the City to be unable to meet the schedule. In addition, please immediately notify the Infrastructure Council if any of the other dates on the attached schedule have or will not be met.

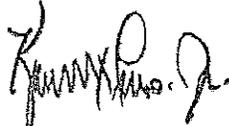
Mayor Edward Kuca, Jr.
City of Benwood
January 26, 2009
Page 2 of 3

The Infrastructure Council, will enter into the Loan agreement with the City following receipt of the completed Schedule B, a final, nonappealable order from the Public Service Commission authorizing construction of the Project, evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; evidence of compliance with the WV Jobs Act; and any other documents requested by the Infrastructure Council.

No statements or representations made before or after the issuance of this contingent commitment by any person or member of the Infrastructure Council, or agent or employee of the Authority shall be construed as approval to alter or amend this commitment, as all such amendments or alterations shall only be made in writing after approval of the Infrastructure Council.

If the City has any questions regarding this commitment, please contact the Infrastructure Council at 304-558-4607.

Sincerely,



Kenneth Lowe, Jr.

Attachments

cc: Bob Decrease, P.E., DEP (via e-mail)
Fred Hypes, P.E., P.S., V.P., Dunn Engineers, Inc. (via e-mail)
Region V-Bel-O-Mar Regional Council and Interstate Planning Commission (via e-mail)

NOTE: This letter is sent in triplicate. Please acknowledge receipt and immediately return two copies to the Infrastructure Council.

City of Benwood

By: Edward M. Kuca, Jr.
Its: Mayor
Date: 2-11-09

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

On this 17th day of March, 2011, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Mayor of the City of Benwood (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the date hereof, the Authority received the entire original issue of \$1,550,000 principal amount of the Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer (the "Bonds"), issued as a single, fully registered Bond, numbered AR-1, and dated March 17, 2011.

2. At the time of such receipt of the Bonds upon original issuance, the Bonds had been executed by the Mayor and the Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Bonds, of the sum of \$218,759.95, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer by the Authority on behalf of the West Virginia Infrastructure and Jobs Development Council as acquisition and construction of the Project progresses.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first above written.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: Carol A. Cummings
Its: Authorized Representative

CITY OF BENWOOD

By: Edward M. Kucafi
Its: Mayor

03.02.11
066650.00004

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

On this 17th day of March, 2011, there are delivered to you herewith:

(1) Bond No. AR-1, constituting the entire original issue of the City of Benwood Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), in the principal amount of \$1,550,000, dated March 17, 2011 (the "Bonds"), executed by the Mayor and the Clerk of the City of Benwood (the "Issuer"), and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on March 8, 2011, and a Supplemental Resolution duly adopted by the Issuer on March 8, 2011 (collectively, the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-captioned Bond issue, duly certified by the Clerk of the Issuer;

(3) Executed counterparts of the loan agreement dated March 17, 2011 (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council; and

(4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the Issuer of the sum of \$218,759.95, representing a portion of the principal amount of the Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated as of the date first written above.

CITY OF BENWOOD

By: Edward M. Keuca, Jr.
Its: Mayor

03.02.11
066650.00004

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BENWOOD
WATER REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1

\$1,550,000

KNOW ALL MEN BY THESE PRESENTS: That on this the 17th day of March, 2011, the City of Benwood, a municipal corporation and political subdivision of the State of West Virginia in Marshall 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 ONE MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$1,550,000), 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, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2012 to and including March 1, 2051, 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 of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated March 17, 2011.

This Bond is issued (i) to pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); (ii) to fund the Series 2011 A Bonds Reserve Account; and (iii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, 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 8, Article 19 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on March 8, 2011, and a Supplemental Resolution duly adopted by the Issuer on March 8, 2011 (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 WATER REVENUE BONDS, SERIES 1992 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 17, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$510,000 (THE "SERIES 1992 A BONDS"); AND (II) WATER REVENUE BONDS, SERIES 1992 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 17, 1992, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$90,000 (THE "SERIES 1992 B BONDS"), (COLLECTIVELY, THE "PRIOR BONDS")

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Prior Bonds, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2011 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute 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 hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2011 A 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 on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds; provided however, that, so long as there exists in the Series 2011 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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 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 in 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 Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

[Remainder of Page Intentionally Blank]

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

[SEAL]

Edward M. Kula Jr.

Mayor

ATTEST:

Judy Stewart

Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 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: March 17, 2011.

THE HUNTINGTON NATIONAL BANK,
as Registrar

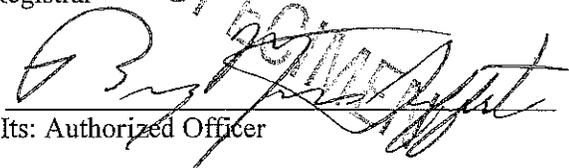
By: 
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|------------------|-------------|---------------|-------------|
| (1) \$218,759.95 | 3/17/2011 | (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

BOND DEBT SERVICE
 \$1,550,000
 City of Benwood
 IF
 0% Interest Rate
 40 Years from Closing Date

Dated Date 3/17/2011
 Delivery
 Date 3/17/2011

| Period Ending | Principal | Interest | Debt Service |
|------------------|-----------|----------|--------------|
| 9/1/2012 | 10,000 | | 10,000 |
| 12/1/2012 | 10,000 | | 10,000 |
| 3/1/2013 | 10,000 | | 10,000 |
| 6/1/2013 | 10,000 | | 10,000 |
| 9/1/2013 | 10,000 | | 10,000 |
| 12/1/2013 | 10,000 | | 10,000 |
| 3/1/2014 | 10,000 | | 10,000 |
| 6/1/2014 | 10,000 | | 10,000 |
| 9/1/2014 | 10,000 | | 10,000 |
| 12/1/2014 | 10,000 | | 10,000 |
| 3/1/2015 | 10,000 | | 10,000 |
| 6/1/2015 | 10,000 | | 10,000 |
| 9/1/2015 | 10,000 | | 10,000 |
| 12/1/2015 | 10,000 | | 10,000 |
| 3/1/2016 | 10,000 | | 10,000 |
| 6/1/2016 | 10,000 | | 10,000 |
| 9/1/2016 | 10,000 | | 10,000 |
| 12/1/2016 | 10,000 | | 10,000 |
| 3/1/2017 | 10,000 | | 10,000 |
| 6/1/2017 | 10,000 | | 10,000 |
| 9/1/2017 | 10,000 | | 10,000 |
| 12/1/2017 | 10,000 | | 10,000 |
| 3/1/2018 | 10,000 | | 10,000 |
| 6/1/2018 | 10,000 | | 10,000 |
| 9/1/2018 | 10,000 | | 10,000 |
| 12/1/2018 | 10,000 | | 10,000 |
| 3/1/2019 | 10,000 | | 10,000 |
| 6/1/2019 | 10,000 | | 10,000 |
| 9/1/2019 | 10,000 | | 10,000 |
| 12/1/2019 | 10,000 | | 10,000 |
| 3/1/2020 | 10,000 | | 10,000 |
| 6/1/2020 | 10,000 | | 10,000 |
| 9/1/2020 | 10,000 | | 10,000 |
| 12/1/2020 | 10,000 | | 10,000 |
| 3/1/2021 | 10,000 | | 10,000 |
| 6/1/2021 | 10,000 | | 10,000 |
| 9/1/2021 | 10,000 | | 10,000 |
| 12/1/2021 | 10,000 | | 10,000 |
| 3/1/2022 | 10,000 | | 10,000 |
| 6/1/2022 | 10,000 | | 10,000 |
| 9/1/2022 | 10,000 | | 10,000 |
| 12/1/2022 | 10,000 | | 10,000 |
| 3/1/2023 | 10,000 | | 10,000 |

BOND DEBT SERVICE
\$1,550,000
City of Benwood
IF
0% Interest Rate
40 Years from Closing Date

| Period Ending | Principal | Interest Debt Service |
|------------------|-----------|-----------------------|
| 6/1/2023 | 10,000 | 10,000 |
| 9/1/2023 | 10,000 | 10,000 |
| 12/1/2023 | 10,000 | 10,000 |
| 3/1/2024 | 10,000 | 10,000 |
| 6/1/2024 | 10,000 | 10,000 |
| 9/1/2024 | 10,000 | 10,000 |
| 12/1/2024 | 10,000 | 10,000 |
| 3/1/2025 | 10,000 | 10,000 |
| 6/1/2025 | 10,000 | 10,000 |
| 9/1/2025 | 10,000 | 10,000 |
| 12/1/2025 | 10,000 | 10,000 |
| 3/1/2026 | 10,000 | 10,000 |
| 6/1/2026 | 10,000 | 10,000 |
| 9/1/2026 | 10,000 | 10,000 |
| 12/1/2026 | 10,000 | 10,000 |
| 3/1/2027 | 10,000 | 10,000 |
| 6/1/2027 | 10,000 | 10,000 |
| 9/1/2027 | 10,000 | 10,000 |
| 12/1/2027 | 10,000 | 10,000 |
| 3/1/2028 | 10,000 | 10,000 |
| 6/1/2028 | 10,000 | 10,000 |
| 9/1/2028 | 10,000 | 10,000 |
| 12/1/2028 | 10,000 | 10,000 |
| 3/1/2029 | 10,000 | 10,000 |
| 6/1/2029 | 10,000 | 10,000 |
| 9/1/2029 | 10,000 | 10,000 |
| 12/1/2029 | 10,000 | 10,000 |
| 3/1/2030 | 10,000 | 10,000 |
| 6/1/2030 | 10,000 | 10,000 |
| 9/1/2030 | 10,000 | 10,000 |
| 12/1/2030 | 10,000 | 10,000 |
| 3/1/2031 | 10,000 | 10,000 |
| 6/1/2031 | 10,000 | 10,000 |
| 9/1/2031 | 10,000 | 10,000 |
| 12/1/2031 | 10,000 | 10,000 |
| 3/1/2032 | 10,000 | 10,000 |
| 6/1/2032 | 10,000 | 10,000 |
| 9/1/2032 | 10,000 | 10,000 |
| 12/1/2032 | 10,000 | 10,000 |
| 3/1/2033 | 10,000 | 10,000 |
| 6/1/2033 | 10,000 | 10,000 |
| 9/1/2033 | 10,000 | 10,000 |
| 12/1/2033 | 10,000 | 10,000 |
| 3/1/2034 | 10,000 | 10,000 |
| 6/1/2034 | 10,000 | 10,000 |
| 9/1/2034 | 10,000 | 10,000 |
| 12/1/2034 | 10,000 | 10,000 |

BOND DEBT SERVICE
\$1,550,000
 City of Benwood
 IF
 0% Interest Rate
 40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|------------------|-----------|----------|--------------|
| 3/1/2035 | 10,000 | | 10,000 |
| 6/1/2035 | 10,000 | | 10,000 |
| 9/1/2035 | 10,000 | | 10,000 |
| 12/1/2035 | 10,000 | | 10,000 |
| 3/1/2036 | 10,000 | | 10,000 |
| 6/1/2036 | 10,000 | | 10,000 |
| 9/1/2036 | 10,000 | | 10,000 |
| 12/1/2036 | 10,000 | | 10,000 |
| 3/1/2037 | 10,000 | | 10,000 |
| 6/1/2037 | 10,000 | | 10,000 |
| 9/1/2037 | 10,000 | | 10,000 |
| 12/1/2037 | 10,000 | | 10,000 |
| 3/1/2038 | 10,000 | | 10,000 |
| 6/1/2038 | 10,000 | | 10,000 |
| 9/1/2038 | 10,000 | | 10,000 |
| 12/1/2038 | 10,000 | | 10,000 |
| 3/1/2039 | 10,000 | | 10,000 |
| 6/1/2039 | 10,000 | | 10,000 |
| 9/1/2039 | 10,000 | | 10,000 |
| 12/1/2039 | 10,000 | | 10,000 |
| 3/1/2040 | 10,000 | | 10,000 |
| 6/1/2040 | 10,000 | | 10,000 |
| 9/1/2040 | 10,000 | | 10,000 |
| 12/1/2040 | 10,000 | | 10,000 |
| 3/1/2041 | 10,000 | | 10,000 |
| 6/1/2041 | 10,000 | | 10,000 |
| 9/1/2041 | 10,000 | | 10,000 |
| 12/1/2041 | 10,000 | | 10,000 |
| 3/1/2042 | 10,000 | | 10,000 |
| 6/1/2042 | 10,000 | | 10,000 |
| 9/1/2042 | 10,000 | | 10,000 |
| 12/1/2042 | 10,000 | | 10,000 |
| 3/1/2043 | 10,000 | | 10,000 |
| 6/1/2043 | 10,000 | | 10,000 |
| 9/1/2043 | 10,000 | | 10,000 |
| 12/1/2043 | 10,000 | | 10,000 |
| 3/1/2044 | 10,000 | | 10,000 |
| 6/1/2044 | 10,000 | | 10,000 |
| 9/1/2044 | 10,000 | | 10,000 |
| 12/1/2044 | 10,000 | | 10,000 |
| 3/1/2045 | 10,000 | | 10,000 |
| 6/1/2045 | 10,000 | | 10,000 |
| 9/1/2045 | 10,000 | | 10,000 |
| 12/1/2045 | 10,000 | | 10,000 |
| 3/1/2046 | 10,000 | | 10,000 |
| 6/1/2046 | 10,000 | | 10,000 |
| 9/1/2046 | 10,000 | | 10,000 |

\$1,550,000
 City of Benwood
 IF
 0% Interest Rate
 40 Years from Closing Date

| Period Ending | Principal | Interest Debt Service |
|------------------|------------------|-----------------------|
| 12/1/2046 | 10,000 | 10,000 |
| 3/1/2047 | 10,000 | 10,000 |
| 6/1/2047 | 10,000 | 10,000 |
| 9/1/2047 | 10,000 | 10,000 |
| 12/1/2047 | 10,000 | 10,000 |
| 3/1/2048 | 10,000 | 10,000 |
| 6/1/2048 | 10,000 | 10,000 |
| 9/1/2048 | 10,000 | 10,000 |
| 12/1/2048 | 10,000 | 10,000 |
| 3/1/2049 | 10,000 | 10,000 |
| 6/1/2049 | 10,000 | 10,000 |
| 9/1/2049 | 10,000 | 10,000 |
| 12/1/2049 | 10,000 | 10,000 |
| 3/1/2050 | 10,000 | 10,000 |
| 6/1/2050 | 10,000 | 10,000 |
| 9/1/2050 | 10,000 | 10,000 |
| 12/1/2050 | 10,000 | 10,000 |
| 3/1/2051 | 10,000 | 10,000 |
| | 1,550,000 | 1,550,000 |

(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:

March 17, 2011

City of Benwood
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

City of Benwood
Benwood, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the City of Benwood (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$1,550,000 Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated March 17, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal only to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2012, to and including March 1, 2051, all as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public water system of the Issuer (the "Project"); (ii) funding the Series 2011 A Bonds Reserve Account; and (iii) 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 March 8, 2011, as supplemented by a Supplemental Resolution duly adopted by

the Issuer on March 8, 2011 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement 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 Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Issuer without the written consent of the Authority and the Council.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Gross Revenues of the System referred to in the Bond Legislation and secured by a first lien on and pledge of the Gross Revenues of the System on a parity with the Issuer's: (i) Water Revenue Bonds, Series 1992 A (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$510,000 (the "Series 1992 A Bonds"); and (ii) Water Revenue Bonds, Series 1992 B (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$90,000 (the "Series 1992 B Bonds") (collectively, the "Prior Bonds").

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 Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from gross income for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Loan Agreement 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,



STEPHENS & JOHNSON PLLC

03.02.11
066650.00004

Berry, Kessler, Crutchfield, Taylor & Gordon

Attorneys at Law
514 Seventh Street
Moundsville, West Virginia 26041

Rodney T. Berry
Jeffrey V. Kessler
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March 17, 2011

City of Benwood
Benwood, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Steptoe & Johnson, PLLC
Charleston, West Virginia

**RE: City of Benwood
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)**

Ladies & Gentlemen:

We are counsel to the City of Benwood in Marshall County, West Virginia (the "Issuer"), in connection with the above-captioned bond issue. As such counsel, we have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a loan agreement dated March 17, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), a Bond Ordinance duly enacted by the Issuer on March 8, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on March 8, 2011 (collectively, the "Bond Legislation"), and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

We are 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, and the Mayor, Clerk and members of council of the Issuer have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.

2. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

3. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority, and the Council constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.

4. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Bond Legislation 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. The Issuer has received all permits, licenses, approvals, exemptions, consents, registrations, certificates and authorizations required by law for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Bureau for Public Health, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of ordinances, prescribing such rates and charges. The time for appeal of such rate ordinances has expired prior to the date hereof without any appeal.

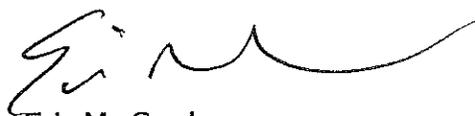
6. To the best of our knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Gross Revenues therefor.

7. We have ascertained that all successful bidders have provided the drug-free workplace affidavit, submitted their drug free workplace plan, and the contracts contain language that comply with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code. All successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon our review of the

contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, we are of the opinion that such surety bonds and policies (i) are in compliance with the contracts; (ii) are adequate in form, substance and amount to protect the various interests of the Issuer; (iii) have been executed by duly authorized representatives of the proper parties ; (iv) meet the requirements of the Act, the Bond Legislation and the Loan Agreement; and (v) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric M. Gordon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eric M. Gordon
Berry, Kessler, Crutchfield, Taylor & Gordon

EMG/kab

March 17, 2011

City of Benwood
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

City of Benwood
Benwood, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Ladies and Gentlemen:

We are special counsel to the City of Benwood, a municipality in Marshall County, West Virginia (the "Issuer"). As such counsel, we have represented the Issuer before the Public Service Commission of West Virginia in connection with the issuance of the above-referenced bonds, and the acquisition and construction of the Project. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

We are of the opinion that the Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered on November 17, 2010, which became Final Order on December 7, 2010, in Case No. 10-1200-W-CN, granting the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Final Order has expired prior to the date hereof. Such Order remains in full force and effect.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,


STEPTOE & JOHNSON, PLLC

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March 17, 2011

West Virginia Infrastructure & Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, WV

**Re: City of Benwood
Water System Upgrade
Final Title Opinion
WV IJDC No. 2007W-976**

Ladies and Gentlemen:

This firm represents the City of Benwood (the "City") with regard to a proposed project to upgrade the existing water system (the "Project") and provides this final title opinion on behalf of the City to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council (UDC) with regard to the financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the City is a duly created and existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project as approved by the Bureau for Public Health.
2. That the City has obtained approval or applied for all necessary permits and approvals for the construction of the Project. (Only the permit from the BPH is required for the Project).
3. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Dunn Engineers, Inc., the consulting engineers for the Project.

4. That in my opinion, the entirety of the site components for this Project lie within existing City of Benwood rights-of-way or properties owned by the City sufficient to assure undisturbed use and possession for the purpose of construction, operation, and maintenance for the estimated life of the facilities to be constructed.

5. That all deeds or other documents which were previously acquired by the City were duly recorded in the aforesaid Clerk's Office in order to protect the legal title to and interest of the City, or have been used by the City of Benwood for governmental purposes for a time sufficient to ensure prescriptive rights.

If you have any questions regarding any of the information contained in this preliminary title opinion, please contact this office.

Very truly yours,



Eric M. Gordon

EMG/kab

cc: Samme L. Gee, Esquire
John Stump, Esquire

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. INSURANCE
12. VERIFICATION OF SCHEDULE
13. RATES
14. SIGNATURES AND DELIVERY
15. BOND PROCEEDS
16. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
17. PUBLIC SERVICE COMMISSION ORDERS
18. SPECIMEN BOND
19. COMPLIANCE WITH WEST VIRGINIA JOBS ACT
20. CONFLICT OF INTEREST
21. EXECUTION OF COUNTERPARTS

On this 17th day of March, 2011, we, the undersigned MAYOR and CLERK of the City of Benwood in Marshall County, West Virginia (the "Issuer"), and the undersigned COUNSEL TO THE ISSUER, hereby certify in connection with the City of Benwood Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds" or the "Series 2011 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 in the Bond Ordinance of the Issuer duly enacted March 8, 2011, and the Supplemental Resolution duly adopted March 8, 2011 (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 Gross Revenues, 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 Gross Revenues or

any other moneys 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 pledge or application of moneys and security or the collection of the Gross Revenues.

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 and the issuance of the Bonds have been obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been 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. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the loan agreement (the "Loan Agreement") entered into by and between the Issuer and the Authority on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"). The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2011 A Bonds as to liens, pledge and source of and security for payment, being the Issuer's: (i) Water Revenue Bonds, Series 1992 A (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$510,000 (the "Series 1992 A Bonds"); and (ii) Water Revenue Bonds, Series 1992 B (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$90,000 (the "Series 1992 B Bonds") (collectively, the "Prior Bonds").

The Series 2011 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 respects. The Issuer has obtained (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 2011 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 the covenants of the Prior Bonds and the Prior Ordinance.

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

Loan Agreement

Public Service Commission Order

Infrastructure Council Approval

Charter and Rules of Procedure

Oaths of Office of Officers and Councilmembers

Water Rate Ordinance

Minutes on Adoption and Enactment of Water Rate Ordinance

Affidavits of Publication of Rate Ordinance and Notice of Public Hearing

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

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

Evidence of Insurance

Bureau for Public Health

Consent of USDA

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Benwood." The Issuer is a municipal corporation in Marshall 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, and 8 councilmembers, all duly elected, 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 |
|--------------------------------------|--------------------------------|-------------------------------|
| Edward Kuca, Jr., Mayor | 07/01/2008 | 06/03/2012 |
| John Kazemka, Councilmember | 07/01/2008 | 06/30/2012 |
| Lori Longwell, Councilmember | 07/01/2008 | 06/30/2012 |
| Curtis Mele, Councilmember | 07/01/2010 | 06/30/2014 |
| Chuck Terry, Councilmember | 07/01/2008 | 06/30/2012 |
| Lawrence Ferrera, III, Councilmember | 07/01/2010 | 06/30/2014 |
| Bob Rose, Councilmember | 07/01/2010 | 06/30/2014 |
| Walter Yates, Councilmember | 07/01/2010 | 06/30/2014 |

The duly appointed Clerk is Judy Hunt. The duly appointed and acting Counsel to the Issuer is Berry, Kessler, Crutchfield, Taylor & Gordon, of Moundsville, West Virginia and the duly appointed Special PSC Counsel is Steptoe & Johnson PLLC, Charleston, 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, operation and financing of the Project or 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. The successful bidders have provided the Drug-Free Workplace Affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code. All insurance for the System required by the Bond Legislation is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

The Issuer will serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority. Following completion of the Project the Issuer will certify to the Authority the number of customers added to the System.

11. INSURANCE. The Issuer will maintain or, as appropriate, will require all

contractors to maintain worker's compensation, public liability, property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Bond Legislation and the Loan Agreement. All insurance for the System required by the Bond Legislation and the Loan Agreement are in full force and effect.

12. VERIFICATION OF SCHEULE: The final Schedule B attached to the Certificate of Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

13. RATES: The Issuer has duly enacted a water rate ordinance on June 8, 2010 setting forth the respective rates and charges for the services of the System. The time for appeal of such rate ordinance has expired prior to the date hereof without any appeal, and such rate ordinance is currently in effect.

14. 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 her manual signature, and the undersigned Clerk did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by her manual signature, and the Registrar did officially authenticate, register and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

15. BOND PROCEEDS: On the date hereof, the Issuer received \$218,759.95 from the Authority and the Council, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

16. 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 *Moundsville Echo*, a newspaper published and of general circulation in the City of Benwood, 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 the Governing Body on the 8th day of March, 2011, at 7:00 pm, 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 Clerk 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.

17. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia in Case No. 10-1200-W-CN, dated November 17, 2010 which became Final Order on December 7, 2010, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Final Order has expired prior to the date hereof. Such Order is in full force and effect.

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

19. COMPLIANCE WITH WEST VIRGINIA JOBS ACT: Unless it shall hereafter be qualified for an exception, the Issuer hereby covenants to comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and will require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Issuer hereby certifies to the Authority that (i) the Issuer will comply with all the requirements of the West Virginia Jobs Act; (ii) the Issuer has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (iii) the Issuer has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (iv) the Issuer will file with the DOL and the Authority copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL.

20. CONFLICT OF INTEREST: No officer or employee of the Issuer 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.

21. 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 Left Blank]

WITNESS our signatures and the official seal of the CITY OF BENWOOD as of the date first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Edward M. Kucy

Mayor

Judy Duvall

Clerk

E. D.

Counsel to Issuer

Stephan + John PSC

Special PSC Counsel
(paragraphs 13 & 17)

066650.00004

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

CERTIFICATE OF ENGINEER

On this 17th day of March, 2011, I, Fred Hypes, Registered Professional Engineer, West Virginia License No. 9327, of Dunn Engineering, Inc., Consulting Engineers, in Charleston, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing public water system (the "System") of the City of Benwood (the "Issuer"), to be constructed in Marshall County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (the "Series 2011 A Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Ordinance enacted by the Issuer on March 8, 2011, and the Supplemental Resolution adopted by the Issuer on March 8, 2011, and the loan agreement dated March 17, 2011 (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council").

2. The Bonds are being issued for the purposes of (i) paying the costs of acquisition and construction of the Project; (ii) funding the Series 2011 A Bonds Reserve Account; and (iii) paying certain costs of issuance and related costs.

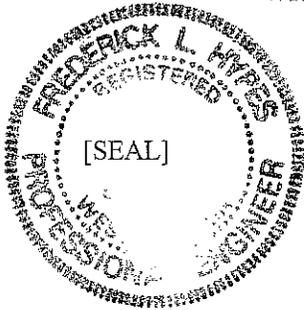
3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the Council and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least 40 years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing described in Schedule B, attached hereto as Exhibit A and the Issuer's counsel, Berry, Kessler, Crutchfield, Taylor & Gordon, has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the successful bidders have provided the drug-free workplace affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; (vi) the bid documents relating to the Project reflect the Project as approved by the Council and the bid forms provided to the bidders contain the critical operational components of the Project; (vii) the successful bids include prices for every item on such bid forms; (viii) the uniform bid procedures were followed; (ix) the Issuer has obtained all applicable permits required by the laws of the State of West

Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (x) in reliance upon the certificate of Griffith & Associates, as of the effective date thereof, the rates and charges for the System enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (xi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Council; and (xii) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

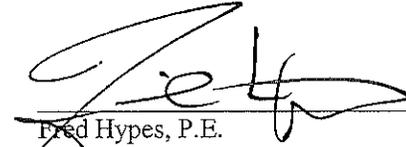
4. The Project will serve no new customers.

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WITNESS my signature and seal as of the date first written above.



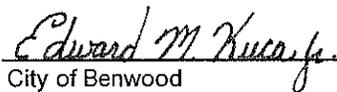
DUNN ENGINEERING, INC.



Fred Hypes, P.E.
West Virginia License No. 9327

066650.00004

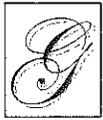
| A. COST OF PROJECT | TOTAL | IJDC |
|---|--------------|--------------|
| 1 Construction | | |
| Contract No. 1 (James White) | 650,200.00 | 650,200.00 |
| Contract 2 (Welding) | 422,000.00 | 422,000.00 |
| 2 Technical Services - Dunn | | |
| Study & Report | 10,000.00 | 10,000.00 |
| Final Design | 100,000.00 | 100,000.00 |
| Construction | 115,000.00 | 115,000.00 |
| Special | 0.00 | 0.00 |
| 3 Legal & Fiscal | | |
| a. Legal (Land/RW) | 5,000.00 | 5,000.00 |
| b. Legal (PSC Filing) - Steptoe Johnson | 8,000.00 | 8,000.00 |
| c. Accounting - Griffith | 18,900.00 | 18,900.00 |
| 4 Administration | 50,000.00 | 50,000.00 |
| 5 Lands & ROWs | 20,000.00 | 20,000.00 |
| 6 Miscellaneous, permits, ads, etc | 3,600.00 | 3,600.00 |
| 7 Contingency | 86,800.00 | 86,800.00 |
| 8 Total of Lines 1 through 7 | 1,489,500.00 | 1,489,500.00 |
| B. COST OF FINANCING | | |
| 9 Capitalized Interest | 0.00 | 0.00 |
| 10 Funded Reserve | 40,000.00 | 40,000.00 |
| 11 Bond Counsel - S & J | 20,000.00 | 20,000.00 |
| 12 Registrar | 500.00 | 500.00 |
| 13 Total Cost of Financing (lines 9 through 12) | 60,500.00 | 60,500.00 |
| 14 TOTAL PROJECT COST (line 8 plus line 13) | 1,550,000.00 | 1,550,000.00 |
| C. SOURCES OF FUNDS | | |
| 15 Federal Grants: | 0.00 | 0.00 |
| 15 State/Other Grants | 0.00 | 0.00 |
| 17 TOTAL GRANTS | 0.00 | 0.00 |
| 18 Size of Bond Issue (line 14 minus line 17) | 1,550,000.00 | 1,550,000.00 |


 City of Benwood

 Date


 Dunn Engineers

10 March 2011
 Date



March 17, 2011

City of Benwood
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

City of Benwood
Benwood, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs
Development Council
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the water rate ordinance dated June 8, 2010 and the current operation and maintenance expenses and customer usage as furnished to us by the City of Benwood (the "Issuer"), it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the waterworks system (the "System") of the Issuer, will (i) pay all repair, operation and maintenance expenses of the System, and (ii) leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Issuer's Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund) (the "Bonds"), to be issued to the West Virginia Water Development Authority in the principal amount of \$1,550,000, and all other obligations secured by a lien on or payable from the revenues of the System, on a parity with the Bonds, including the Issuer's: (1) Water System Revenue Bonds, Series 1992 A (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$510,000; and (2) Water Revenue Bonds, Series 1992 B (United States Department of Agriculture), dated March 17, 1992, issued in the original aggregate principal amount of \$90,000 (collectively, the "Prior Bonds").

It is further our opinion that the Net Revenues for the Fiscal Year following the year in which the Series 2011 A Bonds are issued will be at least 120% of the average annual debt service on the Prior Bonds and the Series 2011 A Bonds.

Very truly yours,

Michael D. Griffith, CPA/AFI
Griffith & Associates, PLLC

MDG/dk

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

CERTIFICATE AS TO USE OF PROCEEDS

On this 17th day of March, 2011, the undersigned Mayor of the City of Benwood in Marshall County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of \$1,550,000 Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, dated March 17, 2011 (the "Bonds" or the "Series 2011 A Bonds"), hereby certifies as follows:

1. I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance duly enacted by the Issuer on March 8, 2011, as supplemented by Supplemental Resolution duly enacted by the Issuer on March 8, 2011, (collectively, the "Bond Ordinance"), authorizing the Bonds.

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

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on March 17, 2011, the date on which the Bonds are being physically delivered in exchange for a portion of the principal amount of the Series 2011 A Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted 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 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2011 A Bonds were sold on March 17, 2011, to the Authority, pursuant to a Loan Agreement dated March 17, 2011, by and among the Issuer, the Authority and the Council, for an aggregate purchase price of \$1,550,000 (100% of par), at which time, the Issuer received \$218,759.95 from the Authority and the Council, being the first advance of the principal amount of the Series 2011 A Bonds. No accrued interest has been or will be paid on the Series 2011 A Bonds. The balance of the principal amount of the Series 2011 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2011 A Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public water system of the Issuer (the "Project"), (ii) funding the Series 2011 A Bonds Reserve Account; and (iii) paying certain costs of issuance of the Bonds and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Series 2011 A Bonds Reserve Account, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before April 1, 2012. The acquisition and construction of the Project is expected to be completed by October 1, 2011.

8. The total cost of the Project is estimated at \$1,550,000. Sources and uses of funds for the Project are as follows:

SOURCES

| | |
|-------------------------------------|--------------------|
| Proceeds of the Series 2011 A Bonds | <u>\$1,550,000</u> |
| Total Sources | <u>\$1,550,000</u> |

USES

| | |
|------------------------------------|--------------------|
| Costs of Project | \$1,489,500 |
| Fund Series 2011 A Reserve Account | \$40,000 |
| Costs of Issuance | <u>\$20,500</u> |
| Total Uses | <u>\$1,550,000</u> |

9. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created relative to the Series 2011 A Bonds:

- (1) Revenue Fund (established by Prior Bond Ordinance);
- (2) Renewal and Replacement Fund (established by Prior Bond Ordinance);
- (3) Series 2011 A Bonds Construction Trust Fund;
- (4) Series 2011 A Bonds Sinking Fund; and
- (5) Series 2011 A Bonds Reserve Account.

10. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) From the proceeds of the Series 2011 A Bonds, there shall first be deposited with the Commission in the Series 2011 A 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 2011 A Bonds for the period commencing on the date of issuance of the Series 2011 A Bonds and ending 6 months after the estimated date of completion of construction of the Project;

(2) Next, from the proceeds of the Series 2011 A Bonds, there shall be deposited with the Commission in the Series 2011 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2011 A Bonds Reserve Account.

(3) The remaining proceeds of the Series 2011 A Bonds shall be deposited in the Series 2011 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 2011 A Bonds and related costs.

11. Moneys held in the Series 2011 A Bonds Sinking Fund will be used solely to pay principal of the Series 2011 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2011 A Bonds Sinking Fund and Series 2011 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2011 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 6 months of the date hereof.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2011 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 12 months from the date of issuance thereof.

15. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

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

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No 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.

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

20. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

21. The Bonds are not federally guaranteed.

22. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain public purpose bonds.

23. The Issuer has either (a) funded the Series 2011 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2011 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2011 A Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2011 A Bonds Reserve Account and the Series 2011 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Bonds and will not be available to pay costs of the Project.

24. 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 the Bonds and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

25. 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.

26. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

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

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WITNESS my signature as of the date first written above.

CITY OF BENWOOD

By: Edward M. Kucera Jr.
Its: Mayor

03.01.11
066650.00004

CHARTER
OF
THE CITY OF BENWOOD
WEST VIRGINIA



Prepared by Charter Board - 1948

ARTICLE I.

INCORPORATION

Sec. 1. The inhabitants of Marshall County in this State, now and hereafter residing within the boundaries prescribed in the next section hereof, or as hereafter established in the manner prescribed by law, shall continue to be a municipal body politic and corporate in peretuity under the name of the "City of Benwood."

BOUNDARIES AND WARDS

Sec. 2. (a) The boundaries of said city shall be as follows: Beginning at a point on the west side of the Ohio River in the state line, where the line between Ohio and Marshall counties intersects the same; thence with the Ohio and Marshall county lines crossing the river; south eighty-five degrees east to a stake on the hill side; thence south twenty-four degrees twenty-five minutes west one hundred and forty-two and five tenth poles to a point in the middle of Bogg's Run located south forty-seven degrees forty-five minutes east nine and one-tenth poles from a notch cut in the face and top of the east wing of the abutment of the turnpike bridge over said run; thence following a line which passes through the center of the top (at its north end) of the river hill south of the run, south twelve degrees forty-five minutes west fifty-three fifteen hundredths poles to a point north of and near the top of the said hill; thence south thirty-seven degrees west thirty-three twenty-two hundredths poles to a stake; thence south twenty-seven degrees thirty minutes west forty-three poles to a stake; thence south fourteen degrees west seventeen poles to a stake; thence south ten degrees east thirty-four five tenths poles to a white oak; thence south three degrees thirty minutes west thirty-five poles to a stake; thence south eight degrees east twelve poles to a stake; thence south three degrees west fifty-five five tenth poles to a stake; thence south two degrees east seventy-three poles to a red oak; thence south eleven degrees thirty minutes east twenty-four poles to a stake; thence south two degrees thirty minutes west twenty-five five tenths poles; thence south twenty-four degrees east thirty-four twenty-five hundredths poles to a stake; thence south eleven degrees east thirty-eight poles to a stake; thence south thirty degrees thirty minutes east fifty-one five tenths poles to the south east corner of the original corroration on top of the river hill; thence with the top of the ridge of the said hill, south one degree west nine hundred thirty feet to a stake; thence south thirty-seven degrees forty-five minutes west five hundred sixty feet to a double honey locust tree on the south point of the hill; thence south twenty-three degrees thirty minutes west three hundred ninety-eight feet to a honey locust on the point of the hill above the hill road; thence leaving the ridge south twenty-one degrees fifteen minutes east three hundred eighty-four feet to a stake on the north side of McMechen's Run located south twenty-one degrees fifteen minutes east seven five tenth feet from a large sycamore standing on the said bank; thence down the run south seventy-one degrees fifteen minutes west one hundred thirty-two feet; south seventy degrees fifteen minutes west ninety-two feet; south sixty-eight degrees forty-five minutes west two hundred nine five tenths feet; north eighty-five degrees forty-five minutes west one hundred sixteen feet; south seventy-four degrees forty-five minutes west four hundred feet; south fifty-two degrees west one hundred eight feet; south eighty-six degrees west one hundred eighty-five feet; south eighty-eight degrees thirty minutes west two hundred forty-seven feet; north sixty-four degrees thirty minutes west one hundred seven feet; north seventy-

eight degrees west two hundred twelve feet; south eighty-nine degrees fifteen minutes west one hundred seventy-nine five tenths feet; north eighty-four degrees fifteen minutes west one hundred forty feet; south eighty-six degrees fifteen minutes west one hundred forty-eight five tenths feet; west ninety-one feet south sixty-nine degrees thirty minutes west one hundred seventy-eight feet to the mouth of said McMechen's Run; thence crossing the Ohio River south eighty-one degrees fifteen minutes west to a point in the mouth of Pinch Run, at its intersection with the state line; thence up the river with the said state line, to the place of beginning.

(b) Beginning at a cross on a rock, said cross being at the north-easterly corner of Lot No. 21 in the Boggs Run Mining and Manufacturing Company's Subdivision No. 3, said subdivision being recorded in the office of the Clerk of the County Court of Marshall County in Deed Book 172, page 601; thence S. 84° 36' E. 518.17 feet to a stake on the top of the river hill; thence N. 86° 06' E. 354.13 feet to the center of a high tension tower; thence, following the high tension tower line, S. 17° 23' E. 2045.67 feet to the center of a high tension tower on the top of the hill; thence, following the top of the ridge, S. 33° 23' W. 1005.88 feet to a fallen black oak, said black oak being the most easterly corner of a tract of land formerly owned by J. J. Jones; thence with his line, S. 65° 47' W. 326.40 feet to a stone, corner to said J. J. Jones, Louisa Keller and others; thence, S. 59° 42' W. 884.60 feet to a post, corner to said J. J. Jones, Louisa Keller and Charles Norman et al; thence, with the said Keller, Norman line, S. 17° 55' W. 266.39 feet to a post, corner to Keller, Norman and Gail Huss et ux; thence, with Gail Huss and Norman's line S. 54° 33' W. 125.67 feet to a point; thence, S. 14° 56' W. 305.00 feet to a point at the southerly side of Brown's Run Public Road; thence following the southerly side of the said Brown's Run Road, N. 57° 01' W. 329.89 feet to the northwest corner of the northwest wing wall of the bridge crossing Boggs Run; thence crossing Boggs Run and with a line up the hill S. 86° 05' W. 662.21 feet to a point in the present Corporation Line of the City of Benwood; thence, following the present Corporation Line, N. 4° 10' W. 119.24 feet to a stake; thence, N. 7° 20' E. 577.50 feet to a white oak; thence, N. 6° 10' W. 569.25 feet to a stake; thence N. 17° 50' E. 280.50 feet to a stake; thence, N. 31° 20' E. 709.50 feet to a stake; thence, N. 40° 50' E. 548.13 feet to a point; thence N. 16° 35' E. 876.98 feet to a point in the center of Boggs Run; thence, N. 28° 15' E. following along the easterly line of the said Boggs Run Mining and Manufacturing Company's Subdivision No. 3 565.00 feet to the place of beginning.

(c) The city shall be divided into six wards. A change in the wards may be made by the council by ordinance, but in making any such change regard must be had to the compactness of the territory of every ward, and no ordinance shall be passed which affects a gerrymander of territory, or which does not more nearly equalize population of the several wards.

POWERS

Sec. 3. Except as limited by the constitution and laws of the United States or West Virginia or restricted by this charter, the city shall have and may exercise all powers, functions, rights, privileges and immunities of every name and nature whatsoever belonging or appertaining to municipal corporations or cities. These shall include, without limitation, the power to acquire property within or without its corporate limits for any city purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation; to sell, lease, mortgage, hold, manage and control such property that its interest may require; to sue

and be sued, contract and be contracted with, and to tax all persons and all real and personal property within the city which are subject to taxation under the constitution and laws of West Virginia.

FORM OF GOVERNMENT

Sec. 4. (a) The elective officers of the city shall be a mayor, chief of police, and two councilmen from each ward. The mayor and chief of police shall be elected by the qualified voters of the city. The councilmen shall be elected by the qualified voters of their respective wards. The council shall appoint the officers named in Article V below, and shall have power to appoint such other officers as it may choose. Except as specifically provided herein, no person shall be eligible for any office, whether elective or appointive, unless he is a qualified voter of the city and has resided therein for at least one year before his election; and in the case of a councilman, he shall be a bona fide resident of the ward from which he is elected. Upon the cessation of any of the above qualifications or upon conviction of any crime involving moral turpitude, the office shall automatically become vacant.

(b) The municipal authorities of said city shall consist of the mayor and councilmen, who together shall form a common council, and all the corporate powers of said corporation shall be exercisable by said council or under its authority except where otherwise provided herein.

ARTICLE II.

ELECTIONS

CONDUCT OF ELECTIONS

Sec. 1. The first election hereunder shall be held on the first Tuesday in June, one thousand nine hundred and fifty, and biennially thereafter. Every person who has been a bona fide resident of the said city for one year next preceding any election, and otherwise a qualified voter, under the constitution and laws of the State, shall be entitled to vote at such election, in the ward in which he resides. The elections shall be held, conducted, returned, and the results ascertained, certified and determined, under such rules and regulations as may be prescribed by the council, which shall not be inconsistent with the general laws of the State governing municipal elections, and shall conform as nearly as practicable to such laws. Contested elections shall be heard and determined by the council, and the proceedings therein shall conform as nearly as may be to similar proceedings in the case of county and district officers. The council shall be the judge of the election, returns and qualifications of all officers. In case two or more persons receive an equal number of votes for the same office, the council shall decide by vote which of them shall be returned elected, and shall make their return accordingly.

TERMS OF OFFICE

Sec. 2. At each biennial election there shall be chosen a mayor and chief of police who shall each serve for two years. One councilman shall be chosen for each ward who shall serve for four years, with the second councilman from the ward being chosen at the succeeding election. All short-term vacancies in council shall be filled at each election. The mayor, chief of police and councilmen now in office shall serve out the terms for which they were each respectively elected.

DUCTION OF OFFICERS

Sec. 3. Each newly elected officer shall take office on the first day July following his election, and shall continue in office until replaced a duly elected successor.

ARTICLE III.

COUNCIL

MEETINGS

Sec. 1. (a) The regular meetings of council shall be held on the second and fourth Tuesday of each month, at such place in the city as council may by ordinance appoint. A special meeting of council may be called by the mayor, or by such member or members of council as may be specified by ordinance, but reasonable notice of such meeting shall be given in writing to all of the members who can be found. The notice and agenda must specify the business of the meeting, and no other business shall be considered. The presence of the majority of the whole number of councilmen shall be necessary to constitute a quorum for the transaction of business at any meeting, but a smaller number may adjourn from time to time and compel the attendance of absent members in such a way as council may provide by ordinance. The council shall, except as herein provided, determine its own rules and order of business. The council shall keep a journal of its proceedings. At the request of any councilman present, the yeas and nays on any question shall be taken and entered upon the journal. All meetings and investigations shall be open to the public. If the mayor shall for any reason be unable to preside, council shall elect a president pro tem, but said president pro tem shall continue to have a vote on all questions.

(b) Any councilman who is unable to be present at any council meeting shall cause the city clerk to be notified, stating the reason for his inability to be present. Such notice shall be given at least one hour prior to the convening time of council. Unauthorized absence for an unreasonable number of times from council meetings shall be grounds for council to declare the office of the offending councilman vacant and elect a successor. Notice of such intended action shall be given to the offending councilman in writing, which notice shall state the time and place for a public hearing to be had upon the matter. Council may also act to remove an offending councilman by two-thirds vote.

ORDINANCES

Sec. 2. In addition to such acts of the council as are required by statute or by this charter to be by ordinance, every act establishing a fine or other penalty or providing for the expenditure of funds or for the incurring of indebtedness, shall be by ordinance. The enacting clause of all ordinances shall be, "The Council of the City of Benwood hereby enacts." Ordinance procedure shall be in accordance with the general laws of the State ✓

APPOINTMENT OF OFFICERS AND EMPLOYEES

Sec. 3. Except for the mayor and chief of police, all city officers and employees, including policemen, shall be appointed by council and shall hold office at the pleasure of council. The officers appointed shall be those listed in Article V plus such additional officers as council shall



from time to time think proper. Council may increase or change the duties of each office as it may see fit, but shall not abolish the offices and duties specified in this charter. All acts of appointive officers and employees shall be subject to the control of the mayor and of the council.

SALARIES

Sec. 4. Council shall have power to fix the salaries of all officers both elective and appointive, including its own, and of all employees. The salaries of the mayor and chief of police may be increased but not diminished during their current term of office. Salaries of appointive officers and employees shall be at pleasure of council.

INVESTIGATIONS

Sec. 5. The council or any committee of council shall have power to inquire into the conduct of any office, department or agency of the city and to make investigation as to municipal affairs and for that purpose may subpoena witnesses, administer oaths, and compel production of books, papers and other evidence. Failure to comply with such orders shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$500.00 or by imprisonment not to exceed six months or both.

IMPEACHMENT

Sec. 6. Council shall have authority, upon the filing before it by any person of charges in writing against any elective officer of the city, to make an investigation of such charges. For this purpose also, it may exercise the powers set forth in Section 5 above. The accused shall be entitled to a public hearing, to the assistance of legal counsel and to the right of subpoena of witnesses, and documents on his behalf. After such investigation the council may remove the said officer upon a two-thirds vote. The accused shall not vote on the question.

AUDITS

Sec. 7. In addition to the regular annual audit made by the state tax commissioner, the council may at any time employ qualified public accountants to make a special independent audit of the finances of the city or of the accounts of any city officer.

VOTING

Sec. 8. Except as herein provided, all action of the council shall be by majority vote. No member of council shall discuss or vote on any question in which he is interested other than as a citizen of the city.

TAXES

Sec. 9. No tax on real or personal property shall be levied to exceed fifty cents on every \$100.00 of the assessed value, and all taxes shall be uniform with regard to persons and property. No capitation tax shall be levied in excess of \$1.00 per person.

MAXIMUM PENALTIES

Sec. 10. Punishment for violation of a city ordinance shall not exceed a fine of \$100.00 or imprisonment for six months or both.

FRANCHISES

Sec. 11. Franchises may be granted by the council allowing to persons or corporations for a limited time such occupancy of portions of

the streets and alleys as may be necessary for works of public utility and service. But no such franchise shall hereafter be granted except under the following restrictions and conditions:

a. No ordinance granting any franchise for the using of the streets, alleys or public grounds of the city shall take effect until the following steps are taken in the order named, and each step shall be completed before initiation of the next step:

1. The ordinance shall be proposed in council.
2. It shall be published in a newspaper of general circulation in Marshall County once a week for four successive weeks.
3. It shall be read at a regular meeting of council and then laid over at least until the next regular meeting.
4. It shall be passed by two-thirds vote at a regular meeting.

b. Every grant of a franchise shall be for a limited period of time. If no limit be expressly provided, the franchise shall be valid for one year only. In no case shall the franchise extend for a period exceeding thirty years.

c. No grant of a franchise shall be made without at the time of making it providing that the grantee, its successors and assigns, shall indemnify the city against all damages caused by the construction of such works. All reasonable additional provisions and conditions shall be made for the protection of the public from unnecessary damage or inconvenience by reason of such works and the operation thereof. Failure of compliance with any condition imposed by the ordinance granting such franchise shall cause said franchise at the option of council to become null and void.

ARTICLE IV.

MAYOR AND CHIEF OF POLICE

MAYOR IS CHIEF EXECUTIVE OFFICER

Sec. 1. The mayor shall be the chief executive officer of the city and shall see that all the orders, by-laws, ordinances and resolutions of the council thereof are faithfully executed. He shall have control of the police of the city, and may with the consent of council appoint special officers whenever he deems it necessary, and it shall be his duty to see that the peace and good order of the city are preserved. He shall, subject to action of council, supervise the work of all appointive officers and employees. He shall from time to time recommend to council such measures as he may deem needful for the welfare of the city. He shall preside over the meetings of the council but shall have no vote except in case of a tie.

MAYOR'S COURT

Sec. 2. The mayor shall hold court at such times and places as he may deem necessary, and shall have such jurisdiction and powers as are now or may hereafter be prescribed by law.

a. The mayor shall have jurisdiction over all offenses against or violation of the ordinances of the city, and authority to inflict punishment for such violations in the manner lawfully prescribed by such ordinances upon and against offenders or violators of the

same: Provided, however, that no jury shall be allowed by trial in said court for the violation of any ordinance of the city.

b. The proceedings for the recovery of the fine or for the enforcement of the penalty prescribed by any ordinance shall conform to the regulations, in so far as they are applicable, including the provisions as to costs and appeals, prescribed in chapter 50 of the Code of 1943 for the enforcement of penalties against persons convicted of misdemeanors; but the mayor by *capias pro fine* or other process may cause the defendant to be arrested and brought before said court to be dealt with according to law.

c. The mayor shall have full power and authority to enforce his orders and judgments, by any process of law which may be necessary and proper for the purpose and all processes, executions and orders of his court shall be signed by the mayor. All process and executions shall be directed in the name of the City of Benwood as plaintiff to the chief of police, and be executed by him or one of his deputies at any place within the county. In the execution of any process or order of said court, the chief of police or deputy shall have the same powers, be governed in his proceedings by the same rules of law, and be subject to the same liabilities as the sheriff of Marshall County, West Virginia, in the performance of like services. There may be charged for the services of such officer the same fees as the sheriff is entitled to charge for like services, but all such fees, as well as all fines imposed by said mayor, shall be collected by the mayor, and accounted for and paid by him to the treasurer of the city. The city shall in no event be liable for any such fees.

d. The mayor shall have authority to administer oaths within the city. He shall be *ex-officio* a justice of the peace within the city and shall within the same have and exercise all the powers and duties whether in civil or criminal proceedings vested by law in a justice of the peace.

e. The mayor may charge the same fees for his services whether in enforcement of city ordinances or other matters as are allowed to be charged by justices of the peace for similar services, which fees shall be paid to the city treasurer.

f. A docket and other books required by the records and a seal shall be provided for the mayor by the council. Full faith and credit shall be given to the records and certificates of the mayor's court, in like manner and with the same effect as if the same were records of the Circuit Court similarly authenticated.

OTHER DUTIES OF THE MAYOR

Sec. 3. The mayor shall perform such other duties as may be prescribed by this charter, or required of him by the council not inconsistent with this charter.

DUTIES OF CHIEF OF POLICE

Sec. 4. The chief of police shall, subject to the direction of the mayor and council, control, have charge over, and be responsible for the police force of the city. He shall also perform such other duties as may be prescribed by council.

ARTICLE V.

APPOINTIVE OFFICERS

CITY SOLICITOR

Sec. 1. The city solicitor shall prosecute and defend all suits for or against the city, and when requested to do so shall give his opinion in writing to the mayor or council upon such legal questions affecting the city as may be referred to him. He shall in addition perform such other services as council may require. The solicitor shall be a duly licensed attorney at law, but need not be a resident of the city.

CITY CLERK

Sec. 2. The city clerk shall give notice of the meetings of council, keep the journal of its proceedings, and authenticate by his signature all ordinances and resolutions of council. He shall have charge of and preserve the seal and the records of the city. He shall be clerk of the mayor's court. In the absence of, or in the case of sickness, or disability of the mayor, or during any vacancy in the mayor's office, he shall perform all the duties of the mayor and be vested with all the powers necessary for the performance of such duties, except that he shall not act as presiding officer over the council. He shall perform such other duties as may be required by the council. He shall collect all taxes, special assessments, license fees and other revenues of the city or for whose collection the city is responsible and receive all money receivable by the city from the state or federal government or from any court or from any office, department or agency of the city.

STREET COMMISSIONER

Sec. 3. The street commissioner shall have charge of the city streets and alleys and shall perform such other duties as council may require.

BUILDING INSPECTOR

Sec. 4. The building inspector shall issue building permits, see that building and maintenance ordinances are complied with and perform such other duties as council may require.

ZONING COMMISSION

Sec. 5. The zoning commission shall consist of three or more persons and shall supervise and administer such zoning ordinances as council may establish.

CITY TREASURER

Sec. 6. The city treasurer shall have charge of the administration of the financial affairs of the city, and to that end he shall have the following authority and duties:

a. He shall have custody of all funds belonging to or under the control of the city and deposit all such funds in such depositories as may be designated by resolution of council, or if none, by the mayor, subject to the requirements of law as to surety and the payment of interest on deposits.

b. He shall have custody of all bonds, notes, certificates, and other evidences of indebtedness to the city, together with all valuable papers which may be placed in his hands by the council.

c. He shall assist the mayor in preparing the annual budget. He shall prepare and submit to council complete quarterly reports of the finances of the city.

d. He shall be the disbursing officer of the city and no funds shall be paid except under his signature.

e. He shall prescribe the forms of receipts, vouchers, bills or claims to be used by the city government.

ARTICLE VI.

BUDGET

FISCAL YEAR

Sec. 1. The fiscal year of the city government shall begin on the first day of July and shall end on the last day of June of each calendar year. Such fiscal year shall also constitute the budget and accounting year. As used in this charter, the term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

PREPARATION AND SUBMISSION OF BUDGET

Sec. 2. The mayor, prior to the beginning of each budget year, shall submit to the council an itemized budget.

BUDGET A PUBLIC RECORD

Sec. 3. The budget and all supporting schedules shall be a public record in the office of the city clerk open to public inspection by anyone.

PUBLIC HEARING ON BUDGET

Sec. 4. At the first regular council meeting after submission of the budget, the council shall hold a public hearing on the budget as submitted, at which all interested persons shall be given an opportunity to be heard, for or against the estimates or any item thereof.

DATE OF FINAL ADOPTION

Sec. 5. The budget shall be finally adopted not later than the first Tuesday of August in the fiscal year.

ARTICLE VII.

INITIATIVE AND REFERENDUM

POWERS OF INITIATIVE

Sec. 1. The electors shall have power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the city equal in number to at least ten per centum of the registered voters at the last regular municipal election.

POWER OF REFERENDUM

Sec. 2. The electors shall have power to approve or reject at the polls any ordinance passed by the council, or submitted by the council to a vote of the electors, such power being known as the referendum. Ordinances submitted to the council by initiative petition and passed by the council without change shall be subject to the referendum in the same manner as other ordinances. Within twenty days after the enactment by the council of any ordinance which is subject to a referendum, a petition signed by qualified electors of the city equal in number to at least ten per centum of the registered voters at the last preceding regular municipal election may be filed with the city clerk requesting that any such ordinance be either repealed or submitted to a vote of the electors.

FORM OF PETITIONS: COMMITTEE OF PETITIONERS

Sec. 3. All petition papers circulated for the purposes of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to indemnify the place. There shall appear on each petition the names and addresses of the same five electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that it bears a stated number of signatures, that all the signatures appended thereto were made in his presence, and that he believes them to be the genuine signatures of the persons whose names they purport to be.

FILING EXAMINATION AND CERTIFICATION OF PETITIONS

Sec. 4. All petition papers comprising an initiative or referendum petition shall be assembled and filed with the city clerk as one instrument. Within twenty days after a petition is filed, the city clerk shall determine whether each paper of the petition has a proper statement of the circulator and whether the petition is signed by a sufficient number of qualified voters. The city clerk shall declare any petition paper entirely invalid which does not have attached thereto an affidavit signed by the circulator thereof. If a petition paper is found to be signed by more persons than the number of signatures certified by the circulator, the last signatures in excess of the number certified shall be disregarded. If a petition paper is found to be signed by fewer persons than the number certified, the signatures shall be accepted unless void on other grounds. After completing his examination of the petition, the city clerk shall certify the result thereof to the council at its next regular meeting. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

AMENDMENT OF PETITIONS

Sec. 5. An initiative or referendum petition may be amended at any time within ten days after the notification of insufficiency has been sent by the city clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The city clerk shall, within five days after such an amendment is filed, make examination of the amended petition and, if the petition be still insufficient, he shall file his certificate to that effect in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

EFFECT OF CERTIFICATION OF REFERENDUM PETITION

Sec. 6. When a referendum petition, or amended petition as defined in Section 5, Article VII of this charter, has been certified as sufficient by the city clerk, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the electors, as herein-after provided.

CONSIDERATION BY COUNCIL

Sec. 7. Whenever council receives a certified initiative or referendum petition from the city clerk, it shall proceed at once to consider such petition. A proposed initiative ordinance shall be read and provision shall be made for a public hearing upon the proposed ordinance. The council shall take final action on the ordinance not later than sixty days after the date on which such ordinance was submitted to the council by the city clerk. A referred ordinance shall be reconsidered by the council and its final vote upon such reconsideration shall be upon the question, "Shall the ordinance specified in the referendum petition be repealed?"

SUBMISSION TO ELECTORS

Sec. 8. If the council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor, or if the council fail to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon. The council may, in its discretion, and if no regular election is to be held within such period shall, provide for a special election.

FORM OF BALLOT FOR INITIATED AND REFERRED ORDINANCES

Sec. 9. Ordinances submitted to vote of the electors in accordance with the initiative and referendum provisions of this charter shall be submitted by ballot title, which shall be prepared in all cases by the city solicitor of the city. The ballot title may be different from the legal title of any such initiated or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance. The ballot used in voting upon any ordinance, shall have below the ballot title the following propositions, one above the other, in the order indicated: "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE". Immediately at the left of each proposition there shall be a square in which by making a cross (X) the elector may vote for or against the ordinance. Any number of ordinances may be voted on at the same election and may be submitted on the same ballot. A ballot used for voting thereon, shall be for that purpose only.

AVAILABILITY OF LIST OF QUALIFIED ELECTORS

Section 10. If any organization or group requests it for the purpose of circulating descriptive matter relating to the ordinance to be voted on, the board of elections or city clerk or other office, department or agency of the city having the list of qualified electors shall either permit such organization or group to copy the names and addresses of the qualified electors or furnish it with a list thereof.

RESULTS OF ELECTION

Sec. 11. If a majority of the electors voting on a proposed initiative ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the city. A referred ordinance which is not approved by a majority of the electors voting thereon shall thereupon be deemed repealed. If conflicting ordinances are approved by the electors at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

REPEALING ORDINANCES: PUBLICATION

Sec. 12. Initiative and referendum ordinances adopted or approved by the electors shall be published, and be amended or repealed by the council, as in the case of other ordinances.

ARTICLE VIII.

GENERAL PROVISIONS

COUNCIL DISCUSSION

Sec. 1. The heads of all departments, and such other officers as may be designated by vote of the council shall be entitled to seats in the council, but shall have no vote. They shall be entitled to take part in all discussions of the council relating to their respective offices, departments or agencies.

RECORDS AVAILABLE TO PUBLIC

Sec. 2. All records, minutes and accounts of every office, department or agency of the city, including the council, shall be open to inspection by any citizen at all reasonable times and under reasonable regulations established by the council, excepting where disclosure would tend to defeat the lawful purpose which they are intended to accomplish.

BONDS

Sec. 3. Council may require all officers and employees of the city to give bond for the faithful performance of their duties in such reasonable amounts as shall be necessary to protect the city, the citizens, and the general public. Sureties shall be approved by the council, and premiums shall be paid by the city.

OATH OF OFFICE

Sec. 4. Every officer of the city shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city clerk: "I solemnly swear (or affirm) that I will support the constitution and will obey the laws of the United States and of the State of West Virginia, that I will, in all respects, observe the provisions of the charter and ordinances of the City of Benwood and will faithfully discharge the duties of the office of -----".

EFFECT OF THIS CHARTER ON EXISTING LAW

Sec. 5. (a) This charter shall entirely supersede the old charter of the City of Benwood. All legislative and administrative acts or rules heretofore adopted by the governing body and administrative agencies of the City of Benwood which are inconsistent or in conflict with this charter, shall continue in force for sixty days after the effective date of the charter, unless sooner modified or repealed by competent authority; but at the end of this period, shall to the extent of such inconsistency or conflict, be of no further force or effect.

(b) All provisions of the old charter, all ordinances and acts which are not in conflict with this charter shall remain in full force and effect unless later modified. In so far as the provisions of this charter are the same in terms or in substance and effect as provisions of law in force when this charter shall take effect, the provisions of this charter are intended to be not a new enactment but a continuation of such provisions of law, and this charter shall be so construed and applied.

AMENDING THE CHARTER

Sec. 6. Amendments of this charter may be made in accordance with the general laws of the state.

SEPARABILITY CLAUSE

Sec. 7. If any section or part of section of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

ADMINISTRATIVE BOARDS

Sec. 8. Whenever it is deemed advisable, the council shall have authority to create by ordinance and to provide for financial support of any of the separate administrative boards provided for in Section Five-a, Article Three, Chapter Eight-a of the official code of West Virginia, as amended, and shall appoint the members of any board so established.

FEEES

Sec. 9. All fees received by any officer or employee shall belong to the city government and shall be paid daily into the city treasury, except as hereinabove provided.

BONDED INDEBTEDNESS AND BORROWING

Sec. 10. The city may create a bonded indebtedness, but only as provided by general law. The city shall not in any year make contracts in excess of its revenues, but it is authorized to borrow money for emergencies provided provision is made for repayment out of the revenues for the current year.

CITY IMPROVEMENTS

Sec. 11. Any city improvement costing more than \$500.00 shall be executed by contract, except where authorized to be executed directly by a city department in conformity with detailed plans, specifications and estimates. All such contracts shall be awarded to a responsible bidder after proper notice, provided that the mayor shall have the power to reject all bids and advertise again. Alterations in any contract may be made when authorized by the council.

ARTICLE IX.

SUCCESSION

RIGHTS OF OFFICERS AND EMPLOYEES

Sec. 1. Nothing in this charter contained, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the city or of any office, department or agency existing at the time when this charter shall take effect, or any provision of law in force at the time when this charter shall take effect and not inconsistent with the provisions of this charter, in relation to the personnel, appointment, tenure of office, promotion, removal, civil rights or any other rights or privileges of officers or employees of the city or any office, department or agency thereof.

CONTINUATION OF OFFICERS AND SALARIES

Sec. 2. All officers and employees at the time this charter takes effect shall continue in office and in the performance of their duties and all salaries shall continue as at present until changed.

CONTINUATION OF CONTRACTS

Sec. 3. All contracts entered into by the city, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws or charter provisions existing at the time this charter takes effect may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws and charter provisions.

CONTINUATION OF LEGAL PROCEEDINGS

Sec. 4. No action or proceeding, civil or criminal, pending at the time when this charter shall take effect, brought by or against the city or any office, department or agency or officer thereof, shall be affected or abated by the adoption of this charter or by anything therein contained.

EFFECTIVE DATE

Sec. 5. Upon the adoption of this charter, its provisions shall immediately be in force.

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF BENWOOD, TO-WIT:

The undersigned Chairman, Clerk and other members of the Charter Board of The City of Benwood, elected to said board at an election held in said city on the 6th day of April 1948, under the Municipal Home Rule Law, having convened and effected its organization and determined the rules of its proceedings within ten days after said election and having completed a draft of said charter within one hundred and twenty (120) days after the date of said organization meeting, and having certified said draft of the charter to the Attorney General of the State of West Virginia, and said draft of the charter having been approved by said Attorney General, and a public meeting on said charter having been advertised according to law and held at 7:30 P. M. on the 17th day of August 1948, do now certify that the foregoing charter is in the form finally adopted by the undersigned Charter Board and constitutes the complete draft of the charter.

WITNESS our hands this 24th day of August 1948.

WILLIAM J. STRAUGHN, Chairman

A. TOM CERRA, Clerk

RUDOLPH NEDUCHAL

ALBERT GRESKO

DRAGAN DURANOVICH

JOSEPH P. KISSEL

EMIL JELACIC

Members of the Charter Board of The
City of Benwood.

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Rori Hongwell having been elected ^(4 year term) to the office of Council, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Rori A. Hongwell

Subscribed and sworn to before me this 30th day of June

Attest Erin Bone 1908

Judy [Signature]

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

4 year term

I, John Kazemka having been ELECTED to the office of Council person, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Subscribed and sworn to before me this

30th day of June

Attest: Erin Bonard 19 08.

John Kazemka
Judith L. Whit

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Edward M. Kura, Jr. having been elected ^(4 year term) to the office of Mayor (4 year term) do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Subscribed and sworn to before me this 30th day of July

Edward M. Kura, Jr. 19 28
Attest Erin Benar

Judge S. Ober

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Chuck Terry having been elected ^(4 year term) to the office of 1st Ward Councilperson, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Subscribed and sworn to before me this

30 day of June

6-30

19 08

Attest: Erin Bonar

Judith Dent

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Curtis Mele having been elected (5/11/10) to the office of 1st Ward Council, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

X Curtis Mele
Subscribed and sworn to before me this 25th day of June
Walter E. B... 19 2010

Judy I. Hunt

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Harry Ferrera III having been elected (5/11/10) to the office of 2nd Ward Council, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Harry Ferrera III

Subscribed and sworn to before me this 30th day of June

J. Druschel 19 2010

Erin J. Brown

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Bob Rose having been elected (5/4/10) to the office of City Council, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Subscribed and sworn to before me this 25th day of June

Attest: Erin Bonar 2010

John Rose
John Rose

CITY OF BENWOOD

WEST VIRGINIA

State of West Virginia,

County of Marshall, ss:

I, Walter Yates having been elected (5/1/10) to the office of 3rd Ward Council, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and will faithfully discharge the duties of the said office to the best of my skill and judgement, so help me God.

Subscribed and sworn to before me this 29th day of June

Renny K. West 19 2010

Walter Yates
E. J. D.
John D. D.

RECEIVED ORDINANCE OF THE CITY OF BENWOOD, WEST VIRGINIA,
PROVIDING FOR AN INCREASE IN THE RATES IT CHARGES TO
PROVIDE WATER

2010 JUN 11 07 08 35

W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

WHEREAS, the City of Benwood has recognized, due to an increase in the costs of providing water to it's customers, that the water department is operating at a deficit; and

WHEREAS, The City of Benwood is in the process of obtaining a no interest loan to make needed improvements to its water system; and

WHEREAS, the City of Benwood has commissioned an accounting firm to analyze the municipal rate structure and to recommend a rate that will allow them to operate without running a deficit; and

WHEREAS, the Council of the City of Benwood recognizes that this is a significant increase and, therefore, should be phased in over a period of time.

WHEREFORE, the City of Benwood desires to enact this Ordinance to increase the rates it charges for providing water service to those recommended by it's accountant.

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BENWOOD,
WEST VIRGINIA:

SECTION ONE: The Ordinance of the City of Benwood regulating its rates and charges for water services is hereby amended and altered to read as follows:

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, industrial service and resale water service.

RATES (customers with metered water supply)

| | | |
|-----------|-------------------------------|--------------------------|
| First: | 25,000 gallons used per month | \$7.84 per 1,000 gallons |
| All Over: | 25,000 gallons used per month | \$4.93 per 1,000 gallons |

BERRY, KESSLER,
CRUTCHFIELD, TAYLOR
& GORDON
ATTORNEYS AT LAW
514 SEVENTH ST
MOUNDSVILLE, W VA
26041

COPY

MINIMUM CHARGE

No minimum bill will be rendered for less than \$15.68 per month which is the equivalent of 2,000 gallons.

| | | Equivalent Gallons |
|----------------|-----------------|--------------------|
| 5/8 inch meter | \$15.68 | 2,000 |
| 3/4 inch meter | 23.55 | 3,004 |
| 1 inch meter | 39.20 | 5,000 |
| 1½ inch meter | 78.40 | 10,000 |
| 2 inch meter | 125.45 | 16,001 |
| 3 inch meter | 235.20 | 32,951 |
| 4 inch meter | 392.00 | 64,757 |
| 6 inch meter | 784.00 | 144,720 |
| 8 inch meter | 1,254.40 | 239,686 |

UNMETERED RATE

In the event the water supply (residential) is unmetered or otherwise unmeasurable by the City, the unmetered rate shall be charged. (Based on **4,500** gallons used per month.)

LATEST PAY DATE

The last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty shall be stated on the face of the bill.

DELINQUENT BILL

Any bill issued by the city that is not paid within thirty (30) days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill.

RETURNED CHECKS CHARGE

A service charge of **\$25.00** will be imposed upon any customer whose check for payment of charges is returned by their bank for any reason.

EFT, CREDIT CARD, ACH AND DROP BOX PAYMENTS

A service charge will be imposed on EFT, Credit Card, ACH or Drop Box Payments. The amount shall be **equal to the actual charges** to the utility from the financial institution for processing payment.

DELAYED PAYMENT PENALTY

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

DEPOSIT FOR WATER UTILITY SERVICE

A deposit of **\$50.00** will be required for new water utility service and a **\$50.00** deposit will be required for new sewage utility service prior to these utilities services being connected.

SERVICE CONNECTION CHARGE

A tap fee of **\$500.00, or the actual cost of the connection** (solely determined by the City), whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

WATER DISCONNECT-RECONNECT-ADMINISTRATION

Whenever water service has been disconnected for any reason, a **disconnection fee of \$50.00** shall be charged; or in the event the delinquent sewer bill is collected in the field, an **administrative fee of \$50.00** shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a **reconnection fee of \$50.00** shall be charged.

LEAK ADJUSTMENT

\$4.93 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

LEAKS ON THE CUSTOMER'S SIDE OF THE METER

The city shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping facets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the city clerks office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for **public and private fire protection** service.

PRIVATE RATES

Where connections, hydrants, sprinklers, etc., on property are maintained by customer:

| | |
|---|--------------------|
| 2 inch service lines with hydrants, sprinklers, and/or connections | \$6.25 per month |
| 3 inch service lines with hydrants, sprinklers, and/or connections | \$12.50 per month |
| 4 inch service lines with hydrants, sprinklers, and/or connections | \$22.92 per month |
| 6 inch service lines with hydrants, sprinklers, and/or connections | \$58.33 per month |
| 8 inch service lines with hydrants, sprinklers, and/or connections | \$100.00 per month |
| 10 inch service lines with hydrants, sprinklers, and/or connections | \$166.67 per month |
| 12 inch service lines with hydrants, sprinklers, and/or connections | \$229.17 per month |

PERIODIC BILLING

The schedule of rates and charges above may be applied on a bi-monthly, quarterly, semi-annual basis, provided **no lower charges apply**.

PUBLIC RATES

An annual fee of **\$25.00 per fire hydrant** is assessed by the City of Benwood and/or other municipal corporations where hydrants are located.

TAX SCHEDULE

The water utility is required to collect a **utility tax** pursuant to West Virginia Code Section 8-13-5a. Customers receiving water service within the corporate limits of the of the City of Benwood shall pay a **local surcharge tax of two percent (2%)**.

SECTION TWO: Section One (1) of this Ordinance is to take effect 45 days after passage of this Ordinance.

SECTION THREE: Six (6) months after this Ordinance become effective, the rates the City of Benwood charges for water service shall be amended to read as follows:

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, industrial service and resale water service.

RATES (customers with metered water supply)

| | | |
|-----------|-------------------------------|---------------------------------|
| First: | 25,000 gallons used per month | \$8.78 per 1,000 gallons |
| All Over: | 25,000 gallons used per month | \$5.52 per 1,000 gallons |

MINIMUM CHARGE

No minimum bill will be rendered for less than **\$17.56** per month which is the equivalent of 2,000 gallons.

| | | Equivalent Gallons |
|----------------|-------------------|--------------------|
| 5/8 inch meter | \$17.56 | 2,000 |
| 3/4 inch meter | \$26.35 | 3,000 |
| 1 inch meter | \$43.90 | 5,000 |
| 1½ inch meter | \$87.80 | 10,000 |
| 2 inch meter | \$140.50 | 16,000 |
| 3 inch meter | \$263.40 | 32,953 |
| 4 inch meter | \$439.00 | 64,764 |
| 6 inch meter | \$878.00 | 144,291 |
| 8 inch meter | \$1,404.80 | 239,724 |

UNMETERED RATE

In the event the water supply (residential) is unmetered or otherwise unmeasurable by the City, the unmetered rate shall be charged. (Based on **4,500** gallons used per month.)

LATEST PAY DATE

The last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty shall be stated on the face of the bill.

DELINQUENT BILL

Any bill issued by the city that is not paid within thirty (30) days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill.

RETURNED CHECKS CHARGE

A service charge of **\$25.00** will be imposed upon any customer whose check for payment of charges is returned by their bank for any reason.

EFT, CREDIT CARD, ACH AND DROP BOX PAYMENTS

A service charge will be imposed on EFT, Credit Card, ACH or Drop Box Payments. The amount shall be **equal to the actual charges** to the utility from the financial institution for processing payment.

DELAYED PAYMENT PENALTY

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

DEPOSIT FOR WATER UTILITY SERVICE

A deposit of **\$50.00** will be required for new water utility service and a **\$50.00** deposit will be required for new sewage utility service prior to these utilities services being connected.

SERVICE CONNECTION CHARGE

A tap fee of **\$500.00, or the actual cost of the connection** (solely determined by the City), whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

WATER DISCONNECT-RECONNECT-ADMINISTRATION

Whenever water service has been disconnected for any reason, a **disconnection fee of \$50.00** shall be charged; or in the event the delinquent sewer bill is collected in the field, an **administrative fee of \$50.00** shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a **reconnection fee of \$50.00** shall be charged.

LEAK ADJUSTMENT

\$5.52 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

LEAKS ON THE CUSTOMER'S SIDE OF THE METER

The city shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping facets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the city clerks office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for **public and private fire protection** service.

PRIVATE RATES

Where connections, hydrants, sprinklers, etc., on property are maintained by customer:

| | |
|--|-------------------|
| 2 inch service lines with hydrants, sprinklers, and/or connections | \$6.25 per month |
| 3 inch service lines with hydrants, sprinklers, and/or connections | \$12.50 per month |
| 4 inch service lines with hydrants, sprinklers, and/or connections | \$22.92 per month |
| 6 inch service lines with hydrants, sprinklers, and/or connections | \$58.33 per month |

| | |
|---|--------------------|
| 8 inch service lines with hydrants, sprinklers, and/or connections | \$100.00 per month |
| 10 inch service lines with hydrants, sprinklers, and/or connections | \$166.67 per month |
| 12 inch service lines with hydrants, sprinklers, and/or connections | \$229.17 per month |

PERIODIC BILLING

The schedule of rates and charges above may be applied on a bi-monthly, quarterly, semi-annual basis, provided **no lower charges apply**.

PUBLIC RATES

An annual fee of **\$25.00 per fire hydrant** is assessed by the City of Benwood and/or other municipal corporations where hydrants are located.

TAX SCHEDULE

The water utility is required to collect a **utility tax** pursuant to West Virginia Code Section 8-13-5a. Customers receiving water service within the corporate limits of the of the City of Benwood shall pay a **local surcharge tax of two percent (2%)**.

SECTION FOUR: Upon initiating of the Debt Service on the proposed loan given to the City of Benwood for its Water Improvement Project, the rate the City of Benwood charges for water services shall be amended to read as follows:

APPLICABILITY

Applicable in all areas served by the City of Benwood Water.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, industrial service and resale water service.

RATES (customers with metered water supply)

| | | |
|-----------|-------------------------------|----------------------------------|
| First: | 25,000 gallons used per month | \$10.10 per 1,000 gallons |
| All Over: | 25,000 gallons used per month | \$6.35 per 1,000 gallons |

MINIMUM CHARGE

No minimum bill will be rendered for less than **\$20.20** per month which is the equivalent of 2,000 gallons.

| | | Equivalent Gallons |
|----------------|-------------------|--------------------|
| 5/8 inch meter | \$20.20 | 2,000 |
| 3/4 inch meter | \$30.30 | 3,000 |
| 1 inch meter | \$50.50 | 5,000 |
| 1½ inch meter | \$101.00 | 10,000 |
| 2 inch meter | \$161.60 | 16,000 |
| 3 inch meter | \$303.00 | 32,953 |
| 4 inch meter | \$505.00 | 64,764 |
| 6 inch meter | \$1,010.00 | 144,291 |
| 8 inch meter | \$1,616.00 | 239,724 |

UNMETERED RATE

In the event the water supply (residential) is unmetered or otherwise unmeasurable by the City, the unmetered rate shall be charged. (Based on **4,500** gallons used per month.)

LATEST PAY DATE

The last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty shall be stated on the face of the bill.

DELINQUENT BILL

Any bill issued by the city that is not paid within thirty (30) days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill.

RETURNED CHECKS CHARGE

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A service charge will be imposed on EFT, Credit Card, ACH or Drop Box Payments. The amount shall be **equal to the actual charges** to the utility from the financial institution for processing payment.

DELAYED PAYMENT PENALTY

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

DEPOSIT FOR WATER UTILITY SERVICE

A deposit of **\$50.00** will be required for new water utility service and a **\$50.00** deposit will be required for new sewage utility service prior to these utilities services being connected.

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A tap fee of **\$500.00, or the actual cost of the connection** (solely determined by the City), whichever is greater, will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

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LEAK ADJUSTMENT

\$6.35 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

LEAKS ON THE CUSTOMER'S SIDE OF THE METER

The city shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping facets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the city clerks office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

APPLICABILITY

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AVAILABILITY OF SERVICE

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PRIVATE RATES

Where connections, hydrants, sprinklers, etc., on property are maintained by customer:

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|---|--------------------|
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| 8 inch service lines with hydrants, sprinklers, and/or connections | \$100.00 per month |
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| 12 inch service lines with hydrants, sprinklers, and/or connections | \$229.17 per month |

PERIODIC BILLING

The schedule of rates and charges above may be applied on a bi-monthly, quarterly, semi-annual basis, provided **no lower charges apply**.

PUBLIC RATES

An annual fee of **\$25.00 per fire hydrant** is assessed by the City of Benwood and/or other municipal corporations where hydrants are located.

TAX SCHEDULE

The water utility is required to collect a **utility tax** pursuant to West Virginia Code Section 8-13-5a. Customers receiving water service within the corporate limits of the of the City of Benwood shall pay a **local surcharge tax of two percent (2%)**.

SECTION FIVE: This Ordinance shall become effective Forty-five (45) days after its date of passage.

Passed First Reading: May 25, 2010

Passed Second Reading: June 08, 2010

Edward M. Kuca, Jr.
Edward M. Kuca, Mayor

ATTEST:

Judy Hunt
Judy Hunt, City Clerk

\\Bkcandtserver\work docs\LKobasko\MNO\Ordinance-Bwd(Water-SewageRates).wpd

**STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF
BENWOOD, CITY COUNCIL REGULAR MEETING February 22, 2011**

The City Council of the City of Benwood met in Regular Session on Tuesday, February 22, 2011 in the council chambers of the Municipal Building. City Clerk/Treasurer Judy Hunt called the meeting to order at 7:00 p.m. Hunt called the roll call and the following council members were present: Kazemka, Longwell, Mele, Rose and Terry. Excused Absence: Ferrera, Olson and Yates. Others Present: Attorney Eric Gordon, Chief Frank Longwell and Jon Howard, Public Works Director.

PLEDGE OF ALLEGIANCE

Mayor Kuca led the pledge of allegiance to the flag.

MINUTES

Councilperson Rose moved to approve the minutes for February 22, 2011, seconded by Terry. Motion carried unanimously.

NEW BUSINESS:

**AN ORDINANCE OF THE CITY OF BENWOOD, WEST VIRGINIA,
PROVIDING FOR AN INCREASE IN THE RATES IT CHARGES TO
PROVIDE SEWAGE SERVICE (FIRST READING)**

Michael Griffith & Associates, CPA firm, recommended a 35% sewage rate increase in March of 2009, but council only implemented a 20% increase at that time. The Water/Sewer Committee met and is recommending the additional 15% that was initially proposed by the accountant. This amount will cover the bond covenant requirements and stabilize the fund.

Councilperson Terry moved to adopt the above resolution on first reading, seconded by Kazemka. Mayor Kuca called for a roll call vote and motion passed 4 yeas. Rose voted against the motion.

Attorney Gordon will prepare the required legal notices for the newspapers.

**AN ORDINANCE OF THE CITY OF BENWOOD, WEST VIRGINIA,
PROVIDING FOR A RAISE IN THE RATES CHARGED FOR THE
COLLECTION AND REMOVAL OF REFUSE AND GARBAGE AND A
MODIFICATION IN HOW SAID RATES ARE CHARGED (FIRST READING)**

The Sanitation Committee met and discussed the increase of residential/governmental/commercial rates in depth. The committee discussed different increase options for commercial customers in order to establish a uniform and fair rate for different classifications. It is proposing the following: Commercial Users Class I - Light

Benwood Council Minutes
February 22, 2011
Page 2

Users shall be charged \$30.00 per month; Commercial Users Class II – Heavy Users are to be defined as those commercial, business or service customers dispensing of bottles, cans, boxes, crates or other heavy items in addition to regular refuse \$60.00 per month. Residential and governmental customers will increase \$1.00 per month.

Mele moved to adopt the above refuse ordinance on first reading, seconded by Kazemka. Mayor Kuea called for a roll call vote and motion passed with 3 yeas. Longwell abstained from the vote on the motion and Rose voted against the motion.

APPROVAL TO PURCHASE EXERCISE EQUIPMENT

Terry moved to approve the purchase of a new EFX elliptical exercise machine in the amount of \$2,699 plus \$175 for installation, seconded by Kazemka. Mayor Kuea called roll call vote on the motion and motion carried with 4 yeas. Longwell abstained from voting on the motion.

OLD BUSINESS:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF BENWOOD AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$2,050,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND) 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 A LOAN AGREEMENT RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO. (SECOND READING)

Councilperson Kazemka moved to adopt the above resolution on second reading, seconded by Terry. Mayor Kuea called for a roll call vote and motion passed 5 yeas.

Benwood Council Minutes
February 22, 2011
Page 3

Chief Longwell advised that Dunn Engineering and the contractor have been instructed to lay the new water line on Roosevelt Avenue first when the Water Improvement Projects begins. The city did not want WVDOH to pave the street in connection with the Bridge Project and then tear up new paving for the water line. The city will be saving \$43,000 that was allocated for the paving because it has been added on as part of the bridge project. This \$43,000 will be reallocated to the water extension replacement to the Industrial Park which is only projected to cost \$41,000. This will not increase the project cost. Longwell further added that we are working to pave all we can in that area to provide more parking space and eliminate the parking in the mud. Also, we are trying to get the basketball court resurfaced.

Chief Longwell reported the administration is looking into a real estate issue with the bridge project. There was a change to the original design and it is believed that they took more land than they was suppose to.

FINANCE & TAXATION



Councilperson Rose moved to adopt the above ordinance on first reading, seconded by Councilperson Terry. Roll call vote was taken and motion passed unanimously.

Councilperson Rose moved to adopt the above ordinance on second reading, seconded by Councilperson Terry. Roll call vote was taken and motion passed unanimously.

ACCOUNTS PAYABLE CHECK REGISTER REPORTS

Longwell moved to receive and file accounts payable check register reports totaling \$110,367.56 seconded by Kazemka. Motion carried unanimously.

FINANCIAL STATEMENT AND OPERATING CASH BALANCE REPORT

Operating Cash Balances as of February 22, 2011: General Fund \$965,348.13; Coal Severance Tax Fund \$11,368.69; Water Fund \$46,092.19; Fire Fund \$347.66 and Sewer Fund \$45,422.83. Total Operating Cash \$1,067,833.25.

Benwood Council Minutes
February 22, 2011
Page 4

Longwell moved to receive and file the Operating Cash Balance Report and Financial Report as presented, seconded by Kazemka. Motion carried unanimously. (See report following minutes)

WATER/SEWER DEPARTMENT HEAD REPORT

Longwell moved to receive and file the Water/Sewer Department head report, seconded by Kazemka. Motion carried unanimously.

STREETS, ALLEYS AND GRADES

CITY OFFICES, PROPERTY, FIRE & POLICE

POOL MANAGER & LIFEGUARDS

To date there has not been any applications submitted to the city for pool manger or lifeguard positions.

DICUSSION ON MOVING BUS STOP

Mele advised council that Nardone, who is moving into the former Payless Shoe building, would like to have the bus stop moved to another area. Rose questioned if it would be possible to move it ten feet down toward Gary's S & V Exxon station. Mayor Kuca advised that there are federal guidelines involved with it that stipulates how the structure is placed, etc. Chief Longwell suggested that Gary is contacted first before moving it. Chief Longwell will look into the situation.

DEMOLITION & PAVING PRIORITY LIST

Chief Longwell advised that \$75,000 is being allocated in the upcoming budget for demolitions and paving. He requested that all ward council persons put a priority list together for their wards.

COMMUNITY MEETING SCHEDULED CONCERNING CITY PARK

Chief Longwell informed council that the Mayor's newsletter will be mailed next week and there will be an announcement of a community meeting to be held on March 19th, 2011 at 1:00 p.m. concerning citizen input regarding the swimming pool upgrades, etc. Citizens wishing to serve on the committee are welcome to do so. Once a plan is

Benwood Council Minutes
February 22, 2011
Page 5

developed regarding the direction the committee wants to pursue, then the city can proceed with attempting to acquire grant funds for the project.

EXECUTIVE SESSION

Rose moved to go into Executive Session regarding a personnel matter at 7:40 p.m., seconded by Mele. Motion carried unanimously;

Rose moved to reconvene for Regular Session at 7:45 p.m., seconded by Longwell. Motion carried.

Yates moved to grant Penny West two medical hardship leave days for December 29, 2010 and January 12, 2011, seconded by Longwell. Motion carried unanimously.

ADJOURNMENT

Councilperson Longwell moved to adjourn meeting, seconded by Councilperson Kazemka. Motion carried by a unanimous vote.

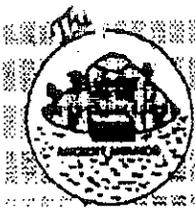
Regular Session of Council adjourned at 7:45 p.m.

Minutes Respectfully Submitted by,

Judy Hunt, City Clerk

Edward M. Kuca, Jr. Mayor

Pre



MOUNDSVILLE DAILY ECHO SINCE 1891

(304) 845-2660 P.O. BOX 369 MOUNDSVILLE WEST VIRGINIA 26041

RECEIVED

2010 JUN 11 AM 8 35

W VA PUBLIC SERVICE COMMISSION SECRETARY'S OFFICE

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, to wit:

I, Marian Walton, being first duly sworn upon my oath, do depose and say:

- that I am Co-Publisher of the MOUNDSVILLE DAILY ECHO, a Republican newspaper;
• that I have been duly authorized to execute this affidavit;
• that such newspaper has been published for over 103 years, is regularly published afternoons daily except Sundays, for at least fifty weeks during the calendar year, in the municipality of Moundsville, Marshall County, West Virginia.
• that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Moundsville and Marshall 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 or consideration;
• that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
• and that the annexed notice described as follows:

PARTY(ies)

City of Benwood

NATURE (and agency if heard before one)

ordinance water rates

CERTIF-BILL TO

CITY OF BENWOOD Main street Benwood WV 26031

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

Table with 2 columns: TIMES, DATES. Row 1: one, June 3, 2010

Table with 2 columns: BY WORDS, PUBLICATION CHARGES. Row 1: 164@.115, \$18.86

(signed) Marian L Walton

NOTARIZATION

Notary seal for Notary Public, Moundsville Daily Echo, P.O. Box 369, Moundsville, West Virginia 26041. Commission Expires Jan. 9/2015. Includes handwritten date 10/2/2010 and signature M. Nassie.

LEGAL ADVERTISEMENT

NOTICE CITY OF BENWOOD

Notice is hereby given that the City of Benwood, a municipal corporation, will hold a hearing before the final vote on a proposed ordinance, the principal object of which is the increased of water rates for customers of the water system operated by the City of Benwood. The title of such ordinance is "An Ordinance of the City of Benwood, West Virginia, Providing for an Increase in the Rates in Charges to Provide Water". The final vote on adoption of said proposed ordinance shall be held in the Council Chambers of the City of Benwood, City Hall, 430 Main Street, Benwood, West Virginia, on Tuesday, June 8, 2010, at seven o'clock (7:00) p.m. Interested parties may appear and be heard at such time with respect to the passage of the proposed ordinance. Copies of the proposed ordinance are available at the Office of the Clerk, City Hall, in Benwood.

PUBLISH: June 3, 2010.



(304) 845-2660
P.O. BOX 369
MOUNDSVILLE
WEST VIRGINIA
26041

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF MARSHALL, to wit:

I, Marian Walton, being first duly sworn to my oath, do depose and say:

- that I am Co-Publisher of the MOUNDSVILLE DAILY ECHO, a Republic newspaper;
- that I have been duly authorized to execute this affidavit;
- that such newspaper has been published for over 103 years, is regularly published afternoons daily except Sundays, for at least fifty weeks during the calendar year, in the municipality of Moundsville, Marshall County, West Virginia.
- that such newspaper is a newspaper of "general circulation" as defined in 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Mounds and Marshall County;
- that such newspaper averages in length four or more pages, exclusive of cover, per issue;
- that such newspaper is circulated to the general public at a definite price consideration;
- that such newspaper is a newspaper to which the general public resorts passing events or a political, religious, commercial and social nature and for rent happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

PARTY(ies) City of Benwood

NATURE (and agency if heard before one) water rates

CERTIF-BILL TO City of Benwood
Main st.
Benwood WV 26031

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

| TIMES | DATES |
|-------|-------------------|
| two | June 11, 18, 2010 |

| BY WORDS | PUBLICATION CHARGES |
|------------|---------------------|
| 984@. 2012 | \$197.98 |

(signed) Marian Walton

OFFICIAL NOTARIZATION
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA M. MASSIE
Moundsville Daily Echo
P.O. Box 369
Moundsville, West Virginia 26041
My Commission Expires Jan. 9, 2016

30th
2010
Notary public

LEGAL ADVERTISEMENT

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

NOTICE is hereby given that the City of Benwood, a municipality, on June 8, 2010, adopted an Ordinance increasing its rates, fees and charges for furnishing water service to approximately 620 customers in the City of Benwood in Marshall County and the surrounding community.

(Effective 45 Days After Passage of the Ordinance)

The proposed increased rates, fees and charges will become effective July 23, 2010, unless otherwise ordered by the Public Service Commission and will produce approximately \$40,000 annually in additional revenue, an increase of 12%. The monthly bill for the various classes of customers will be changed as follows:

The monthly rate per 1,000 Gallons for the various classes of customers will be changed as follows:

CLASS—Residential (4,000 gal/ Mo); (\$) INCREASE—\$3.36; INCREASE (%)—12.0%

CLASS—Commercial (10,000 gal/ Mo); (\$) INCREASE—\$8.40; INCREASE (%)—12.0%

CLASS—Industrial (100,000 gal/ Mo); (\$) INCREASE—\$60.75; INCREASE (%)—12.0%

CLASS—Resale (Varies, Irregular); (\$) INCREASE—N/A; INCREASE (%)—N/A

(Effective Six (6) Months After Passage of the Ordinance)

The proposed increased rates, fees and charges will become effective six (6) months after passage of the Ordinance, unless otherwise ordered by the Public Service Commission and will produce approximately \$40,000 annually in additional revenue, an increase of 12%. The monthly bill for the various classes of customers will be changed as follows:

The monthly rate per 1,000 Gallons for the various classes of customers will be changed as follows:

CLASS—Residential (4,000 gal/ Mo); (\$) INCREASE—\$3.76; INCREASE (%)—12.0%

CLASS—Commercial (10,000 gal/ Mo); (\$) INCREASE—\$9.40; INCREASE (%)—12.0%

CLASS—Industrial (100,000 gal/ Mo); (\$) INCREASE—\$67.75; INCREASE (%)—12.0%

CLASS—Resale (Varies, Irregular); (\$) INCREASE—N/A; INCREASE (%)—N/A

(%)—N/A
The increases shown are based on an increase in the monthly customer usage charges for all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

1. Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipality operated public utility; or

2. Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

3. Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A complete copy of the proposed rates, as well as a representative of the utility to provide any information requested concerning it, is available to all customers, prospective customers, or their agents at any of the following offices of the utility.

City of Benwood
430 Main Street
Benwood, West Virginia 26031

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, Post Office Box 812, Charleston, West Virginia 25323.
LISE June 11, 2010

SECRETARY'S OFFICE
JUN 11 2 40 PM '10

POST 2/2

(Effective Upon Initiation of the Debt Service on the Proposed Water Improvement Project Loan)

The proposed increase rates, fees and charges will become effective upon initiation of the debt service on the Proposed Water Improvement Project Loan, unless otherwise ordered by the Public Service Commission and will produce approximately \$57,000 annually in additional revenue, an increase of 15%. The monthly bill for the various classes of customers will be changed as follows:

The monthly rate per 1,000 Gallons for the various classes of customers will be changed as follows:

CLASS—Residential (4,000 gal/Mo); (\$) INCREASE—\$5.28; INCREASE (%)—15.0%

CLASS—Commercial (10,000 gal/Mo); (\$) INCREASE—\$13.20; INCREASE (%)—15.0%

CLASS—Industrial (100,000 gal/Mo); (\$) INCREASE—\$95.25; INCREASE (%)—15.0%

CLASS—Resale (Varies, Irregular); (\$) INCREASE—N/A; INCREASE

RECEIVED

10 JUL 12 AM 10: 06

W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

**STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF
BENWOOD, CITY COUNCIL REGULAR MEETING January 25, 2011**

The City Council of the City of Benwood met in Regular Session on Tuesday, January 25, 2011 in the council chambers of the Municipal Building. City Clerk/Treasurer Judy Hunt called the meeting to order at 7:00 p.m. Hunt called the roll call and the following council members were present: Ferrera, Kazemka, Longwell, Rose, Terry and Yates. Excused Absence: Olson and Mele. Others Present: Attorney Eric Gordon, Chief Frank Longwell and Jon Howard, Public Works Director.

PLEDGE OF ALLEGIANCE

Mayor Kuca led the pledge of allegiance to the flag.

MINUTES

Councilperson Terry moved to approve the minutes for December 14, 2010, seconded by Rose. Motion carried unanimously.

NEW BUSINESS:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF BENWOOD AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$2,050,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND) 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 A LOAN AGREEMENT RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO. (FIRST READING)

Discussion was held concerning the scope of the Water Improvement Project. Yates questioned reason for replacement of existing line used to service the old CSX railroad yard property in South Benwood, which is currently part of the Industrial Park Development. Yates voiced he believed it to be the responsibility of the Marshall County Commission. Chief Longwell further explained that the planned replacement of the line is within the city's jurisdiction therefore making it the city's responsibility. We need to

look at potential development and get water service to future development. The property consists of a total of 150 acres and thinks it is beneficial for us to have at least one fire hydrant on that piece of property. Hunt added that it is the city's responsibility to get water to the property and this is a way of attracting businesses to develop.

RED owns the property and it is their responsibility to run a line to the city main. Application has been made for grant funding to lay a new water line.

Chief Longwell posed the question to council whether the city is going to be about jobs and promotion of economic development or not.

Councilperson Ferrara moved to adopt the above resolution on first reading, seconded by Longwell. Mayor Kuca called for a roll call vote and motion passed 5 yeas. Yates abstained from the vote.

APPROVAL OF PURCHASE A NEW TRUCK FOR PUBLIC WORKS

Kazemka moved to authorize purchase and to acquire bids for a new truck for public works, seconded by Rose. Mayor Kuca called for a roll call vote and motion passed unanimously.

ADOPTION OF RESOLUTION TO TRANSFER FUNDS - RETIREES

Yates moved to authorize \$20,000 be transferred from the General Fund into a certificate of deposit to establish an Employee Post-Benefit Retirement Account for future retirees, seconded by Kazemka. Mayor Kuca called for a roll call vote and motion passed unanimously.

FREE SWIM DAY APPROVED

A group called the Benwood Crowd requested council to approve free swim day on July 2, 2011.

After discussion, Rose moved to grant the free swim day for July 2, 2011, seconded by Ferrara. Motion carried unanimously.

DISCUSSION OF NORTH BENWOOD RED LIGHT

Chief Longwell advised that the WVDOH is proposing a three way stop at the Kroger intersection in North Benwood because the technical repairs are too much with the current traffic light.

A lengthily discussion was held concerning WVDOH's proposal. Councilperson Rose and Mayor Kuca were in agreement to keep the blinker system. Chief Longwell believes the three way stop is needed because when vehicles are making a left turn into Kroger's

plaza something is needed to slow other traffic down. Otherwise, he thinks it will contribute to more accidents.

Councilperson Rose said he wants the phone number for WVDOH because he opposes the three way stop.

Attorney Gordon advised that a formal objection could be filed by council as well as contacting legislatures regarding the matter.

APPROVAL TO ACCEPT WV HIGHWAY SAFETY GRANTS

Chief Longwell his department has received over \$5,000 in grant funds for the WV Highway Safety Grant program to upgrade computer technology, which will consist of new lap tops and scanners. The equipment will greatly enhance the efficiency by cutting down the processing time for writing citations to motorists. The new scanners will allow an officer to scan the bar codes on the back of a driver's license and registration and cut down on the clerical work. A ticket can now be processed within a minute and will not have to be manually written out.

Rose moved to approve acceptance of the WV Highway Safety Grant for the lap top computers, seconded by Longwell. Motion and it carried unanimously.

Longwell moved to approve acceptance of the WV Highway Safety Grant for the computer scanners, seconded by Kazemka. Motion and it carried unanimously.

CONDEMNATION & DEMOLITION OF DILAPIDATED STRUCTURES

Chief Longwell advised a local contractor with qualified operators to provide service to the city to tear down condemned dilapidated structures. But the problem is they want to do them in January and February and we do not have any ready to go at this time.

Other discussion was held on the status and remaining procedures on the Nicholas Szymialis property. Chief Longwell said he did not want to get the contractor involved with Szymialis property because of all the legal issues associated with it.

Kazemka moved to go ahead and proceed with demolitions in case there is property we can find to tear down, seconded by Rose. Motion carried unanimously.

APPROVAL OF HANDICAP ACCESSIBLE PARKING - GREENWOOD

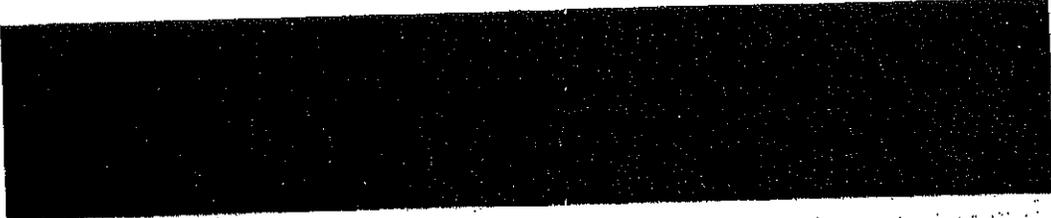
Kazemka moved to approve a handicap accessible parking spot for Michael Greenwood at 53 Sixth Street, seconded by Ferrera. Motion passed unanimously.

APPROVAL TO ACCEPT WV HIGHWAY SAFETY GRANT

Chief Longwell advised that his department has been awarded another WV Highway Safety Grant for DUI Enforcement/Speed Reduction in the amount of \$2,000. It is mainly for the safety of speeding.

Katzenka moved to authorize acceptance of the WV Highway Safety Grant, seconded by Rose. Motion carried unanimously.

FINANCE & TAXATION



Councilperson Ferrera moved to adopt the above ordinance on first reading, seconded by Councilperson Longwell. Roll call vote was taken and motion passed unanimously.

Councilperson Ferrera moved to adopt the above ordinance on second reading, seconded by Councilperson Longwell. Roll call vote was taken and motion passed unanimously.

ACCOUNTS PAYABLE CHECK REGISTER REPORTS

Ferrera moved to receive and file accounts payable check register reports totaling \$62,563.43 seconded by Longwell. Motion carried unanimously.

FINANCIAL STATEMENT AND OPERATING CASH BALANCE REPORT

Operating Cash Balances as of January 25, 2011: General Fund \$923,935.31; Coal Severance Tax Fund \$11,368.69; Water Fund \$53,391.17; Fire Fund \$290.71 and Sewer Fund \$61,448.34. Total Operating Cash \$1,049,687.97.

Ferrera moved to receive and file the Operating Cash Balance Report and Financial Report as presented, seconded by Ferrera. Motion carried unanimously. (See report following minutes)

Hunt informed council she transferred \$20,000 to pay for the new sewer pumps ordered and upon discussion with Finance Chairman Yates and Mayor Kuca an additional \$35,000 was transferred from the certificate of deposit.

Yates moved to approve transfer of \$35,000 to the sewer account, seconded by Terry. Mayor Kuca called for a roll call vote and motion carried unanimously.

WATER/SEWER DEPARTMENT HEAD REPORT

Ferrera moved to receive and file the Water/Sewer Department head report, seconded by Longwell. Motion carried unanimously.

Jon Howard reported that they City of Glen Dale is attempting to acquire money for a high tech leak detector and wanted to know if Benwood would be interesting in sharing in the cost. They are going to approach the County Commission for assistance with the purchase. Howard said the city is in dire need of one. He will know by mid February what the status is.

Yates moved that the city is very interested in sharing in the cost and use of the leak detector, seconded by Terry. Motion carried unanimously.

STREETS, ALLEYS AND GRADES

Rose extended his appreciation to city crews for the good job they did in North Benwood with snow removal.

CITY OFFICES, PROPERTY, FIRE & POLICE

POOL MANAGER & LIFEGUARDS

Hunt advised that the advertisement for the positions pool manager and lifeguards was in the Wheeling Intelligencer January 21, 22, 23, 2011 and the Moundsville Echo January 14 & January 21. The deadline for application submittal is February 21, 2011. To date we have not yet received any response.

Chief Longwell recommended to council that they have formal interviews with individuals applying for the positions. The city needs and experienced person to oversee the park operations.

2011-12 BUDGETS

Hunt is working on the 2011-12 budgets. If councilpersons have any items they want in the budget, please contact her. The budget must be submitted to the State Auditors Office by March 28. Finance Chairman Yates will get with Hunt and schedule budget meetings.

FUEL REFUND

Hunt filed for federal fuel refund in the amount of \$2,500.

COUNCIL APPROVED CONTRIBUTION - NEW FIRE TRUCK

Firefighter Tom Smith informed council the department has been awarded \$570,000 grant toward the purchase of a new aerial fire truck, which is expected to cost about \$600,000. The truck they want to purchase is all stainless steel and valued at \$790,000. It

will last the department 40-50 years. They plan to phase the 34 year old out of services once the new truck is delivered. A \$30,000 grant match is needed for the transaction.

Public Safety Director, Frank Longwell recommended the city contribute \$10,000 toward the purchase. Longwell said that anytime any city entity can obtain \$570,000 of grant money toward the purchase of new equipment of that caliber, he believes officials would be foolish not to participate in assisting the group in acquiring the matching amount. We are real proud of them and think they have done an outstanding job. According to our research, Benwood was awarded the largest amount in the whole country.

Mayor Kuca said he believes that huge amount of a grant is fantastic and thanked the Fire Department for all their efforts in obtaining the money for the Benwood.

Yates moved to contribute \$10,000 toward the purchase of the truck, seconded by Longwell. Mayor Kuca called for a roll call vote and motion passed unanimously.

Tom Smith expressed words of thanks to Chief Longwell and stated how well he has handled the investigation with the reason robbery at the Fireman's Association hall.

BELLAIRE BRIDGE

Attorney Gordon advised council that the demolition of the Bellaire Bridget will not move forward until a notice to proceed has been received for the U.S. Coast Guard and all legal issues have been resolved.

EXECUTIVE SESSION

Yates moved to go into Executive Session regarding a personnel matter, seconded by Longwell. Motion carried unanimously.

Yates moved to reconvene for Regular Session, seconded by Longwell. Motion carried.

Yates moved to grant Penny West two medical hardship leave days for December 29, 2010 and January 12, 2011, seconded by Longwell. Motion carried unanimously.

Terry moved to hire Michael McNamara for the position of dispatcher (temporary as needed) basis, seconded by Kazemka. Motion carried unanimously.

ADJOURNMENT

Councilperson Yates moved to adjourn meeting, seconded by Councilperson Longwell. Motion carried by a unanimous vote.

Regular Session of Council adjourned at 8:08 p.m.

Minutes Respectfully Submitted by,

Judy Hunt, City Clerk

Edward M. Kuca, Jr. Mayor

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

EXCERPT OF MINUTES ON ADOPTION OF BOND ORDINANCE,
SUPPLEMENTAL RESOLUTION, DRAW RESOLUTION AND
SWEEP RESOLUTION

The undersigned CLERK of the City of Benwood of hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said Council:

The Council of the City of Benwood met in regular session, pursuant to notice duly posted, on the 8th day of March, 2011, in Marshall County, West Virginia, at the hour of 7:00 p.m.

PRESENT:

Edward Kuca, Jr., Mayor
John Kazemka, Councilmember
Lori Longwell, Councilmember
Curtis Mele, Councilmember
Chuck Terry, Councilmember
Lawrence Ferrera, III, Councilmember
Bob Rose, Councilmember
Jackie Olson, Councilmember
Walter Yates, Councilmember

ABSENT:

None.

Edward Kuca, Jr., Mayor, presided, and Judy Hunt, acted as Clerk. 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 stated that the proposed Bond Ordinance heretofore passed on first and second readings would be subject to protests and suggestions from any interested person at this time in accordance with the publication of an abstract of said Bond Ordinance and a Notice of Hearing, which publication has been duly made, and the Mayor called for protests and suggestions as to said Bond Ordinance and all persons desiring to protest the said Bond Ordinance or to make any suggestions with reference thereto were heard.

There being no protests or suggestions made as to said Bond Ordinance, the Mayor thereupon stated that it would be in order to consider the said Bond Ordinance for final enactment and the Mayor caused the said Bond Ordinance to be read as follows:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF BENWOOD AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$2,050,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND), 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 A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Jackie Olson and seconded by Lawrence Ferrera, III, it was unanimously ordered that the said Bond Ordinance be adopted and be in full force and effect on and from the date hereof.

Next, the Mayor then presented a proposed Supplemental Resolution 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 WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE CITY OF BENWOOD; RATIFYING AND APPROVING A LOAN AGREEMENT 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; APPROVING A BOND ORDINANCE; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Lawrence Ferrera, III and seconded by Jackie Olson, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Mayor presented a proposed Draw Resolution for the approval of invoices. Thereupon, on motion duly made by Lawrence Ferrera, III and seconded by John Kazemka, it was unanimously ordered that the said Draw Resolution be adopted.

Next, the Mayor presented a proposed Sweep Resolution for the authorization of electronic monthly debt service and reserve fund payments to the Municipal Bond Commission. Thereupon, on motion duly made by Lawrence Ferrera, III and seconded by Jackie Olson, it was unanimously ordered that the said Sweep Resolution be adopted.

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 Benwood 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 17th day of March, 2011.


Clerk



(304) 845-2660
P.O. BOX 369
MOUNDSVILLE
WEST VIRGINIA
26041

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF MARSHALL, to wit:

I, Marian Walton, being first duly sworn my oath, do depose and say:

- that I am Co-Publisher of the MOUNDSVILLE DAILY ECHO, a Regular newspaper;
- that I have been duly authorized to execute this affidavit;
- that such newspaper has been published for over 103 years, is regularly published afternoons daily except Sundays, for at least fifty weeks during the calendar year, in the municipality of Moundsville, Marshall County, West Virginia;
- that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Moun and Marshall County;
- that such newspaper averages in length four or more pages, exclusive cover, per issue;
- that such newspaper is circulated to the general public at a definite consideration;
- that such newspaper is a newspaper to which the general public resort for passing events or a political, religious, commercial and social nature and interest happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

PARTY(ies)

City of Benwood

NATURE (and agency if heard before one)

bond waterworks

CERTIF-BILL TO

STEPTOE & JOHNSON
POB 1588
Charleston WV 25326

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

| TIMES | DATES |
|-------|-----------------------|
| two | Feb 24, March 3, 2011 |

| BY WORDS | PUBLICATION CHARGES |
|-----------|---------------------|
| 492@.2012 | \$98.99 |

(signed) Marian Walton



NOTARIZATION
 Taken, sworn to and subscribed before me this 8th day of March, 2011.
 LINDA M. MASSIE
 Moundsville, Daily Echo
 P. O. Box 369
 Moundsville, West Virginia 26041
 My Commission Expires Jan. 7, 2016
 Notary public Linda Massie

**LEGAL ADVERTISEMENT
NOTICE OF PUBLIC HEARING
ON THE CITY OF BENWOOD BOND
ORDINANCE**

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of the City of Benwood (the "City") to be held on Tuesday, March 8, 2011, at 7:00 p.m. at the City Hall, Benwood, 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:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF BENWOOD AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$2,050,000 IN ORIGINAL AGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA INFRASTRUCTURE FUND), 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 A LOAN AGREEMENT RELATING TO SUCH BONDS; 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 pay the costs of acquisition and construction of certain extensions, additions, betterments and improvements

to the public waterworks system of the issuer, and (ii) to pay certain costs of issuance hereof and related costs. The

Bonds are payable from the revenue 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 Benwood on February 22, 2011. A certified copy of the above-entitled 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/ Judy Hunt
Clerk

PUBLISH: February 24, March 2011.

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

WesBanco Bank, Inc., McMechen, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Benwood (the "Issuer") enacted by the Issuer on March 8, 2011, and a Supplemental Resolution adopted by the Issuer on March 8, 2011 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated March 17, 2011, in the aggregate principal amount of \$1,550,000 (the "Series 2011 A Bonds"), and agrees to serve as Depository Bank in connection with the Series 2011 A Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 17th day of March, 2011.

WESBANCO BANK, INC.

By: 
Its: Authorized Officer

03.01.11
066650.00004

CH5435201

CITY OF BENWOOD

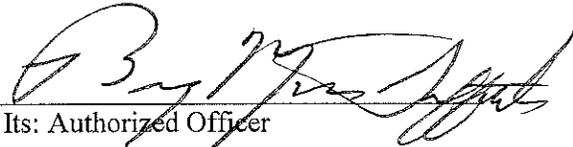
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

ACCEPTANCE OF DUTIES AS REGISTRAR

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Benwood Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated March 17, 2011, in the principal amount of \$1,550,000 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 17th day of March, 2011.

THE HUNTINGTON NATIONAL BANK

By: 
Its: Authorized Officer

03.01.11
066650.00004

CITY OF BENWOOD

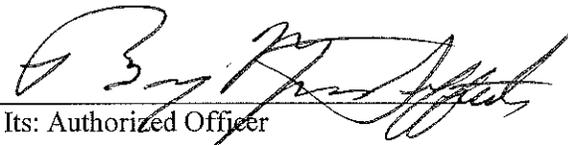
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned bond issue of the City of Benwood (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered City of Benwood Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), of the Issuer, dated March 17, 2011, in the principal amount of \$1,550,000, numbered AR-1, was registered as to principal only in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 17th day of March, 2011.

THE HUNTINGTON NATIONAL BANK

By: 
Its: Authorized Officer

03.02.11
066650.00004

CITY OF BENWOOD

Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 17th day of March, 2011, by and between the CITY OF BENWOOD, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,550,000 principal amount of Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), dated the date hereof, in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted March 8, 2011, and a Supplemental Resolution of the Issuer duly adopted March 8, 2011 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: City of Benwood
430 Main Street
Benwood, West Virginia 26031
Attention: Mayor

REGISTRAR: The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301
Attention: Corporate Trust Department

8. The Registrar shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The registrar shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Registrar to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or other legal available remedies.

9. The Registrar is hereby requested and authorized to authenticate, register and deliver the Bonds in accordance with the Bond Legislation.

10. 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.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first written above.

CITY OF BENWOOD

By: Edward M. Kuca, Jr.
Its: Mayor

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

03.02.11
066650.00004

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first written above.

CITY OF BENWOOD

By: _____
Its: Mayor

THE HUNTINGTON NATIONAL BANK

By: 
Its: Authorized Officer

03.02.11
066650.00004

EXHIBIT A

Included in transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

STATEMENT OF REGISTRAR'S FEES

Account Number 6089001809

City of Benwood
Water Revenue Bonds, Series 2011 A
c/o John C. Stump
Steptoe & Johnson PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

FEE CALCULATION

| | |
|--------------|------------------|
| TOTAL AMOUNT | \$ 500.00 |
| TOTAL DUE | <u>\$ 500.00</u> |

MAIL CHECK TO:
THE HUNTINGTON NATIONAL BANK
ATTN: BARRY GRIFFITH – WE3013
PO BOX 633
CHARLESTON, WV 25322-0633

PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304) 348-5035

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301
Telephone (304) 558-2981

PERMIT

(Water)

PROJECT: Water System Improvements

PERMIT NO.: 18,495

LOCATION: Benwood

COUNTY: Marshall

DATE: 2-8-2010

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

City of Benwood
430 Main Street
Benwood, West Virginia 26031

is hereby granted approval to: install approximately 1,818 LF of 6" and 245 LF of 2" water line; replace gate valves; replace meter settings; clean the existing North Tank; clean, repair and paint the existing South Tank and enclose the tank with a minimum six (6) feet high fence with a lockable gate; add a 250 GPM duplex booster emergency pump station with a 3" turbine meter station; make improvements to the existing well system and chemical feed system; calibrate existing turbine water meters; and all necessary valves and appurtenances.

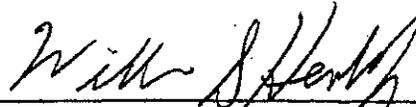
Facilities are to serve the City of Benwood.

NOTE: This permit is contingent upon all new water lines and the cleaned water storage tanks being disinfected, flushed and bacteriologically tested, prior to use.

The Environmental Engineering Division of the **OEHS-Wheeling District Office**, (304) 238-1145, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR



William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:bms

pc: ✓ Dunn Engineers, Inc.
Amy Swann, PSC
James W. Ellars, P.E., PSC-Engineering Division
Marshall County HD
OEHS-EED Wheeling DO



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: March 17, 2011
Re: City of Benwood, Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund)

1. DISBURSEMENTS TO CITY OF BENWOOD

Payor: West Virginia Infrastructure and Jobs Development Council
Source: Series 2011 A Bonds Proceeds
Amount: \$178,759.95
Form: Wire
Payee: City of Benwood, 430 Main Street, Benwood, WV 26031
ABA No: 043400036
Account No: 152003456
Bank: WesBanco Bank, Inc., 613 Marshall Street, McMechen, WV 26040
Contact: JoAnn Kotur, 304.232.5750
Account: Series 2011 A Bonds Construction Trust Fund

2. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

Payor: West Virginia Infrastructure and Jobs Development Council
Source: Series 2011 A Bonds Proceeds
Amount: \$40,000
Form: Wire
Payee: City of Benwood, 430 Main Street, Benwood, WV 26031
ABA No: 051503394
Account No: 5270517317
Bank: BB&T for the benefit of Municipal Bond Commission
Contact: Sara Boardman
Purpose: Fund Series 2011 A Bonds Reserve Account

03.02.11
066650.00004

CH5435187

**RESOLUTION OF THE CITY OF BENWOOD
APPROVING INVOICES RELATING TO SERVICES FOR THE
WATER SYSTEM IMPROVEMENT PROJECT
AND AUTHORIZING PAYMENT THEREOF,**

WHEREAS, the City of Benwood, has reviewed the invoices attached hereto and incorporated herein by reference relation to the Project funded by the West Virginia Infrastructure Fund (IJDC) and find as follows:

- a) That none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made.
- b) That each item for which the payment is proposed to be paid is or was necessary in connection with the Project and constitutes a Cost of the project.
- c) That each of such costs has been otherwise properly incurred.
- d) That the payment for each of the items proposed is due and owing.

NOW, THEREFOR, BE IT RESOLVED the City of Benwood by as follows: There is hereby authorized and directed the payment of the attached invoices as follows:

| Vendor | Total | IJDC |
|-----------------------------------|-------------------|-------------------|
| Step toe & Johnson (Bond Counsel) | 20,000.00 | 20,000.00 |
| Huntington Bank (Registrar) | 500.00 | 500.00 |
| Griffith & Associates | 18,889.06 | 18,889.06 |
| Step toe & Johnson (PSC Counsel) | 8,000.00 | 8,000.00 |
| Belomar Regional Council | 17,048.72 | 17,048.72 |
| Belomar Regional Council | 14,322.17 | 14,322.17 |
| Dunn Engineers | 100,000.00 | 100,000.00 |
| MBC – Reserves | 40,000.00 | 40,000.00 |
| | | |
| Total | 218,759.95 | 218,759.95 |

ADOPTED BY the City of Benwood, at the meeting held on the 8th day of March, 2011.

City of Benwood

By: Edward M. Kuca Jr.

Its: Mayor

SWEEP RESOLUTION

WHEREAS, the City of Benwood (the "Issuer") is a governmental body and political subdivision of West Virginia;

WHEREAS, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

WHEREAS, the Issuer makes monthly debt service payments on the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

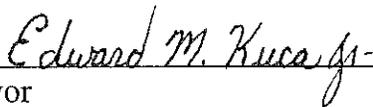
WHEREAS, the MBC may accept such monthly payments by electronic funds transfer thereby eliminating delay in payments and lost checks;

WHEREAS, the Issuer find and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic transfer with the State Treasurer **sweeping** the Issuer's account.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

- 1) The monthly debt service payments on the Bonds, as set forth in Exhibit A, shall be made to the MBC by electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.
- 2) Mayor and Clerk are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.
- 3) This resolution shall be effective immediately upon adoption.

Adopted this 8th day of March, 2011.



Mayor

WV Infrastructure & Jobs Development Council

Certification of Bidder Regarding Compliance with the
WV Jobs Act (SB 103) WV Code 21-1C-1

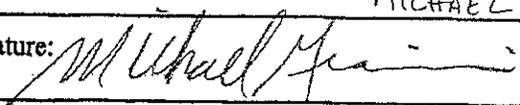
WV JOBS ACT REQUIREMENTS

- (a) Contractors shall hire at least 75% of employees for the project from the local labor market.
- At least two employees from outside local labor market permissible for each employer
 - Employees shall have resided in the local labor market
- (b) Any employer unable to employ the minimum number of employees from the local labor market shall provide the nearest office of the Division of Employment Services, Bureau of Employment Programs the following:
- (1) the number of qualified employees needed; and
 - (2) a job description of positions to be filled
- (c) If, within 3 business days following the placing of the job order with the Division of Employment Services (the "Division"), the Division is unable to refer any qualified applicants to the employer or refers less qualified job applicants than the number requested, then the Division shall issue a waiver to the employer stating the unavailability of applicants and permit the employer to fill any positions covered by the waiver from outside the local labor market.

CONTRACTOR REQUIREMENTS

The contractor hereby agrees to the following:

- (a) The contractor will comply with the Act and will file or cause to be filed with the WV Division of Labor and the Infrastructure Council copies of waiver certificates and certified payrolls as required by the Act, or other comparable documents that include the number of employees, the county and state where the employees reside and their occupation
- (b) the contractor will follow the procedure established by the Division of Labor for efficient collection of the data;
- (c) the contractor will ensure that each subcontract for shall contain provisions conforming to the requirement of the Act
- (d) the contractor will provide with each pay requisition a certification that the contract is in compliance with the Act

| | |
|--|---------------|
| Name & Title of Signer (Please type) | |
| MICHAEL GIANNI, PRESIDENT | |
| Signature:  | Date: 1/27/11 |

WV Infrastructure & Jobs Development Council

Certification of Bidder Regarding Compliance with the
WV Jobs Act (SB 103) WV Code 21-1C-1

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- (b) the contractor will follow the procedure established by the Division of Labor for efficient collection of the data;
- (c) the contractor will ensure that each subcontract for shall contain provisions conforming to the requirement of the Act
- (d) the contractor will provide with each pay requisition a certification that the contract is in compliance with the Act

| | |
|--|---------------------|
| Name & Title of Signer (Please type) <i>W.D. Caswell</i> | |
| Signature: <i>W.D. Caswell</i> | Date <i>1/27/11</i> |

CITY OF BENWOOD

Water Revenue Bonds, Series 1992 A and Series 1992 B

BOND ORDINANCE

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CITY OF BENWOOD

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE CITY OF BENWOOD, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$600,000 IN TOTAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1992 A AND SERIES 1992 B, SUCH BONDS TO BE JUNIOR AND SUBORDINATE TO THE OUTSTANDING 1972 BONDS OF THE CITY; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

THE COUNCIL OF THE CITY OF BENWOOD HEREBY ORDAINS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS
AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance is adopted and enacted pursuant to the provisions of Chapter 8, Article 19, of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. The City of Benwood is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The City of Benwood (the "Issuer"), in the County of Marshall, State of West Virginia, is now served by a public waterworks system, but such system is not adequate. The inhabitants of the Issuer and surrounding area served by the system urgently require that the system be improved as herein provide.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed additions, betterments and improvements to the existing waterworks system of the Issuer consisting of a water storage tank, two wells, transmission lines and chlorination

facilities, and all necessary appurtenant facilities (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Clerk of the Issuer. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. The estimated revenues to be derived in each year from the operation of the System (as hereinafter defined) after completion of the Project will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the 1992 Bonds and the 1972 Bonds (all as hereinafter defined) and all debt service, reserve account and other payments provided for herein.

D. It is necessary for the Issuer to issue its revenue bonds in the total aggregate principal amount of \$600,000 in two series, being the 1992 A Bonds in the aggregate principal amount of \$510,000 and the 1992 B Bonds in the aggregate principal amount of \$90,000 to permanently finance the costs of the Project in the manner hereinafter provided.

E. The estimated maximum cost of the acquisition and construction of the Project is \$600,000, all of which will be obtained from the proceeds of sale of the 1992 Bonds herein authorized.

F. The cost of such acquisition and construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the acquisition of any necessary property, real or personal, or interest therein; interest on the 1992 Bonds prior to, during and for 6 months after estimated completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the acquisition and construction of the Project and financing authorized hereby; provided that, reimbursement to the Issuer for any amounts expended by it for allowable Costs prior to the issuance of the 1992 Bonds or for the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project.

G. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. There is an outstanding obligation of the Issuer which will rank senior and prior to the 1992 Bonds as to liens, pledge and

source of and security for payment, being the Waterworks Revenue Bonds, Series B, of the Issuer, dated January 1, 1972 (the "1972 Bonds") issued in the original aggregate principal amount of \$211,000, originally issued to the United States Department of Housing and Urban Development, and now held by or through General Electric Capital Corporation. The Issuer is not in default under the terms of the 1972 Bonds or the 1972 Ordinance, as herein defined, and has complied with all requirements thereof with respect to the issuance of subordinate bonds or has obtained a sufficient and valid waiver thereof. Other than the 1972 Bonds, there are no other bonds or obligations outstanding which will rank prior to or on a parity with the 1992 Bonds as to liens, pledge and/or source of and security for payment.

I. It is in the best interest of the Issuer that the 1992 Bonds be sold to the United States Department of Agriculture, Farmers Home Administration (the "Purchaser"), pursuant to the terms and provisions of a Letter of Conditions dated July 6, 1990, an amended Letter of Conditions dated March 13, 1991, and all amendments thereto (collectively, the "Letter of Conditions").

J. The Issuer has complied with all requirements of law relating to authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the 1992 Bonds, or will have so complied prior to issuance of the 1992 Bonds, including, among other things and without limitation, obtaining a certificate of convenience and necessity for the Project from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired. The rates, charges and rules provided in Article VI hereof are in full force and effect and have not been changed by said Public Service Commission.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the 1992 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 set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the registered owner of the 1992 Bonds.

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

"Act" means Chapter 8, Article 19, of the West Virginia Code of 1931, as amended.

"1992 A Bond" or "1992 A Bonds" means the \$510,000 Water Revenue Bond, Series 1992 A, authorized hereby to be issued pursuant to this Bond Legislation.

"1992 B Bond" or "1992 B Bonds" means the \$90,000 Water Revenue Bond, Series 1992 B, authorized hereby to be issued pursuant to the Bond Legislation.

"1992 Bond" or "1992 Bonds" means, collectively or individually, without distinction, the 1992 A Bond and the 1992 B Bond.

"Bond Legislation" means this Ordinance and all ordinances and resolutions supplemental hereto.

"Bonds" means, collectively, the 1992 Bonds and the 1972 Bonds.

"1972 Bonds" means the Waterworks Revenue Bonds, Series B, of the Issuer, dated January 1, 1972, issued in the original principal amount of \$211,000.

"Clerk" or "Recorder" means the City Clerk of the Issuer.

"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 Engineer" means Cerrone & Associates, Wheeling, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Costs" or "Costs of the Project" mean those costs described in Section 1.02F hereof to be a part of the cost of acquisition and construction of the Project.

"Depository Bank" means United National Bank-North, Wheeling, West Virginia, a bank or trust company which is a member of FDIC (herein defined), and its successors and assigns.

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"FDIC" means the Federal Deposit Insurance Corporation.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the City Council of the Issuer.

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

"Herein" or "herein" means in this Bond Legislation.

"Holder of the Bonds," "Bondholder," "Registered Owner" or any similar term means any person who shall be the registered owner of any 1992 Bond or Bonds.

"Issuer" or "Borrower" means the City of Benwood, in Marshall County, West Virginia, and includes the Governing Body.

"Letter of Conditions" means the Letter of Conditions of the Purchaser dated July 6, 1990, an amended Letter of Conditions of the Purchaser dated March 13, 1991, and all amendments thereto.

"Mayor" means the Mayor of the Issuer.

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

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles.

"Ordinances" means, collectively, the 1972 Ordinance and the Bond Legislation.

"1972 Ordinance" means, collectively, the ordinance of the Issuer enacted August 9, 1955, as supplemented by the supplemental ordinance of the Issuer enacted February 27, 1973, pursuant to which the 1972 Bonds were issued.

"Project" shall have the meaning stated in Section 1.02B above.

"Purchaser" or "Government" means United States Department of Agriculture, Farmers Home Administration, and any successor thereof.

"Qualified Investments" means and includes any of the following, to the extent such investments are permitted by law:

(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 State Board of Investments pursuant to Chapter 12, Article 6 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 or Standard & Poor's Corporation.

"Registrar" or "Bond Registrar" means the Issuer, which shall usually so act by its Clerk.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the

operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance.

"System" means the waterworks of the Issuer as enlarged, expanded and improved by the Project and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system, and shall also include any and all additions, extensions, improvements, betterments, properties or other facilities at any time acquired or constructed for the waterworks system of the Issuer.

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 neuter gender shall include any other gender.

Section 1.05. Compliance with Requirements of 1972 Ordinance and 1972 Bonds. The issuance of the 1992 Bonds junior and subordinate to the 1972 Bonds is permitted under the terms of the 1972 Ordinance and the 1972 Bonds, and the Issuer has complied with the terms of the 1972 Ordinance and the 1972 Bonds with respect to the issuance of the 1992 Bonds or obtained a waiver thereof. The Issuer is not in default under the terms of the 1972 Ordinance, the 1972 Bonds, or any document or agreement in connection therewith and has complied with all requirements of all the foregoing with respect to the issuance of the 1992 Bonds.

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 \$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 1992 Bonds hereby authorized shall be applied as provided in Article IV hereof.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF 1992 BONDS

Section 3.01. Authorization of 1992 Bonds. Subject and pursuant to the provisions of this Bond Legislation, the bonds of the Issuer, to be known as "Water Revenue Bond, Series 1992 A" and "Water Revenue Bond, Series 1992 B" are hereby authorized to be issued in the respective principal amounts of \$510,000 and \$90,000 for a total aggregate principal amount of not exceeding \$600,000 for the purpose of permanently financing a portion of the cost of the acquisition and construction of the Project.

Section 3.02. Description of 1992 Bonds. A. The 1992 A Bond shall be issued in single form, numbered AR-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The 1992 A Bond shall bear interest from the date of delivery, payable monthly at the rate of 7% per annum or such lesser rate as may be set forth in a Supplemental Resolution and/or the 1992 A Bond upon delivery and shall be sold for the par value thereof.

B. The 1992 B Bond shall be issued in single form, numbered BR-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The 1992 B Bond shall bear interest from the date of delivery, payable monthly at the rate of 7% per annum or such lesser rate as may be set forth in a Supplemental Resolution and/or the 1992 B Bond upon delivery and shall be sold for the par value thereof.

The 1992 Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in a Supplemental Resolution and/or the 1992 Bonds upon delivery.

Section 3.03. Negotiability, Registration, Transfer and Exchange of 1992 Bonds. The 1992 Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the 1992 Bonds, and the right to the principal of and stated interest thereon, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the applicable 1992 Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar. No interest on the 1992 Bonds shall be transferable except by means of

transfer of registration of a 1992 Bond or 1992 Bonds representing such interest and delivery of a new 1992 Bond or 1992 Bonds in exchange therefor in accordance with this Bond Legislation.

Whenever any 1992 Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new 1992 Bond or 1992 Bonds in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of any 1992 Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the 1992 Bonds.

Section 3.04. Registrar. The Registrar will keep or cause to be kept at its office by its agent, sufficient books for the registration and transfer of the 1992 Bonds, and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register each 1992 Bond initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of any 1992 Bond as hereinbefore provided.

The Registrar shall accept a 1992 Bond for registration or transfer only if ownership thereof is to be registered in the name of the Government, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust, and/or such other identifying number and information as may be required by law. The 1992 Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America, Farmers Home Administration. So long as the 1992 Bonds shall be registered in the name of the United States of America, Farmers Home Administration, the address of the United States of America, Farmers Home Administration, for registration purposes shall be Post Office Box 678, Morgantown, West Virginia 26505, or such other address as shall be stated in writing to the Issuer by the United States of America, Farmers Home Administration.

Section 3.05. Execution of 1992 Bonds. The 1992 Bonds shall be executed in the name of the Issuer by the Mayor and its

corporate seal shall be affixed thereto and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed the 1992 Bonds shall cease to be such officer of the Issuer before the 1992 Bonds so signed and sealed have been actually sold and delivered, such 1992 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such 1992 Bonds had not ceased to hold such office. Any 1992 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such 1992 Bonds shall hold the proper office in the Issuer, although at the date of such 1992 Bonds such person may not have held such office or may not have been so authorized.

Section 3.06. 1992 Bonds Mutilated, Destroyed, Stolen or Lost. In case any 1992 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new 1992 Bond of like tenor as the 1992 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated 1992 Bond or in lieu of and substitution for the 1992 Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The 1992 Bond so surrendered shall be canceled and held for the account of the Issuer. If the 1992 Bond shall have matured or be about to mature, instead of issuing a substitute 1992 Bond the Issuer may pay the same, and, if such 1992 Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. 1992 Bonds Secured by Junior and Subordinate Pledge of Gross Revenues. The payment of the debt service of the 1992 Bonds shall be secured forthwith equally and ratably with each other by a lien on the Gross Revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for, BUT JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE, SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, TO THE 1972 BONDS. The Gross Revenues derived from the System in an amount sufficient to pay the principal of and interest on the 1992 Bonds, and to make the payments hereinafter provided, are hereby irrevocably pledged to the payment of installments of the principal and interest on the 1992 Bonds as the same become due as herein provided, all JUNIOR AND SUBORDINATE TO THE 1972 BONDS.

Section 3.08. Form of 1992 Bonds. Subject to the provisions hereof, the text of the 1992 Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any ordinance or resolution adopted after the date of

adoption hereof and prior to the issuance thereof, including, without limitation, a Supplemental Resolution:

(FORM OF 1992 BONDS)

WATER REVENUE BOND, SERIES 1992 _____

CITY OF BENWOOD

\$ _____

No. ___ R-1

Date: _____

FOR VALUE RECEIVED, the CITY OF BENWOOD (herein called "Borrower") promises to pay to the order of the United States of America, Farmers Home Administration (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of _____ THOUSAND DOLLARS (\$ _____), plus interest on the unpaid principal balance at the rate of _____% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due

under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, betterments and improvements to the waterworks system (the "System") of Borrower, is payable solely from the gross revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute an indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19, of the West Virginia Code, as amended (herein called the "Act"), and with an Ordinance of Borrower duly adopted and enacted authorizing issuance of this Bond (as supplemented, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

This Bond is on a parity with respect to liens, pledge and source of and security for payment, and in all other respects, with the Water Revenue Bond, Series 1992 _____, issued concurrently herewith in the original aggregate principal amount of \$ _____ (the "1992 _____ Bond").

THIS BOND AND THE 1992 _____ BOND ARE JUNIOR AND SUBORDINATE TO THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B, DATED JANUARY 1, 1972, ORIGINALLY ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$211,000 (THE "1972 BONDS") WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS.

CITY OF BENWOOD

(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Mayor

(Title of Executive Official)

430 Main Street

(P.O. Box No. or Street Address)

Benwood, West Virginia 26031

(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Clerk

(Title of Attesting Official)

(Form of)

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|-------------|---------------|-------------|
| (1) \$ _____ | | (6) \$ _____ | |
| (2) \$ _____ | | (7) \$ _____ | |
| (3) \$ _____ | | (8) \$ _____ | |
| (4) \$ _____ | | (9) \$ _____ | |
| (5) \$ _____ | | (10) \$ _____ | |
| | TOTAL | \$ _____ | |

(Form of Assignment)

ASSIGNMENT

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

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 Borrower with full power of substitution in the premises.

Dated: _____, _____.

In presence of:

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF 1992 BONDS PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created and established (or continued if previously established by the 1972 Ordinance) with, and shall be held by, the Depository Bank separate, distinct and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund (established by the 1972 Ordinance and continued hereby);
- (2) Depreciation Account (established by the 1972 Ordinance and continued hereby);
- (3) Series 1992 Bonds Reserve Fund (the "Reserve Fund"); and
- (4) Project Construction Account.

Section 4.02. Continuation of Funds and Accounts Relating to 1972 Bonds with Commission. The following special funds or accounts previously established by the 1972 Ordinance with the Commission are hereby continued, until all of the 1972 Bonds and interest thereon have been paid in full:

- (1) Sinking Fund (1972 Bonds); and therein
- (2) Debt Service Reserve (1972 Bonds).

Section 4.03. 1992 Bond Proceeds; Project Construction Account. The proceeds of sale of the 1992 Bonds shall be deposited on receipt by the Issuer in the Project Construction Account. The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Moneys in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the 1992 Bonds if there are not sufficient Gross Revenues to make such monthly payment.

Pending application as provided in this Section 4.03, money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.04. Covenants of the Issuer as to Revenues and Funds. So long as the 1992 Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 1992 Bonds Reserve Fund, sums sufficient to pay the entire principal of the 1992 Bonds remaining unpaid, together with interest accrued thereon, the Issuer further covenants with the holders of the 1992 Bonds as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all tap fees received, except as otherwise provided in this Ordinance, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided in this Ordinance.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority, subject to and in accordance with the terms of the 1972 Ordinance and this Bond Legislation:

(1) The Issuer shall first, each month, pay from the Revenue Fund to the Commission, for deposit in the Sinking Fund (1972 Bonds), the amount set forth in the 1972 Ordinance for payment of principal of and interest on the 1972 Bonds.

(2) The Issuer shall next, each month, so long as the balance in the Debt Service Reserve (1972 Bonds) is less than \$53,000 or twice the

maximum annual debt service on the 1972 Bonds, whichever is lesser, pay from the Revenue Fund to the Commission the sum of \$200.

(3) The Issuer shall next, on or before the due date of payment of each installment on the 1992 Bonds, transfer from the Revenue Fund and pay to the National Finance Office designated in the 1992 Bonds (or such other place as may be designated pursuant to the 1992 Bonds), the amounts required to pay the interest on the 1992 Bonds, and to amortize the principal of the 1992 Bonds over the respective lives of each 1992 Bond issue. All payments with respect to the principal of and interest on the 1992 Bonds shall be made on an equal pro rata basis in accordance with the respective aggregate principal amounts thereof outstanding and on a parity with each other.

(4) The Issuer shall next, each month, transfer from the Revenue Fund and deposit into the Reserve Fund, $1/12$ th of $1/10$ th of the maximum annual aggregate amount of interest and principal which will fall due on the 1992 Bonds until the amount in the Reserve Fund equals such maximum annual aggregate amount of interest and principal, such sum being herein called the "Reserve Requirement." After the Reserve Requirement has been accumulated in the Reserve Fund, the Issuer shall monthly pay into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of maturing principal of and interest on the 1992 Bonds, as shall be required to maintain the Reserve Requirement. Moneys in the Reserve Fund shall be used solely to make up any deficiency of revenues for payment of the principal of and interest on the 1992 Bonds as the same shall become due, on a pro rata basis and a parity with each other, or for mandatory prepayment of principal of the 1992 Bonds, pro rata, as hereinafter provided, and for no other purpose.

(5) The Issuer shall next, each month, from the moneys in the Revenue Fund, pay the Operating Expenses for the previous month.

(6) The Issuer shall next, each month, transfer from the Revenue Fund and deposit in the Depreciation Account a sum equal to not less than 5% of the Gross Revenues derived from the operation of the System during the preceding Fiscal Year until the 1972 Bonds are fully paid, and thereafter shall deposit all remaining moneys in the Revenue Fund into the Depreciation Account until there has been accumulated therein the sum of \$20,000, and thereafter such sums as shall be required to maintain such amount therein. Moneys in the Depreciation Account shall be used by the Issuer first to make up any deficiencies for monthly payments of principal of and interest on the 1972 Bonds and next to restore to the Debt Service Reserve (1972 Bonds) any sum or sums transferred therefrom to pay such principal or interest and, thereafter, to meet principal, interest and reserve payments upon the 1992 Bonds, on a subordinate basis, to the extent that moneys in the Reserve Fund are insufficient therefor. Thereafter, and provided that payments into the Debt Service Reserve (1972 Bonds) and the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Depreciation Account may be withdrawn by the Issuer and used for extensions, replacements and improvements of the System, or any part thereof.

(7) After all the foregoing provisions for use of moneys in the Revenue Fund, as the case may be, have been fully complied with, any moneys remaining therein may be used to prepay installments of the 1972 Bonds, and, thereafter, to prepay installments of the 1992 Bonds, or for any lawful purpose in connection with the System.

Whenever the moneys in the Reserve Fund shall be sufficient to pay or prepay the 1992 Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary in this Ordinance notwithstanding, to pay or prepay, at the earliest practical date and in accordance with applicable provisions of this Ordinance, the 1992 Bonds and accrued interest thereon to such payment or prepayment date.

All the funds provided for in this Section (excluding the Project Construction Account) shall constitute trust funds and shall be used only for the purposes and in the order provided herein and in the 1972 Ordinance and until so used the holders of the 1992 Bonds shall have a lien thereon for further securing payment of the 1992 Bonds and the interest thereon, which lien shall be junior and subordinate to the lien in favor of the holders of the 1972 Bonds, but the Depository Bank shall not be a trustee of any of such funds. The moneys in excess of the sum insured by FDIC in the Revenue Fund, the Reserve Fund and the Depreciation Account shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove and in the 1972 Ordinance provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Issuer shall keep the moneys in the Reserve Fund and the Depreciation Account invested and reinvested to the fullest extent practicable and in accordance with applicable law in Government Obligations having maturities not exceeding 2 years. Subject to the 1972 Ordinance so long as the 1972 Bonds are outstanding, investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of the cost or the then current market value, or at the redemption price thereof if redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia State Board of Investments. Subject to the 1972 Ordinance so long as the 1972 Bonds are outstanding, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund.

C. USER CONTRACTS. The Issuer shall, prior to delivery of the 1992 Bonds, provide evidence that the System will serve 626 bona fide full time users, in full compliance with the requirements and conditions of the Purchaser.

D. CHANGE OF DEPOSITORY BANK. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or

its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Depository Bank then due.

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

ARTICLE V

GENERAL COVENANTS, ETC.

Section 5.01. General Statement. So long as the 1992 Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the 1992 Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 5.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Gross Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the maximum annual debt service on the 1992 Bonds (after provision for payment of the 1972 Bonds) and sufficient to make the payments required herein into the Reserve Fund and the Depreciation Account and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 5.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the 1992 Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04. Issuance of Additional Parity Bonds or Obligations. No additional parity bonds or obligations payable out of Revenues of the System shall be issued after the issuance of the 1992 Bonds pursuant hereto except with the prior written consent of the Purchaser.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the 1992 Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon

any portion of the System now in use, on all above-ground structures of the System in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the 1992 Bonds.

C. VEHICULAR PUBLIC LIABILITY INSURANCE, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

D. WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF THE ISSUER ELIGIBLE THEREFOR AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code

Section 38-2-39. Workers' Compensation coverage will be maintained as provided by law.

E. FIDELITY BONDS will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any Revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount of \$10,000 upon the Clerk, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

F. Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the 1992 Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage. For the further protection of the holders of the 1992 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 and shall take effect immediately upon the delivery of the 1992 Bonds, but junior and subordinate to the statutory mortgage lien in favor of the holders of the 1972 Bonds.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

A. Failure to make payment of any monthly amortization installment upon any 1992 Bond at the date specified for payment thereof;

B. Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the 1992 Bonds or herein, or violation of or

failure to observe any provision of any pertinent law.

Section 5.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser as provided in the Act, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct and as provided in the Act.

Section 5.09. Fiscal Year; Budget. While the 1992 Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten per centum; and provided further that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Clerk on the date of enactment hereof, subject to permitted changes.

Section 5.11. Books and Records; Audits. The Issuer will keep books, accounts and records of the System, in accordance with the Act, 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, including, without limitation, the amount of Revenues received from the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants, which report of such audit shall be open to the public for inspection at all reasonable times, and the Issuer shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.12. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and repair and maintain the System as a revenue-producing utility as herein provided so long as the 1992 Bonds are outstanding.

Section 5.13. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules.

A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as set forth in the rate ordinance of the Issuer finally enacted on December 28, 1984, which rate ordinance is incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer, board or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and Revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

D. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

E. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises. The Issuer shall additionally have such powers as provided under the Act with respect to collection of rates and charges for the System.

F. No allowance or adjustment in any bill for use of the services and facilities of the System shall be made for any leakage occurring on the customer's side of the water meter.

G. The Issuer shall not be liable to any customer for any damage resulting from bursting or breakage of any pipe, line, main, valve, equipment or part or from discontinuance of the operation of

any part of the System or from failure of any part thereof for any cause whatever.

H. In case of emergency, the Issuer shall have the right to restrict the use of any part of the System in any reasonable manner for the protection of the System and the inhabitants of the Issuer.

I. The fees, rates and charges above provided will be increased whenever such increase is necessary in order to comply fully with all provisions hereof, and the Issuer shall always be obligated to and shall fix, establish and collect fees, rates and charges for the services and facilities of the System which shall at all times be sufficient to provide Net Revenues to meet its obligations hereunder and under the 1972 Ordinance, but in any event, not less than 110% of the annual debt service on all 1992 Bonds outstanding.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Payment of 1992 Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the 1992 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the 1992 Bonds, the pledge of Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the 1992 Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 7.02. Modification or Amendment. No modification or amendment of this Bond Legislation, or of any ordinance or resolution amendatory hereof or supplemental hereto, may be made without the prior consent in writing of the Purchaser.

Section 7.03. Delivery of 1992 Bonds Nos. AR-1 and BR-1. The Mayor is hereby authorized and directed to cause 1992 Bonds Nos. AR-1 and BR-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the 1992 Bonds.

Section 7.05. 1972 Ordinance Provisions Continued; Conflicting Provisions Repealed. The 1972 Ordinance and all parts thereof not expressly changed hereby or heretofore changed shall continue in full force and effect and this Bond Legislation shall be supplemental to the 1972 Ordinance.

All other ordinances, resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 7.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof

are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.07. 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 and enactment 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, Clerk 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 7.08. Effective Time. This Bond Legislation shall take effect following public hearing hereon in accordance with the Act.

Section 7.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation, 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 14 consecutive days, with at least 6 full days intervening between each publication, in the Wheeling News Register and the Moundsville Daily Echo, two newspapers of general circulation in the City of Benwood, no qualified newspaper being published therein, together with a notice stating that this Ordinance has been adopted, that the Issuer contemplates the issuance of the 1992 Bonds, that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice and not prior to the last date of such publication, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during the office hours of the Governing Body.

At such hearing, all protests and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

| | |
|---|-------------------|
| Passed on First Reading | February 18, 1992 |
| Passed on Second Reading | February 25, 1992 |
| Passed on Final Reading | |
| Following Public Hearing and Effective | March 10, 1992 |



Mayor



Clerk

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF BENWOOD on the 10th day of March, 1992.

Dated: March 17, 1992

[SEAL]

Carroll J. Smith
Clerk

03/12/92
BENJ.A3
06665/91001

CITY OF BENWOOD

Water Revenue Bonds, Series 1992 A and Series 1992 B

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE INTEREST RATE AND AMORTIZED MONTHLY PAYMENTS OF THE WATER REVENUE BONDS, SERIES 1992 A AND SERIES 1992 B, OF THE CITY OF BENWOOD; AND MAKING OTHER PROVISIONS AS TO THE BONDS

WHEREAS, the city council (the "Governing Body") of the CITY OF BENWOOD (the "Issuer"), has duly and officially enacted an ordinance effective March 10, 1992 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE CITY OF BENWOOD, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$600,000 IN TOTAL AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1992 A AND SERIES 1992 B, SUCH BONDS TO BE JUNIOR AND SUBORDINATE TO THE OUTSTANDING 1972 BONDS OF THE CITY; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

WHEREAS, the Bond Ordinance provides for the issuance of the Water Revenue Bonds, Series 1992 A and Series 1992 B, of the Issuer (collectively, the "Bonds"), in a total aggregate principal amount of not to exceed \$600,000, all in accordance with West Virginia Code, Chapter 8, Article 19 (the "Act"); and in the Bond Ordinance, it is provided that the interest rate on the Bonds would be 7% per annum or such lesser rate as set forth in a supplemental resolution and/or the respective Bond upon delivery and the interest and principal payment amounts would be as set forth in a supplemental resolution and/or the respective Bond upon delivery;

WHEREAS, the Bonds are proposed to be purchased by the United States Department of Agriculture, Farmers Home Administration (the "Purchaser") pursuant to the Letter of Conditions of the Purchaser, as amended;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the interest rate and the interest and principal payment amounts of the Bonds be fixed 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 BENWOOD:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and the following terms of the Bonds are hereby authorized and ordered:

A. The Water Revenue Bond, Series 1992 A, No. AR-1, of the Issuer, issued in the original principal amount of \$510,000, shall bear interest at the rate of 5.75% per annum, and the amortized monthly payment of principal of and interest on this Bond shall be \$2,760.

B. The Water Revenue Bond, Series 1992 B, No. BR-1, of the Issuer, issued in the original principal amount of \$90,000, shall bear interest at the rate of 5.75% per annum, and the amortized monthly payment of principal of and interest on this Bond shall be \$487.

Section 2. The Mayor and Clerk are hereby authorized and directed to execute and deliver such other documents, instruments, agreements 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 March 17, 1992, to the Purchaser.

Section 3. This Supplemental Resolution shall be effective immediately.

Adopted this 10th day of March, 1992.

CITY OF BENWOOD

Anthony J. Scalfidi

Mayor

Carrolla Symaris

Clerk

03/05/92
BENJ.02
06665/91001

SPECIMEN BOND

WATER REVENUE BOND, SERIES 1992 A

CITY OF BENWOOD

\$510,000

No. AR-1

Date: March 17, 1992

FOR VALUE RECEIVED, the CITY OF BENWOOD (herein called "Borrower") promises to pay to the order of the United States of America, Farmers Home Administration (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FIVE HUNDRED AND TEN THOUSAND DOLLARS (\$510,000), plus interest on the unpaid principal balance at the rate of 5.75% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$2,760, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

7A

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, betterments and improvements to the waterworks system (the "System") of Borrower, is payable solely from the gross revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute an indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized

in writing, at the office of Borrower, as Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19, of the West Virginia Code, as amended (herein called the "Act"), and with an Ordinance of Borrower duly adopted and enacted authorizing issuance of this Bond (as supplemented, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

This Bond is on a parity with respect to liens, pledge and source of and security for payment, and in all other respects, with the Water Revenue Bond, Series 1992 B, issued concurrently herewith in the original aggregate principal amount of \$90,000 (the "1992 B Bond").

THIS BOND AND THE 1992 B BOND ARE JUNIOR AND SUBORDINATE TO THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B, DATED JANUARY 1, 1972, ORIGINALLY ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$211,000 (THE "1972 BONDS") WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS.

CITY OF BENWOOD

[CORPORATE SEAL]

Mayor
430 Main Street
Benwood, West Virginia 26031

ATTEST:

Clerk

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|--------|------|---------|----------|
| (1) \$ | | (6) \$ | |
| (2) \$ | | (7) \$ | |
| (3) \$ | | (8) \$ | |
| (4) \$ | | (9) \$ | |
| (5) \$ | | (10) \$ | |
| | | TOTAL | \$ _____ |

ASSIGNMENT

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

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 Borrower with full power of substitution in the premises.

Dated: _____, _____.

In presence of:

SPECIMEN BOND

WATER REVENUE BOND, SERIES 1992 B

CITY OF BENWOOD

\$90,000

No. BR-1

Date: March 17, 1992

FOR VALUE RECEIVED, the CITY OF BENWOOD (herein called "Borrower") promises to pay to the order of the United States of America, Farmers Home Administration (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of NINETY THOUSAND DOLLARS (\$90,000), plus interest on the unpaid principal balance at the rate of 5.75% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$487, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

7B

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, betterments and improvements to the waterworks system (the "System") of Borrower, is payable solely from the gross revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute an indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized

in writing, at the office of Borrower, as Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19, of the West Virginia Code, as amended (herein called the "Act"), and with an Ordinance of Borrower duly adopted and enacted authorizing issuance of this Bond (as supplemented, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

This Bond is on a parity with respect to liens, pledge and source of and security for payment, and in all other respects, with the Water Revenue Bond, Series 1992 A, issued concurrently herewith in the original aggregate principal amount of \$510,000 (the "1992 A Bond").

THIS BOND AND THE 1992 A BOND ARE JUNIOR AND SUBORDINATE TO THE ISSUER'S WATERWORKS REVENUE BONDS, SERIES B, DATED JANUARY 1, 1972, ORIGINALLY ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$211,000 (THE "1972 BONDS") WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS.

CITY OF BENWOOD

[CORPORATE SEAL]

Mayor
430 Main Street
Benwood, West Virginia 26031

ATTEST:

Clerk

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|--------------|------|---------------|----------|
| (1) \$ _____ | | (6) \$ _____ | |
| (2) \$ _____ | | (7) \$ _____ | |
| (3) \$ _____ | | (8) \$ _____ | |
| (4) \$ _____ | | (9) \$ _____ | |
| (5) \$ _____ | | (10) \$ _____ | |
| | | TOTAL | \$ _____ |

ASSIGNMENT

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

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 Borrower with full power of substitution in the premises.

Dated: _____, _____.

In presence of:



**United States Department of Agriculture
Rural Development**
West Virginia State Office

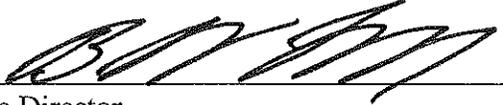
March 17, 2011

City of Benwood
Water Revenue Bonds, Series 2011 A
(West Virginia Infrastructure Fund)

TO WHOM IT MAY CONCERN:

The undersigned duly authorized representative of the United States of America, acting through the Rural Utilities Service, United States Department of Agriculture, the present holder of the Prior Bonds, hereinafter defined and described, hereby (a) consents to the issuance of the Water Revenue Bonds, Series 2011 A (West Virginia Infrastructure Fund), in the original aggregate principal amount not to exceed \$1,550,000 (the "Series 2011 A Bonds"), by the City of Benwood (the "Issuer"), under the terms of the bond ordinance authorizing the issuance of the Bonds (the "Ordinance"), on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding: (i) Water Revenue Bonds, Series 1992 A, dated March 17, 1992, issued in the original aggregate principal amount of \$510,000 (the "Series 1992 A Bonds") and (ii) Water Revenue Bonds, Series 1992 B, dated March 17, 1992, issued in the original aggregate principal amount of \$90,000 (the "Series 1992 B Bonds") (collectively, the "Prior Bonds"); (b) waives any requirements imposed by the Prior Bonds or the ordinance authorizing the Prior Bonds (the "Prior Ordinance"), regarding the issuance of parity bonds which are not met by the Bonds or the Ordinance; and (c) consents to any amendments made to the Prior Ordinances by the Ordinance.

WITNESSETH my signature on this 17th day of March, 2011.



State Director

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

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