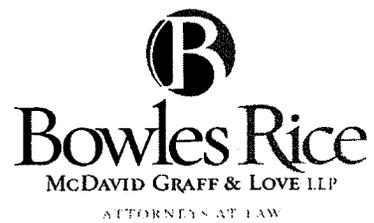


**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS  
REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**Date of Closing: January 28, 2010**



**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**Date of Closing: January 28, 2010**

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2. Supplemental Resolution
3. ARRA Assistance Agreement
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**CITY OF BRIDGEPORT**  
**STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES**  
**2010B**

**(WVCWSRF PROGRAM/ARRA)**

**BOND ORDINANCE**

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**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**BOND ORDINANCE**

ORDINANCE AUTHORIZING CERTAIN STORMWATER SYSTEM IMPROVEMENTS AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF BRIDGEPORT OF NOT MORE THAN TWO MILLION DOLLARS (\$2,000,000.00) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF BRIDGEPORT STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT (GREEN RESERVE); AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

## ARTICLE I

### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order, ordinance or resolution supplemental hereto or amendatory hereof, the “Bond Legislation”) is enacted pursuant to the provisions of Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the “Act”) and other applicable provisions of law.

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

A. City of Bridgeport (the “Issuer”) is a municipal corporation and political subdivision of the State of West Virginia (the “State”) in Harrison County of said State.

B. The Issuer has deemed it necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain stormwater system improvements as further described in Exhibit A hereto (collectively, the “Project”).

C. The estimated maximum cost of the construction of the Project and issuance of the Series 2010B Bonds, as hereinafter defined, is approximately \$2,000,000, which will be permanently financed solely with the proceeds of the Issuer’s Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF PROGRAM/ARRA) (the “Series 2010B Bonds”) herein authorized.

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the Project will be sufficient to pay the principal of and interest, if any, on the Series 2010B Bonds, and all sinking funds, reserve accounts and other payments provided for herein.

E. It is further deemed necessary for the Issuer to issue the Series 2010B Bonds, in the total aggregate principal amount of not more than \$2,000,000, to permanently finance all of the costs of the Project. Said costs of the Project shall be deemed to include the cost of construction, reconstruction, establishment or acquisition of the Project, the cost of all land, property rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful, convenient or incidental therefor; interest, if any, upon the Series 2010B Bonds prior to and during construction and acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2010B Bonds Reserve Account, as hereinafter defined; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Bondholder (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2010B 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 2010B Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

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

G. It is in the best interests of the Issuer that its Series 2010B Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA Assistance Agreement (Green Reserve) by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in substantially the form as submitted to the Council of the Issuer (the "ARRA Assistance Agreement"), which ARRA Assistance Agreement is hereby approved.

H. There are no outstanding obligations of the Issuer payable from the revenues of the Project or otherwise encumbering the Project.

I. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition, construction and operation of the Project and the issuance of the Series 2010B Bonds or will have so complied prior to issuance of any thereof.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2010B Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds, as the case may be, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

"Agreement" means that certain Agreement by and between the Issuer and Genesis Partners, Limited Partnership, a West Virginia limited partnership, relating to the Project.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement (Green Reserve) heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2010B Bonds from the Issuer by the Authority, the form of which is approved, and the execution and delivery by the Issuer authorized and directed or ratified, by this Ordinance.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2010B Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

“Authorized Officer” means the Mayor or any acting Mayor duly appointed as such by the Governing Body.

“Bondholder,” “Holder of the Bonds,” “Holder” 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.

“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.

“Bonds” means the Series 2010B Bonds and, where appropriate, any Bonds on a parity therewith authorized to be issued hereunder or by another ordinance of the Issuer.

“Certificate of Authentication and Registration” means the certificate of authentication and registration on the Series 2010B Bonds in substantially the form set forth in the bond form contained herein.

“Closing Date” means the date upon which there is an exchange of the Series 2010B Bonds for an advance of more than a de minimis amount of the principal of the Series 2010B Bonds from the Bondholder.

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

“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 Thrasher Engineering, Inc., Clarksburg, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the Project 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, commission, or political subdivisions.

“Costs” or “Costs of the Project” means those costs described in Section 1.02 E hereof to be a part of the cost of acquisition and construction of the Project.

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

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

“Event of Default” means any occurrence or event specified in Section 9.01.

“FDIC” means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Council of the Issuer, as it may now or hereafter be constituted.

“Government Obligations” means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, including without limitation (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the Project, 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 Section 8.01 hereof).

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

“Independent Certified Public Accountants” shall mean any public accountant or certified public accountant or firm of public accountants or 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 Project or for any other purpose except keeping the accounts of the Project in the normal operation of its business and affairs.

“Issuer” means City of Bridgeport, a municipal corporation and political subdivision of the State, in Harrison County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer and any commission, board or department established by the Issuer to operate and maintain the Project.

“Mayor” means the Mayor of the Issuer.

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

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the Project 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 (all as herein defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

“Parity Bonds” means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.05 hereof.

“Paying Agent” means the West Virginia Municipal Bond Commission, or such entity or authority as may be designated by the Issuer with the consent of the Bondholder.

“Project” means the project described in Exhibit A attached hereto.

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

A. Government Obligations;

B. 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;

C. 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;

D. Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

E. Money market funds or similar funds whose only assets are investments of the type described in paragraphs (A) through (D) above;

F. Repurchase agreements, fully secured by investments of the types described in paragraphs (A) through (D) 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;

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

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

“Recorder” means the Recorder, Clerk, or Administrator of the Issuer.

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

“Registrar” means the Bond Registrar.

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

“Revenue Fund” means the Revenue Fund established or continued by Section 5.01 hereof.

“Series 2010B Bonds Reserve Account” means the Series 2010B Bonds Reserve Account established pursuant to Section 5.02 hereof.

“Series 2010B Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2010B Bonds in the then concurrent or any succeeding year.

“Series 2010B Bonds” means the not more than \$2,000,000 in aggregate principal amount of Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA), of the Issuer, authorized by this Ordinance.

“Series 2010B Bonds Construction Trust Fund” means the Series 2010B Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2010B Bonds Sinking Fund” means the Series 2010B Bonds Sinking Fund established by Section 5.02 hereof.

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

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

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the Supplemental Resolution authorizing the sale of the Series 2010B Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2010B Bonds and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, as further defined in Section 5.03(C) hereof.

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

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.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Ordinance; and the term “hereafter” means after the date of enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

## 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 the acquisition and construction of the Project, at an estimated cost of not to exceed \$2,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority and the DEP. The proceeds of the Series 2010B Bonds hereby authorized shall be applied as provided in Article VI hereof.

The Issuer has entered or will enter into a contract or contracts for the acquisition and construction of the Project, including the Agreement.

The cost of the Project is estimated not to exceed \$2,000,000, which is to be paid solely from the proceeds of the Series 2010B Bonds and in no event shall the Issuer be obligated to pay any cost of the Project from any source other than the proceeds of the Series 2010B Bonds.

## ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2010B Bonds, funding a reserve account for the Series 2010B Bonds, paying Costs of the Project not otherwise provided for, and paying certain costs of issuance of the Series 2010B Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2010B Bonds of the Issuer, in an aggregate principal amount of not more than \$2,000,000. The Series 2010B Bonds shall be issued initially as a single bond, to be designated "Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA)," in the aggregate principal amount of not more than \$2,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010B Bonds remaining after the funding of the Series 2010B Bonds Reserve Account (if funded from the Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2010B Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2010B Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Series 2010B Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2010B Bonds, if any, shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2010B Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2010B Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2010B Bonds shall be exchangeable at the option and expense of the Holder for other fully registered 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 or by a separate bond ordinance.

The Bonds shall be dated as of the date specified in a Supplemental Resolution or separate bond ordinance and shall bear interest, if any, as provided in such Supplemental Resolution or separate bond ordinance.

Section 3.03. Execution of Bonds. The Series 2010B Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Series 2010B Bonds shall cease to be such officer of the Issuer before the Series 2010B 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 2010B Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. The Bond Registrar for the Series 2010B Bonds shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 2010B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 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 2010B Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2010B 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 any of said Series 2010B 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 Bond shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 2010B Bonds remain Outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain the books for the registration and transfer of the Series 2010B Bonds.

The registered Series 2010B Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2010B Bonds or transferring the registered Series 2010B Bonds are exercised, Series 2010B Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2010B Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2010B Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2010B Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2010B Bonds or, in the case of any proposed redemption of Series 2010B Bonds, next preceding the date of the selection of Series 2010B 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 2010B Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2010B Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the Project as herein provided and amounts, if any, in the Series 2010B Bonds Reserve Account. No holder or holders of any of the Series 2010B Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010B Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Series 2010B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the Project. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2010B Bonds 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 2010B Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2010B 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 2010B 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 2010B Bonds to the original purchasers;

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

D. An executed copy of the ARRA Assistance Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2010B Bonds.

Section 3.10. Form of Series 2010B Bonds. The text of the Series 2010B Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Series 2010B Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BOND,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)

No. BR-\_\_\_\_\_

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That CITY OF BRIDGEPORT, a municipal corporation and political subdivision of the State of West Virginia in Harrison County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_ to and including \_\_\_\_\_ 1, 20\_\_\_\_, as set forth in 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 100% forgivable as set forth in the ARRA Assistance Agreement described below.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (Green Reserve) by and among the Issuer, the Authority and the DEP, dated \_\_\_\_\_, 2010.

This Bond is issued (i) to permanently finance all of the costs of the construction of certain stormwater system improvements further described in the Bond Legislation, as hereinafter defined (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. 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 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on January 25, 2010, and a Supplemental Resolution duly adopted by the Issuer on January 25, 2010 (collectively called 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 securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the Project and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2010B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2010B Bonds Reserve Account and unexpended proceeds of the Bonds. 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 \_\_\_\_\_, as Registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, 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 Net Revenues of the Project has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, CITY OF BRIDGEPORT has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 20\_\_\_\_.

CITY OF BRIDGEPORT

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2010B 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: \_\_\_\_\_.

\_\_\_\_\_,  
as Registrar

By: \_\_\_\_\_

**EXHIBIT A**  
**RECORD OF ADVANCES**

	<u>Amount</u>	<u>Date</u>		<u>Amount</u>	<u>Date</u>
(1)	\$		(7)	\$	
(2)	\$		(8)	\$	
(3)	\$		(9)	\$	
(4)	\$		(10)	\$	
(5)	\$		(11)	\$	
(6)	\$		(12)	\$	

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 Series Bonds; Approval and Ratification of Execution of ARRA Assistance Agreement. The Series 2010B Bonds shall be sold to the Authority, pursuant to the terms and conditions of the ARRA Assistance Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the ARRA Assistance Agreement and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the ARRA Assistance Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The form of the ARRA Assistance Agreement shall be approved or ratified by the Supplemental Resolution.

Section 3.12. “Amended Schedule” Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP setting forth the actual costs of the Project and sources of funds therefor.

**ARTICLE IV**

**[RESERVED]**

## ARTICLE V

### FUNDS AND ACCOUNTS; PROJECT REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- A. Revenue Fund; and
- B. Series 2010B Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with the Commission:

- A. Series 2010B Bonds Sinking Fund; and
- B. Series 2010B Bonds Reserve Account.

Section 5.03. Project Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the Project shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

1. The Issuer shall first, each month, pay from the moneys in the Revenue Fund all Operating Expenses of the Project.

2. The Issuer shall next, on the first day of each month, beginning on the date 3 months prior to the first principal payment date of the Series 2010B Bonds, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 2010B Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010B 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 2010B Bonds Sinking Fund and the next ensuing quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing 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, beginning with the first day of the month in which the Issuer is obligated to commence remitting principal payments to the Commission with respect to the Series 2010B Bonds pursuant to Section 5.03.A.2 above, transfer from the Revenue Fund and remit to the Commission for deposit in the

Series 2010B Bonds Reserve Account, if not fully funded upon issuance of the Series 2010B Bonds, an amount equal to 1/120 of the Series 2010B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2010B 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 2010B Bonds Reserve Requirement.

Moneys in the Series 2010B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2010B Bonds as the same shall become due. Moneys in the Series 2010B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2010B Bonds, as the same shall come due, when other moneys in the Series 2010B Bonds Sinking Fund are insufficient therefor, and for no other purpose; provided that, upon the occurrence of an Event of Default as described in Section 9.01 hereof, the moneys on deposit in the Series 2010B Bonds Reserve Account shall be paid on the principal of the Series 2010B Bonds.

All investment earnings on moneys in the Series 2010B Bonds Sinking Fund and Series 2010B Bonds Reserve Account (if equal to at least the Series 2010B Bonds Reserve Requirement) 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 2010B Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing principal payment due on the Series 2010B Bonds.

Any withdrawals from the Series 2010B Bonds Reserve Account which result in a reduction in the balance of the Series 2010B Bonds Reserve Account to below the Series 2010B Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2010B 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 therefor.

The Issuer shall not be required to make any further payments into the Series 2010B Bonds Sinking Fund or into the Series 2010B Bonds Reserve Account when the aggregate amount of funds in said Series 2010B Bonds Sinking Fund, and Series 2010B Bonds Reserve Account are at least equal to the aggregate principal amount of the Series 2010B Bonds then Outstanding and all interest to accrue until the respective maturities thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2010B Bonds Sinking Fund and the Series 2010B 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.

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.

Moneys in the Series 2010B Bonds Sinking Fund and the Series 2010B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2010B Bonds Sinking Fund shall be used solely and only for, and is hereby pledged for, the purpose of servicing the Series 2010B Bonds under the conditions and restrictions set forth herein. The Series 2010B Bonds Reserve Account shall be used solely and only for, and is hereby pledged for, the purpose of servicing the Series 2010B Bonds when the amounts in the Series 2010B Bonds Sinking Fund are not adequate to do so.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve account payments with respect to the Series 2010B 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.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds and accounts, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds and accounts 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 Project.

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

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the

same order as payments are to be made pursuant to this section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Series 2010B Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2010B Bonds, there shall first be deposited with the Commission in the Series 2010B Bonds Sinking Fund, the amount, if any, specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2010B Bonds for the period commencing on the date of issuance of the Series 2010B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2010B Bonds, there shall be deposited with the Commission in the Series 2010B Bonds Reserve Account the sum, if any, set forth in the Supplemental Resolution for funding of the Series 2010B Bonds Reserve Account.

C. Next, from the proceeds of the Series 2010B Bonds, there shall first be credited to the Series 2010B Bonds Construction Trust Fund and then paid, any and all borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, together with interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer.

D. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2010B Bonds, such moneys shall be deposited with the Depository Bank in the Series 2010B Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2010B Bonds.

E. After completion of construction of the Project, as certified by the Consulting Engineers, and all Costs have been paid, any remaining proceeds of the Series 2010B Bonds shall be applied as directed by the DEP.

Section 6.02. Disbursements From the Series 2010B Bonds Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 2010B Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments of all Costs of the Project shall be made monthly unless otherwise agreed to by the DEP.

Except as provided in Section 6.01 hereof, disbursements from the Series 2010B Bonds Construction Trust Fund shall be made only after submission to, and approval from the DEP, of a completed "Payment Requisition Form," signed by the Mayor or other duly authorized

representative of the Issuer, in a form acceptable to the Authority and the DEP, in compliance with the construction schedule.

All payments made from the Series 2010B Bonds Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Series 2010B Bonds Construction Trust Fund.

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

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2010B 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 2010B 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 said Series 2010B Bonds or the interest thereon, if any, is Outstanding and unpaid.

Section 7.02. Series 2010B Bonds not to be Indebtedness of the Issuer. The Series 2010B Bonds shall not be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any of the Series 2010B Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2010B Bonds or the interest, if any, thereon.

Section 7.03. Series 2010B Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2010B Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the Project. Net Revenues derived from the Project in an amount sufficient to pay the principal of and interest, if any, on the Series 2010B Bonds are hereby irrevocably pledged, in the manner provided herein, to such payments as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. So long as the Series 2010B Bonds are Outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the Project sufficient to provide Net Revenues in an amount sufficient to pay the principal of the Series 2010B Bonds as such principal becomes due and payable.

Section 7.05. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. So long as any of the Series 2010B Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the Project which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2010B Bonds unless it has received the prior written consent of the Authority.

Section 7.06. Books and Records. The Issuer shall keep complete and accurate records of costs of constructing and installing the Project. The Issuer shall permit the DEP and the Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the DEP and the Authority such documents and information as it may

reasonably require in connection with the acquisition, construction and installation of the Project, and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the DEP and the Authority, or its agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the DEP and the Authority, or its agents and representatives, with access to the Project site as may be reasonably necessary to accomplish all of the powers and rights of the DEP and the Authority with respect to the Project pursuant to the Act.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as promulgated from time to time.

Section 7.07. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers, 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 DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP 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 DEP 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 DEP 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.

Section 7.08. Completion and Operation of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible, but in no event shall the Issuer be obligated to pay any Cost of the Project from any source other than the proceeds of the Series 2010B Bonds.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project and all approvals for issuance of the Series 2010B Bonds required by state law, with all requisite appeal periods having expired without successful appeal and the Issuer shall provide an opinion of counsel to such effect.

Section 7.09. Compliance With ARRA Assistance Agreement and Law. The Issuer shall perform, satisfy and comply with all terms and conditions of the ARRA Assistance Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with all copies submitted to the Authority.

The Issuer also agrees to comply with the Act and all applicable laws, rules and regulations issued by the Authority and the DEP or other state, federal or local bodies in regard to the acquisition and construction of the Project.

To the extent required by the Authority, the Issuer shall perform the annual maintenance audits as required by the Act and shall submit such audits to the DEP, the Authority and the PSC.

The Issuer shall serve the additional customers, if any, described in the ARRA Assistance Agreement and shall not reduce the amount of additional customers served without the written approval of the Board of the Authority.

Notwithstanding any provision herein to the contrary, the Issuer shall not be obligated to incur any costs relating to the Project other than those payable from the proceeds of the Series 2010B Bonds.

Section 7.10. Securities Laws 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 7.11. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2010B Bonds immediately enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2010B 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 DEP before expending any proceeds of the Series 2010B Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

### INVESTMENT OF FUNDS

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys 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 moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own 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 if reasonably requested by the Issuer), a summary of such funds, accounts, and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding.

Section 8.02. Use of Proceeds. The Issuer shall furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2010B 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 2010B Bonds:

A. If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2010B Bonds; or

B. If default occurs in the Issuer’s observance of any of the covenants, agreements or conditions on its part relating to the Series 2010B Bonds, set forth in this Bond Legislation, any supplemental resolution or in the Series 2010B Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of a Bond; or

C. If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

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

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Series 2010B Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of all Series 2010B Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010B 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 the issuance of the Series 2010B Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010B Bonds, no material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2010B Bonds shall be made without the consent in writing of the Holders of the Series 2010B Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Holders of the Series 2010B 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 2010B 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. 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.

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, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Before this Ordinance becomes effective, an abstract of this Ordinance, substantially in the form attached hereto as Exhibit B,

which is determined by the Issuer 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 a qualified newspaper published and of general circulation in the City of Bridgeport, together with the notice set forth therein stating that this Ordinance has been adopted on first reading and that the Issuer contemplates the issuance of the Series 2010B Bonds, and 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 present protests, and that a certified copy of the Ordinance is on file in the office of the City Clerk for review by interested parties during the office hours of the City Clerk.

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.

Section 11.08. Effective Date. This Ordinance shall take effect following the public hearing described in Section 11.07 above.

Passed on First Reading

January 11, 2010

Passed on Second Reading  
and effective following  
public hearing held on

January 25, 2010

  
\_\_\_\_\_  
Recorder

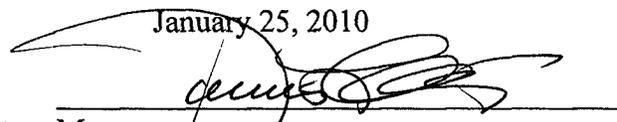
  
\_\_\_\_\_  
Mayor

Exhibit A

**DESCRIPTION OF PROJECT**

Those certain stormwater system improvements described as Contract # 1: Westfork Watershed Improvement Project Watershed Drainage Project and Contract # 2: Westfork Watershed Improvement Project Green Infrastructure Project in Bridgeport, West Virginia.

Exhibit B

**NOTICE OF PUBLIC HEARING**

CITY OF BRIDGEPORT  
NOTICE OF PUBLIC HEARING  
ON STORMWATER SYSTEM IMPROVEMENTS REVENUE BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Bridgeport to be held on Monday, January 25, 2010, at 7:00 p.m., in the Council Chambers at the Bridgeport City Hall, 515 West Main Street, Bridgeport, West Virginia, and at such hearing all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING CERTAIN STORMWATER SYSTEM IMPROVEMENTS AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF BRIDGEPORT OF NOT MORE THAN TWO MILLION DOLLARS (\$2,000,000.00) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF BRIDGEPORT STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT (GREEN RESERVE); AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The Council of the City of Bridgeport adopted the above-entitled Ordinance on first reading on January 11, 2010 and will consider and take final action on the enactment of the above-entitled Ordinance on January 25, 2010, which will grant final approval for the issuance of the Bonds described in said Ordinance.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issue contemplated thereby. The Bonds are to provide permanent financing of the costs of stormwater system improvements. The Bonds are payable solely from revenues derived from the projects to be financed with the proceeds of the Bonds. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the City Clerk of the City of Bridgeport for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to put said Ordinance into effect.

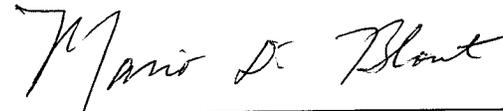
Dated: \_\_\_\_\_, 2010.

/s/ Mario D. Blount, Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF BRIDGEPORT on the 25<sup>th</sup> day of January, 2010, and put into effect following a public hearing held on the 25<sup>th</sup> day of January, 2010.

Dated: January 28, 2010.

  
\_\_\_\_\_  
Recorder

[SEAL]

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**SUPPLEMENTAL RESOLUTION**

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PRINCIPAL PAYMENT DATES, REDEMPTION PROVISIONS, SALE PRICE AND OTHER TERMS OF THE STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA) OF THE CITY OF BRIDGEPORT; AUTHORIZING, RATIFYING AND APPROVING AN ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A BONDS REGISTRAR, DEPOSITORY BANK, AND PAYING AGENT; MAKING OTHER PROVISIONS AS TO THE BONDS; AND APPROVING INVOICES RELATING TO SUCH BONDS AND THE STORMWATER SYSTEM IMPROVEMENTS TO BE FINANCED THEREBY AND AUTHORIZING PAYMENT OF THE SAME.

WHEREAS, the City Council (the "Governing Body") of the City of Bridgeport (the "Issuer") has duly and officially enacted an Ordinance earlier on the date hereof, and has put such Ordinance into effect following a public hearing held earlier on the date hereof (the "Ordinance") entitled:

ORDINANCE AUTHORIZING CERTAIN STORMWATER SYSTEM IMPROVEMENTS AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF BRIDGEPORT OF NOT MORE THAN TWO MILLION DOLLARS (\$2,000,000.00) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF BRIDGEPORT STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT (GREEN RESERVE); 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 meanings set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the issuance by the Issuer of not more than Two Million Dollars (\$2,000,000.00) in aggregate principal amount of revenue bonds to be designated Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA) (the "Series 2010B Bonds"), and has preliminarily authorized the execution and delivery of an ARRA Assistance Agreement (Green Reserve) relating to the Series 2010B Bonds, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the DEP"), all in accordance with Chapter 8, Article 16 of the West Virginia Code of 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate of rates, principal payment dates, redemption provisions, sale price and other terms of the Series 2010B Bonds should be established by a supplemental resolution pertaining to the Series 2010B Bonds; and that other matters relating to the Series 2010B Bonds be herein provided for;

WHEREAS, the form of the ARRA Assistance Agreement relating to the Series 2010B Bonds has been presented to the Issuer at this meeting for final ratification and approval;

WHEREAS, the Series 2010B Bonds are proposed to be purchased by the Authority on behalf of the DEP pursuant to the ARRA Assistance Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the ARRA Assistance Agreement be finally ratified, approved and entered into by the Issuer, that the exact principal amount, date, maturity date, interest rate, principal payment dates, redemption provisions, sale price and other terms of the Series 2010B Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 2010B Bonds be herein provided for;

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

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA) of the Issuer, originally represented by a single bond, numbered BR-1, in the principal amount of \$1,978,974.00. The Series 2010B Bonds shall be dated the date of delivery thereof, shall finally mature on December 1, 2020, shall bear no interest, shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, as long as the Authority shall be registered owner of the Series 2010B Bonds, and shall be payable quarterly by forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, in the amounts as set forth in the Schedule Y attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2010B Bonds.

Section 2. All other provisions relating to the Series 2010B Bonds and the text of the Series 2010B Bonds shall be as provided in the Ordinance.

Section 3. The Issuer does hereby authorize, ratify, approve and accept the form of the ARRA Assistance Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the ARRA Assistance Agreement by the Mayor and the Recorder and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed. The price of the Series 2010B Bonds shall be 100% of par value, there being no interest accrued thereon. The proceeds of the Series 2010B Bonds shall be advanced from time to time as requisitioned by the Issuer, and at closing, there shall be requisitioned and advanced a portion of the proceeds of the Series 2010B Bonds in the amount of \$98,949.00, being more than a de minimis amount with respect to the Series 2010B Bonds. The Issuer hereby affirms all covenants and representations made in the ARRA Assistance Agreement and in the application to the DEP.

Section 4. The Issuer does hereby appoint and designate United Bank, Inc., Charleston, West Virginia, to serve as Registrar for the Series 2010B Bonds (the "Registrar") and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Series 2010B 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 Series 2010B Bonds under the Ordinance.

Section 6. The Issuer does hereby appoint and designate WesBanco Bank, Inc., Bridgeport, West Virginia, to serve as Depository Bank under the Ordinance.

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

Section 8. The Series 2010B Bonds proceeds in the amount of \$-0- shall be deposited in a Series 2010B Bonds Reserve Account.

Section 9. The remaining proceeds of the Series 2010B Bonds shall be deposited in the Series 2010B Bonds Construction Trust Fund as received from time to time for payment of Costs of the Project, and payment of cost of issuance of the Series 2010B Bonds and the reimbursement of the Issuer of any such Costs paid by the Issuer.

Section 10. The Mayor and Recorder are hereby authorized and directed to execute and deliver the Series 2010B Bonds and such other documents, agreements, instruments and certificates required or desirable in connection with the Series 2010B Bonds hereby and by the Ordinance approved and provided for, and to affix thereon the seal of the Issuer, as appropriate, to the end that the Series 2010B Bonds may be delivered to the Authority pursuant to the ARRA Assistance Agreement on or about January 28, 2010, or as soon thereafter as practicable.

Section 11. The acquisition and construction of the Project and the financing thereof with the proceeds of the Series 2010B Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Governing Body hereby determines that it is in the best interest of the Issuer to invest all monies in the funds and accounts established by the Ordinance held by the Depository Bank in time deposits of the Depository Bank, secured by a pledge of Government Obligations, and therefore the Issuer hereby authorizes and directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such time deposits until further directed by the Issuer. Monies in the Series 2010B Bonds Sinking Fund and the Series 2010B Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 13. All contracts relating to the financing, acquisition and construction of the Project are hereby approved and the Mayor is hereby authorized and directed to execute and deliver all such contracts.

Section 14. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 15. There is hereby authorized and directed the payment of the attached invoices as summarized as follows:

<u>Vendor</u>	<u>Amount</u>
Bowles Rice McDavid Graff & Love LLP (Bond Counsel)	\$18,000.00
United Bank, Inc. (Registrar)	500.00

Section 16. The Terms and Conditions of the ARRA Assistance Agreement are attached as Exhibit A, are agreed to and are incorporated herein by reference.

Section 17. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 25<sup>th</sup> day of January, 2010.

CITY OF BRIDGEPORT

  
\_\_\_\_\_

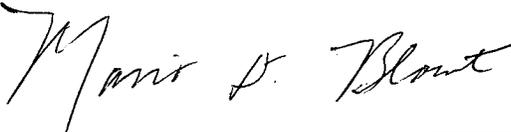
Mayor

**CERTIFICATION**

Certified a true copy of a Supplemental Resolution duly adopted by the City Council of the City of Bridgeport on the 25<sup>th</sup> day of January, 2010.

Dated: January 28, 2010.

[SEAL]

  
\_\_\_\_\_  
Recorder

## EXHIBIT A

### TERMS AND CONDITIONS OF THE ARRA ASSISTANCE AGREEMENT

#### TERMS AND CONDITIONS

A. PUBLIC RELEASE REQUIREMENT — The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) — Effective October 1, 2003, the Local Government that receives \$500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION — The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. [RESERVED]

E. CONTRACTS — The Local Government shall enter into contracts or commence construction by January 28, 2010.

F. LOGO — The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS — The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT — The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of

Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING — The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS — The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS — The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS — The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES — The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE — The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on [www.recovery.gov](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE — Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS — The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title

VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION — Each Local Bond funded by ARRA funds shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. [RESERVED]

SRF-ARRA (GREEN RESERVE)  
(09/09)

ARRA ASSISTANCE AGREEMENT  
(GREEN RESERVE)

THIS WATER POLLUTION CONTROL REVOLVING FUND ARRA ASSISTANCE AGREEMENT (the "ARRA Assistance Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government or other eligible recipient designated below (the "Local Government").

CITY OF BRIDGEPORT (C-547150)  
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, the United States Congress has provided additional capitalization grant funding under the Clean Water Act through the American Recovery and Reinvestment Act of 2009 (the "ARRA") for projects that address energy efficiency, water efficiency, green infrastructure and environmentally innovative processes as well as wastewater and stormwater treatment facilities (the "ARRA Project");

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular Local Governments pursuant to the Clean Water Act and the ARRA;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection

Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans (the "Loans") from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act, the ARRA and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Government; and

WHEREAS, the Local Government intends to construct, is constructing or has constructed an ARRA Project;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

## ARTICLE I

1.1 The Local Government has submitted an application to DEP for the ARRA Project more specifically described in Exhibit A hereto.

1.2 The ARRA Project has been designated as a project eligible for the Green Project Reserve as approved by United States Environmental Protection Agency (the "USEPA").

1.3 The Local Government shall covenant and agree to the terms and conditions with respect to the ARRA Project as set forth on Exhibit B hereto.

1.4 DEP has instructed the Authority to make a forgivable loan to the Local Government with the financial terms and conditions set forth in Exhibit C hereto.

1.5 DEP shall advance the proceeds of the loan for costs incurred with respect to the ARRA Project only upon receipt of invoices approved by DEP.

## ARTICLE II

2.1 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this ARRA Assistance Agreement, in the application or in any other application or documentation with respect to financing the ARRA 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 DEP shall have the right to cancel all or any of their obligations under this ARRA Assistance Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government 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, the SRF Regulations or this ARRA Assistance Agreement.

2.2 If any provision of this ARRA Assistance 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 ARRA Assistance Agreement, and this ARRA Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

2.3 This ARRA Assistance 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 ARRA Assistance Agreement.

2.4 No waiver by any party of any term or condition of this ARRA Assistance 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 ARRA Assistance Agreement.

2.5 This ARRA Assistance 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.

2.6 This ARRA Assistance Agreement shall terminate upon the earlier of: (i) written notice of termination to the Local Government from either the Authority or DEP; or (ii) January 28, 2010, if the ARRA Project is not under construction.

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

CITY OF BRIDGEPORT

(SEAL)

Attest:

Maris D. Blount  
Its: Recorder

By:   
Its: Mayor  
Date: January 28, 2010

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
DIVISION OF WATER AND WASTE MANAGEMENT

By: Scott G. Mandelick  
Its: Acting Director  
Date: January 28, 2010

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

Attest:

Carol A. Cummings  
Its: Secretary-Treasurer

By:   
Its: Executive Director  
Date: January 28, 2010

{C1664136.1}

## EXHIBIT A

### ARRA PROJECT DESCRIPTION

The Project consists of those certain stormwater system improvements described as Contract # 1: Westfork Watershed Improvement Project Watershed Drainage Project and Contract # 2: Westfork Watershed Improvement Project Green Infrastructure Project in Bridgeport, West Virginia.

## EXHIBIT B

### TERMS AND CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives \$500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. [RESERVED]

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by January 28, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of

specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA’s Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of

Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on [www.recovery.gov](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated “Series [2009] B” and shall contain “(WVCWSRF Program/ARRA)” in the bond name.

S. [RESERVED]

EXHIBIT C

DESCRIPTION OF LOCAL BONDS

- A. Series B Bonds (ARRA)  
Principal Amount of Local Bonds \$1,978,974  
Purchase Price of Local Bonds \$1,978,974

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. Principal forgiveness shall begin on March 1, 2011, and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached hereto and incorporated herein by reference for a period of ten years.

The Local Bonds are fully registered in the name of the Authority.

The Local Government shall make monthly payments into the Renewal and Replacement Fund as required for at least the term of the Local Bonds.

The Local Government shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

The Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Entity: N/A.

Number of New Customers to Be Served: 0  
Location: N/A

**SCHEDULE Y**  
**DEBT SERVICE SCHEDULE**

Bridgeport, City of  
10 Years

	Dated Date	1/28/10	
	Delivery Date	1/28/10	
			Series B
<b>Period</b>			<b>Principal</b>
<b>Ending</b>	<b>Debt Service</b>		<b>Forgiveness</b>
12/1/10			
3/1/11	-49,475		-49,475
6/1/11	-49,475		-49,475
9/1/11	-49,475		-49,475
12/1/11	-49,475		-49,475
3/1/12	-49,475		-49,475
6/1/12	-49,475		-49,475
9/1/12	-49,475		-49,475
12/1/12	-49,475		-49,475
3/1/13	-49,475		-49,475
6/1/13	-49,475		-49,475
9/1/13	-49,475		-49,475
12/1/13	-49,475		-49,475
3/1/14	-49,475		-49,475
6/1/14	-49,475		-49,475
9/1/14	-49,475		-49,475
12/1/14	-49,475		-49,475
3/1/15	-49,475		-49,475
6/1/15	-49,475		-49,475
9/1/15	-49,475		-49,475
12/1/15	-49,475		-49,475
3/1/16	-49,475		-49,475
6/1/16	-49,475		-49,475
9/1/16	-49,475		-49,475
12/1/16	-49,475		-49,475
3/1/17	-49,475		-49,475
6/1/17	-49,475		-49,475
9/1/17	-49,473		-49,473
12/1/17	-49,473		-49,473
3/1/18	-49,473		-49,473
6/1/18	-49,473		-49,473
9/1/18	-49,473		-49,473
12/1/18	-49,473		-49,473
3/1/19	-49,473		-49,473
6/1/19	-49,473		-49,473
9/1/19	-49,473		-49,473
12/1/19	-49,473		-49,473
3/1/20	-49,473		-49,473
6/1/20	-49,473		-49,473
9/1/20	-49,473		-49,473
12/1/20	-49,475		-49,475
	-1,978,974		-1,978,974

**CITY OF BRIDGEPORT**  
**STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,**  
**SERIES 2010B**  
**(WVCWSRF PROGRAM/ARRA)**

**CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS**

The undersigned authorized representative of West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority and James R. Christie, Mayor of the City of Bridgeport (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

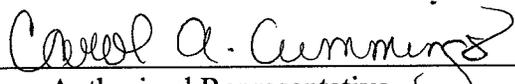
1. On the 28<sup>th</sup> of January, 2010, the Authority received the entire original issue of \$1,978,974 in aggregate principal amount of the City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA) (the "Bonds"), dated January 28, 2010 and issued as a single, fully registered Bond, numbered BR-1.

2. At the time of such receipt of the Bonds upon original issuance, the same had been executed by James R. Christie, as Mayor of the Issuer, by his manual signature, and by Mario D. Blount, as Recorder of the Issuer, by his manual signature, 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 and the West Virginia Department of Environmental Protection (the "DEP"), as the original purchaser of the Bonds, of the sum of \$98,949.00, being a portion of the principal amount of the Bonds, there being no interest accrued thereon. The balance of the proceeds of the Bonds will be advanced from time to time by the Authority and the DEP as the acquisition and construction of the Project progress.

WITNESS our respective signatures as of this 28<sup>th</sup> day of January, 2010.

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By:   
Authorized Representative

CITY OF BRIDGEPORT

By:   
Its: Mayor

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**DIRECTION TO AUTHENTICATE AND DELIVER BONDS**

United Bank, Inc.,  
as Bond Registrar  
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith:

(1) Bond No. BR-1, constituting the entire original issue of the City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA), in the principal amount of \$1,978,974, dated January 28, 2010 (the "Bonds") executed by the Mayor and Recorder of the City of Bridgeport (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance finally enacted by the Council of the Issuer on January 25, 2010, and put into effect following a public hearing held on January 25, 2010, as supplemented and amended by a Supplemental Resolution duly adopted by the Issuer on January 25, 2010 (collectively, the "Bond Ordinance");

(2) A copy of the Bond Ordinance authorizing the issuance of the above-captioned Bonds, duly certified by the Recorder of the Issuer;

(3) An executed ARRA Assistance Agreement by and between the Issuer, the West Virginia Water Development Authority and the West Virginia Department of Environmental Protection, for the Bonds (the "ARRA Assistance Agreement"); and

(5) Signed opinion of nationally recognized bond counsel regarding the validity of the ARRA Assistance Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the account of the Issuer of the sum of \$98,949.00, which amount represent the initial advance of the principal amount of the Bonds, there being no accrued interest thereon. 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 this 28th day of January, 2010.

CITY OF BRIDGEPORT

By: \_\_\_\_\_

Its: Mayor

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BOND,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)

No. BR-1

\$1,978,974.00

KNOW ALL MEN BY THESE PRESENTS: That CITY OF BRIDGEPORT, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 NINE HUNDRED SEVENTY-EIGHT THOUSAND NINE HUNDRED SEVENTY-FOUR AND 00/100 DOLLARS (\$1,978,974.00), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011 to and including December 1, 2020, as set forth in 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 100% forgivable as set forth in the ARRA Assistance Agreement described below.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (Green Reserve) by and among the Issuer, the Authority and the DEP, dated January 28, 2010.

This Bond is issued (i) to permanently finance all of the costs of the construction of certain stormwater system improvements further described in the Bond Legislation, as hereinafter defined (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. 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 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a Bond Ordinance finally enacted by the Issuer on January 25, 2010, and put into effect following a public hearing held on January 25, 2010, as supplemented and amended by a Supplemental Resolution duly adopted by the Issuer on January 25, 2010 (collectively called 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 securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the Project and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2010B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2010B Bonds Reserve Account and unexpended proceeds of the Bonds. 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 United Bank, Inc., as Registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, 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 Net Revenues of the Project has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, CITY OF BRIDGEPORT has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated January 28, 2010.

CITY OF BRIDGEPORT

~~SPECIMEN~~  
*[Handwritten Signature]*

\_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

~~SPECIMEN~~ *Blount*

\_\_\_\_\_  
Recorder

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2010B 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: January 28, 2010.

UNITED BANK, INC.,  
as Registrar

By: \_\_\_\_\_

**SPECIMEN**  
*[Handwritten Signature]*

**EXHIBIT A**  
**RECORD OF ADVANCES**

	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1)	\$ 98,949.00	January 28, 2010	(7)	\$
(2)	\$		(8)	\$
(3)	\$		(9)	\$
(4)	\$		(10)	\$
(5)	\$		(11)	\$
(6)	\$		(12)	\$

**SPECIMEN**

Total \$ \_\_\_\_\_

## EXHIBIT B DEBT SERVICE SCHEDULE

Bridgeport, City of		
10 Years		
	Dated Date	1/28/10
	Delivery Date	1/28/10
		Series B
Period Ending	Debt Service	Principal Forgiveness
12/1/10		
3/1/11	-49,475	-49,475
6/1/11	-49,475	-49,475
9/1/11	-49,475	-49,475
12/1/11	-49,475	-49,475
3/1/12	-49,475	-49,475
6/1/12	-49,475	-49,475
9/1/12	-49,475	-49,475
12/1/12	-49,475	-49,475
3/1/13	-49,475	-49,475
6/1/13	-49,475	-49,475
9/1/13	-49,475	-49,475
12/1/13	-49,475	-49,475
3/1/14	-49,475	-49,475
6/1/14	-49,475	-49,475
9/1/14	-49,475	-49,475
12/1/14	-49,475	-49,475
3/1/15	-49,475	-49,475
6/1/15	-49,475	-49,475
9/1/15	-49,475	-49,475
12/1/15	-49,475	-49,475
3/1/16	-49,475	-49,475
6/1/16	-49,475	-49,475
9/1/16	-49,475	-49,475
12/1/16	-49,475	-49,475
3/1/17	-49,475	-49,475
6/1/17	-49,475	-49,475
9/1/17	-49,473	-49,473
12/1/17	-49,473	-49,473
3/1/18	-49,473	-49,473
6/1/18	-49,473	-49,473
9/1/18	-49,473	-49,473
12/1/18	-49,473	-49,473
3/1/19	-49,473	-49,473
6/1/19	-49,473	-49,473
9/1/19	-49,473	-49,473
12/1/19	-49,473	-49,473
3/1/20	-49,473	-49,473
6/1/20	-49,473	-49,473
9/1/20	-49,473	-49,473
12/1/20	-49,475	-49,475
	-1,978,974	-1,978,974

SPECIMEN

ASSIGNMENT

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

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

SPECIMEN

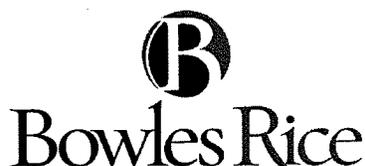
In the presence of  
SPECIMEN

\_\_\_\_\_

101 South Queen Street  
Martinsburg, West Virginia 25401  
(304) 263-0836

7000 Hampton Center  
Morgantown, West Virginia 26505  
(304) 285-2500

5th Floor, United Square  
501 Avery Street  
Parkersburg, West Virginia 26101  
(304) 485-8500



McDAVID GRAFF & LOVE LLP

ATTORNEYS AT LAW

600 Quarrier Street  
Charleston, West Virginia 25301

Post Office Box 1386  
Charleston, West Virginia 25325-1386  
(304) 347-1100

[www.bowlesrice.com](http://www.bowlesrice.com)

January 28, 2010

333 West Vine Street, Suite 1700  
Lexington, Kentucky 40507-1639  
(859) 252-2202

480 West Jubal Early Drive  
Suite 130  
Winchester, Virginia 22601  
(540) 723-8877

2400 Cranberry Square  
Morgantown, West Virginia 26508-9209  
(304) 594-1000

City of Bridgeport  
515 West Main Street  
Bridgeport, West Virginia 26330

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25301

West Virginia Department of  
Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, West Virginia 25304

Re: City of Bridgeport  
Stormwater System Improvements Revenue Bonds  
Series 2010B (WVCWSRF Program/ARRA)

Ladies and Gentlemen:

We have served as Bond Counsel in connection with the issuance by the City of Bridgeport (the "Issuer"), a municipal corporation and political subdivision created and existing under the laws of the State of West Virginia, of its \$1,978,974 Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA) (the "Bonds"), dated the date hereof.

We have examined a certified copy of proceedings and other papers relating to the authorization of a (i) ARRA Assistance Agreement dated January 28, 2010, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") and (ii) the Bonds, which are to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are issued in the principal amount of \$1,978,974, in the form of one bond registered as to principal to the Authority, with no interest and subject to principal forgiveness on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, all as set forth in "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds.

City of Bridgeport  
West Virginia Water Development Authority  
West Virginia Department of Environmental Protection  
January 28, 2010  
Page 2

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 16 of the Code of West Virginia, 1931, as amended (the "Act") for the purposes of (i) permanently financing the costs of the construction of certain stormwater system improvements (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and the Bond Ordinance finally enacted by the Issuer on January 25, 2010, and put into effect following a public hearing held on January 25, 2010, as supplemented by a Supplemental Resolution duly adopted on January 25, 2010 (collectively, the "Bond Ordinance"), pursuant to and under which Act and Bond Ordinance the Bonds are authorized and issued and the ARRA Assistance Agreement has been undertaken. 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 Ordinance and the ARRA Assistance Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance and the ARRA Assistance Agreement.

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 ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer and, assuming due authorization, execution and delivery by the Authority and the DEP, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.
2. The ARRA Assistance Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the consent of the Authority and the DEP.
3. The Issuer is a duly created and validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, Recorder and members of the 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.
4. The Bond Ordinance and all other necessary orders and resolutions have been duly and effectively enacted and adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms.

City of Bridgeport  
West Virginia Water Development Authority  
West Virginia Department of Environmental Protection  
January 28, 2010  
Page 3

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid and legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the Project and secured by a first lien on and pledge of the Net Revenues of said Project, all in accordance with the terms of the Bonds and the Bond Ordinance.

6. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency of the State.

7. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof 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.

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

We have examined the executed and authenticated Bond, No. BR-1, and are of the opinion that the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

BOWLES RICE MCDAVID GRAFF & LOVE LLP

*Bowles Rice McDavid Graff & Love LLP*

Law Offices

# WEST & JONES

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January 28, 2010

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City of Bridgeport  
515 West Main Street  
Bridgeport, West Virginia 26330

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25301

West Virginia Department of  
Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, West Virginia 25304

Bowles Rice McDavid Graff & Love LLP  
600 Quarrier Street  
Charleston, West Virginia 25301

Re: City of Bridgeport  
Stormwater System Improvements Revenue Bonds,  
Series 2010B (WVCWSRF Program/ARRA)

Ladies and Gentlemen:

We are counsel to the City of Bridgeport, a municipal corporation and political subdivision of the State of West Virginia, in Harrison County of said State (the "Issuer"). As such counsel, we have examined (i) the approving opinion of Bowles Rice McDavid Graff & Love LLP, as bond counsel; (ii) the ARRA Assistance Agreement for the above-referenced bonds of the Issuer (the "Bonds") dated January 28, 2010, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), for the Bonds (the "ARRA Assistance Agreement"); (iii) the Bond Ordinance finally enacted by the Issuer on January 25, 2010, and put into effect following a public hearing held on January 25, 2010, as supplemented and amended by a Supplemental Resolution adopted on January 25, 2010, authorizing the issuance of the Bonds (the "Bond Ordinance"); and (iv) other documents, papers, agreements, instruments and certificates relating to the Bonds. All capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Ordinance 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 as follows:

1. The Issuer is duly created and validly existing as a municipal corporation and political subdivision of the State of West Virginia.
2. The ARRA Assistance Agreement has been duly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the Authority and the DEP, constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.
3. The Mayor, Recorder and members of the 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.
4. The Bond Ordinance has been duly enacted and adopted by the Issuer and is in full force and effect.
5. The execution and delivery of the Bonds and the ARRA Assistance Agreement and the consummation of the transactions contemplated by the Bonds, the ARRA Assistance Agreement and the Bond Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any order, resolution, ordinance, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.
6. The Issuer has received, or there have been entered, all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds and the construction of the Project, including, without limitation, all requisite orders, consents, certificates and approvals from the West Virginia Infrastructure and Jobs Development Council, the DEP and the Public Service Commission of West Virginia.

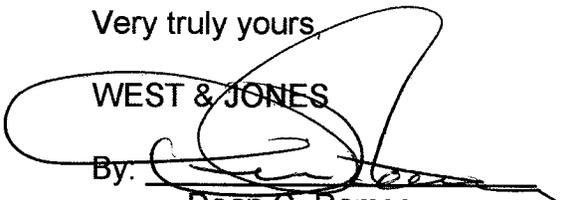
7. There is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the ARRA Assistance Agreement, the Bonds, the Bond Ordinance, the construction of the Project, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

8. We have ascertained that the successful bidders have provided the drug-free workplace affidavit, submitted their drug-free workplace plan, and the contracts contain language that complies with the Drug-Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code of 1931, as amended. We have also ascertained that all successful bidders have made the required provisions for all insurance and payment and performance bonds and verified such insurance policies or binders and such bonds for accuracy. Based upon my 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 (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Bond Ordinance and the ARRA Assistance Agreement; and (5) all such other documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

This opinion may be relied upon by all counsel to the transaction as if specifically addressed thereto.

Very truly yours,

WEST & JONES

By. 

Dean C. Ramsey,  
Its Partner

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September 25, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Title Opinion for ARRA Projects -  
Watershed Drainage and Wetland  
Restoration

Ladies and Gentlemen:

Enclosed are our title opinions regarding the tracts or parcels of land situate in Simpson District-Bridgeport, Harrison County, West Virginia on which the above-referenced projects will be performed. Also, to be enclosed under separate cover is the ALTA/ACSM Land Title Survey Charles Pointe South Charles Pointe Community Enhancement District. The following chart shows the relationship between the title opinions (Tax Map/Parcel Number) and the ALTA/ACSM Land Title Survey Map Designations

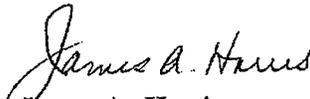
Map No. (ALTA/ACSM Land Title Survey Map Designations)	Letters (Tax Map/Parcel)	Owner	Contract Affected
9	284/14	SVR ONE, LLC	1
38, 39, 40	290/6;7;15	Ann's Run Limited Liability Company	1 & 2
2	289/4	HLC, LP	1 & 2
3, 4	289/5;6	HLC, LP	1 & 2
22	289/51	HLC, LP	1 & 2
26	269/23	HLC, LP	1 & 2
	270/24.4	Julia C. Compton Trust 2003	

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If you have any questions concerning this letter and/or the title opinions, please feel free to contact me. If I am not available Tom Koreski, a Legal Assistant in our office, can discuss the title opinions with you.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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September 24, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: 40 Acres, Simpson District- Bridgeport  
Harrison County, West Virginia

Gentlemen:

Reference is hereby made to our title letters to The County Commission of Harrison County dated June 1, 2007, and December 19, 2008, pertaining to the surface of the six (6) tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, which compose the tract or parcel of land containing forty (40) acres, more or less, conveyed by The County Commission of Harrison County, West Virginia, to the Bridgeport Municipal Building Commission, by deed dated August 27, 2009, of record in said Clerk's office in Deed Book No. 1436, page 259 and to our letters to The County Commission of Harrison County dated December 22, 2008, December 29, 2008, and January 2, 2009, supplementing our said prior title letters, copies of all of which letters are enclosed herewith.

We have again examined the indices to the public records in the Office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all that certain tract or parcel of land situate in the City of Bridgeport, Simpson District, Harrison County, West Virginia, being more particularly bounded and described as follows:

Beginning at a roof bolt found in the westerly right-of-way line of West Virginia State Route 131, being a corner to a Ann's Run Limited

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Liability Company parcel; thence with seven lines of said Ann's Run Limited Liability Company parcels,

N 55° 15' 52" W, 256.51 feet to a rebar set; thence,

N 85° 19' 22" W, 288.71 feet to a rebar set; thence,

S 59° 48' 56" W, passing a rebar set on line at 29.22 feet, in all 59.22 feet to a point in the centerline of a public roadway easement; thence with centerline of said public roadway easement,

with a curve to the left having a radius of 575.00 feet, an arc length of 28.14 feet, a chord bearing of N 31° 35' 11" W, and a chord length of 28.13 feet to a point; thence,

N 32° 59' 17" W, 447.60 feet to a point; thence,

with a curve to the right having a radius of 350.00 feet, an arc length of 424.15 feet, a chord bearing of N 1° 43' 43" E, and a chord length of 398.66 feet to a point; thence,

N 36° 26' 43" E, 272.87 feet to a point, a corner to a Julia C. Compton Trust 2003 parcel; thence continuing with centerline of said public roadway easement and with seven lines of said Julia C. Compton Trust 2003 parcels,

N 36° 26' 43" E, 451.07 feet to a point; thence,

with a curve to the left having a radius of 750.00 feet, an arc length of 146.26 feet, a chord bearing of N 30° 51' 31" E, and a chord length of 146.03 feet to a point; thence,

N 25° 16' 19" E, 233.69 feet to a point; thence,

with a curve to the right having a radius of 835.00 feet, an arc length of 352.28 feet, a chord bearing of N 37° 21' 30" E, and a chord length of 349.67 feet to a point; thence,

N 49° 26' 41" E, 151.29 feet to a point; thence,

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with a curve to the right having a radius of 500.00 feet, an arc length of 20.50 feet, a chord bearing of N 50° 37' 09" E, and a chord length of 20.50 feet to a point; thence,

S 38° 12' 24" E,, 25.20 feet to a rebar set in a line of the Julia C. Compton parcel; thence with twelve lines of said Julia C. Compton parcel,

S 38° 12' 24" E, 29.20 feet to a rebar set; thence,

S 83° 24' 26" E, 70.90 feet to a rebar set; thence,

S 28° 39' 10" E, 131.04 feet to a rebar set; thence,

S 37° 33' 45" E, 118.93 feet to a rebar set; thence,

S 55° 08' 57" E, 108.54 feet to a rebar set; thence,

S 43° 41' 17" E, 70.87 feet to a rebar set; thence,

S 35° 37' 21" E, 34.60 feet to a rebar set; thence,

S 11° 05' 00" E, 46.00 feet to a rebar set; thence,

S 31° 56' 52" E, 97.63 feet to a rebar set; thence,

S 30° 37' 11" W, 145.34 feet to a rebar set; thence,

S 27° 29' 19" W, 152.42 feet to a rebar set; thence,

S 0° 44' 02" E, 10.53 feet to a rebar set in the westerly right-of-way line of West Virginia State Route 131; thence with thirteen lines of said right-of-way,

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S 28° 03' 16" W, 160.89 feet to a point; thence,

S 24° 38' 28" W, 120.24 feet to a point; thence,

S 21° 34' 45" W, 104.51 feet to a point; thence,

S 19° 25' 09" W, 76.60 feet to a point; thence,

S 16° 28' 44" W, 77.77 feet to a point; thence,

S 13° 38' 50" W, 98.05 feet to a point; thence,

S 11° 58' 26" W, 99.52 feet to a point; thence,

S 10° 54' 33" W, 61.73 feet to a point; thence,

S 9° 52' 17" W, 245.11 feet to a point; thence,

S 12° 23' 31" W, 60.44 feet to a point; thence,

S 16° 45' 26" W, 85.39 feet to a point; thence,

S 20° 17' 44" W, 90.82 feet to a point; thence,

S 21° 43' 02" W, 243.31 feet to the beginning, containing 40.000 acres, more or less, as shown on a plat entitled "Plat Of 40.000 Acre Parcel Ann's Run Limited Liability Company Situate In The City Of Bridgeport Simpson District, Harrison County West Virginia", dated October, 2008, of record in the office of the Clerk of the County Commission of said County and State in Large Hanging Plat Rack 2, Sheet 38.

Our examination began on December 30, 2008, the date of recordation of the Deed dated December 30, 2008, (Deed Book No. 1426, page 399) from Ann's Run Limited Liability Company to The County Commission of Harrison County, West Virginia, and ended on September 21, 2009 at 8:00 a.m., from which examination we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land containing forty (40) acres, more or less, was vested in Bridgeport Municipal Building Commission, subject only to the following:

1. Those matters reported in our prior title letters and supplemental letters to The County Commission of Harrison County as previously referenced herein.

2. By deed of Trust dated August 27, 2009, (Trust Deed Book No. 1179, page 1332), Bridgeport Municipal Building Commission conveyed the property under examination to Thomas L. Aman, Jr., Trustee, to secure The County Commission of Harrison County performance by the City of Bridgeport of obligations under an Agreement dated August 27, 2009, among the City of Bridgeport, The County Commission of Harrison County, and Ann's Run Limited Liability Company to assure performance of which obligations the City has provided its performance bond in favor of The County Commission of Harrison County with Bridgeport Municipal Building Commission as surety thereon.

3. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

4. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2009, the property under examination is included in assessments on the Land Books of Harrison County, in Simpson District - Bridgeport as follows:

- (1) Julia C. Compton (Tax Map No. 290, Parcel No. 3, Account No. 6351226)
- (2) Ann's Run Limited Liability Company (Tax Map No. 290, Parcel Nos. 2 and 8.2, Account Nos. 6351208 and 6351244, respectively)
- (3) Ann's Run Limited Liability Company (Tax Map No. 290, Parcel No. 7, Account No. 6351164)
- (4) C.E. Compton Trust (Charles J. Miller & Wm. J. Snyder, Trustees) (Tax Map No. 270, Parcel Nos. 30 and 30.1, Account Nos. 6348366 and 6723566, respectively).

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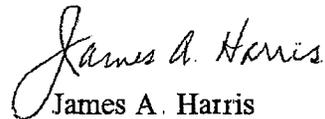
Said 2009 assessments are as follows:

<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
(1) 37.04 Acres Ann's Run	\$1,500.00	0.00	\$1,500.00	\$10.93
(2) 39.53 AC 4 Ann Run	\$4,020.00	0.00	\$4,020.00	\$29.28
0.85 AC Ann Run	\$100.00	0.00	\$100.00	\$ 0.73
(3) 25.75 as ADJ Hunters Chase at Charles Point	\$7,200.00	0.00	\$7,200.00	\$52.43
(4) 47.99 as Anmoore Run	\$1,680.00	\$1,560.00	\$3,240.00	\$23.60
15.01 ac Anmoore Run	\$12,600.00	\$116,520.00	\$129,120.00	\$940.25

The real estate taxes assessed against the property under examination have been paid to and including the year 2008. The real estate taxes assessed against the property under examination for the year 2009 constitute a lien and are now due and payable. The real estate taxes assessed against the property under examination for the year 2010 constitute a lien, but are not due and payable until July 2010.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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September 23, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Tax Map No. 289, Parcel No. 4

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all that certain tract or parcel of land situate on the waters of Barnett's Run, a tributary of Simpson Creek, in Simpson District, Harrison County, West Virginia, bounded and described as follows:

BEGINNING at a rebar found, being a corner to the Julia C. Compton Trust 2003 parcel and the Higinbotham parcel; thence with five lines of said Trust parcel, S 84° 11' 49" W, 363.65 feet to a rebar found; thence, S 35° 41' 50" W, 198.00 feet to a concrete nail in pavement found; thence, N 85° 49' 10" W, 297.00 feet to a concrete nail in pavement found; thence, S 82° 11' 50" W, 273.90 feet to a rebar found; thence, S 50° 26' 50" W, 173.58 feet to a 54 inch white oak, being a corner to a second Julia C. Compton Trust 2003 parcel; thence with two lines of said second Julia C. Compton Trust 2003 parcel, S 70° 07' 49" W, 312.66 feet to a rebar found; thence, N 49° 36' 11" W, 408.54 feet to a 1 inch iron pipe found, being a corner to the Village Heights Subdivision; thence with five lines of said Village

Heights Subdivision, N 53° 00' 09" W, 99.51 feet to a 2 inch iron pipe found; thence, N 78° 50' 16" W, 233.14 feet to a 2 inch iron pipe found; thence, N 62° 28' 59" W, 295.87 feet to a rebar found; thence, N 52° 37' 59" W, 351.36 feet to a ½ inch rebar found; thence, N 64° 28' 59" W, 186.00 feet to a rebar found, being a corner to a second Julia C. Compton Trust 2003 parcel; thence with a line of said second Trust parcel and the Lodge parcel, N 35° 02' 19" E, 2365.16 feet to a rebar found, being a corner to the Lodge parcel; thence with a line of said Lodge parcel, N 71° 17' 33" E, 319.04 feet to a rebar found in the southern right-of-way line interstate I-79; thence with a line of said right-of-way, N 71° 42' 56" E, 849.85 feet to a rebar found, being a corner to the Higinbotham parcel; thence with two lines of said Higinbotham parcel, S 51° 36' 30" E, 474.16 feet to a rebar found; thence, S 0° 53' 30" W, 2381.22 feet to the beginning, containing 132.34 acres, more or less, as surveyed by Grafton Coal Company in November, 2004, of record in said Clerk's office in Deed Book No. 1374, page 971.

Our examination began with a deed dated April 9, 1934, (Deed Book No. 450, page 2), from Jahugh R. Nuzum and Maude M. Nuzum, his wife, to Carl S. McDonald and ended on September 21, 2009, at 8:00 a.m., from which examination we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said lot or parcel of land was vested in HLC, L.P., subject only to the following:

1. By deed dated April 9, 1934, (Deed Book No. 450, page 2), Jahugh R. Nuzum and Maude M. Nuzum, his wife, conveyed the property under examination to Carl S. McDonald subject to the following reservation and exception:

"But there is reserved and excepted from this conveyance unto Lovey E. Fleming, her heirs and assigns, all the oil and gas in and underlying the aforesaid described tract of land, together with the right of the heirs and assigns of said Lovey E. Fleming, to go upon said land and mine and operate for oil and gas, and for laying pipelines, building tanks, stations and structures thereon, to take care of the said products, without being liable for any damages done to the surface by reason of said operation thereon. But said operations shall

be done in a prudent and fair manner so as to interfere as little as possible with the cultivated portions of said farm.

The heirs and assigns of said Lovey E. Fleming shall have the right and privilege of using sufficient water from the said premises to run all machinery necessary for drilling and operating thereon, and at any time to remove all machinery and fixtures placed on said premises.

The heirs and assigns of said Lovey E. Fleming shall receive all monies for oil and gas for the lease now existing on said land and for any extensions of said lease or any new lease or leases made thereon, the said heirs and assigns shall have the sole right and privilege of leasing said premises for oil and gas."

2. By deed dated May 25, 1964, (Deed Book No. 890, page 513), Carl S. McDonald and Eva M. McDonald, his wife, conveyed the property under examination to William Charles Callison and Eloise Mae Callison, his wife, subject to the same reservation and exception described in paragraph 1 above.

3. By deed dated June 2, 1966, (Deed Book No. 920, page 483), William Charles Callison and Eloise Mae Callison, his wife, conveyed the property under examination to Chas. E. Compton subject to the following reservation and exception:

"There is excepted and reserved from this conveyance all of the oil and gas in and underlying said tract of land, together with all necessary and convenient rights and privileges to drill and operate for said oil and gas and for laying pipelines, building tanks, stations and structures thereon, to take care of said oil and gas, without being liable in so doing for any damage to the surface of said land; provided, however, said oil and gas operations shall be carried on in a prudent and fair manner and so as to interfere as little as possible with the cultivated portions of said farm."

WATERS, WARNER & HARRIS, PLLC

4. By instrument dated April 1, 1953, (Deed Book No. 794, page 560), Hettie Mae McDonald and Carl S. McDonald granted to The Chesapeake & Potomac Telephone Company of West Virginia the right to construct, operate and maintain its lines of telephone and telegraph over and across the property which they then owned in Simpson District, Harrison County, West Virginia. Said grant may affect the property under examination.

5. By instrument dated December 18, 1975, (Deed Book No. 1078, page 81), Charles E. Compton and Julia C. Compton, his wife, entered into an agreement with Consolidated Gas Supply Corporation regarding and pertaining to the usage of free gas privileges. The lands to which the agreement pertained included all of the surface lands owned by the Comptons as of the date of this instrument, including a tract of 130 acres listed as follows:

<u>Consolidated's Lease Number</u>	<u>Lessor</u>	<u>Date</u>	<u>Acres</u>	<u>Recorded Book/Page</u>
17534	J. R. Stout	08/28/09	130	192/211

6. By instrument dated December 11, 1979, (Deed Book No. 1097, page 613), Charles E. Compton and Julia Compton, his wife, granted unto the West Virginia Department of Highways a permanent utility easement over and upon certain tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, and shown as belonging to Charles E. Compton, et ux., (Parcel 448) upon a map or plans filed in said Clerk's office, marked, identified and described on plans for West Virginia Department of Highways Project I-TU 79 (79) and I-79-3 (42) 132, Rest Area, and more particularly bounded and described as follows:

Tract II - Permanent Utility Easement

Beginning at a point in the proposed southeastern permanent utility easement line and in the existing southeastern permanent utility easement line said point being 15 feet left of and at right angles to baseline Station 9+75, Project I-79-3(42)132, Harrison County; thence, northeasterly with said existing southeastern permanent utility easement line and in a reverse baseline direction 25 feet, more or less, to a point in the proposed centerline of the proposed southeastern permanent utility easement line and in the existing southeastern permanent utility easement line, said point being 15 feet left of and at right angles to Baseline Station 9+38.85; thence, northeasterly with

said existing southeastern permanent utility easement line and parallel to baseline 14.11 feet to a point in the existing southeastern permanent utility easement line and in the proposed northwestern permanent utility easement line, said point being 15 feet left of and at right angles to Baseline Station 9+24.74; thence northeasterly with said proposed northwestern permanent utility easement line in a reverse centerline direction 265 feet, more or less, to a point in the existing southwestern controlled access right of way line, said point being 697.0 feet radially right of I-79 Centerline Station 1854+79.0; thence, northeasterly with said controlled access right of way line 45 feet, more or less, to a point in the existing southeastern controlled access right of way line and in the proposed southeastern permanent utility easement line, said point being 15 feet left of and at right angles to Centerline Station 7+85; thence, southwesterly with said proposed southeastern permanent utility easement line and parallel to centerline 30 feet to a point in the proposed southeastern permanent utility easement line, said point being 15 feet left of and at right angles to Centerline Station 8+15; thence southwesterly with said proposed permanent utility easement line and parallel to centerline 335 feet, more or less, to the place of beginning and containing 0.22 acres, more or less.

#### Tract III - Permanent Utility Easement

Beginning at a point in the division line between Ray Blake and Warren Burnside (Parcel 449) and Charles E. Compton (Parcel 448) and in the proposed southeastern permanent utility easement line, said point being 7.5 feet left of and at right angles to Centerline Station 36+15, project I-79-3(42)132, Harrison County; thence, northwesterly with said division line in a reverse centerline direction and parallel to centerline 16 feet, more or less, to a point in the proposed permanent utility easement line, said point being 15 feet right of and at right angles to Centerline Station 35+92.5; thence, continuing northwesterly with said division line and the division line between Richard W. and Betty Graham (Parcel 440) and Charles E. Compton and the division line between Arthur J. and Lucie Glick (Parcel 441) and Charles E. Compton 196 feet, more or less, to a point in the existing eastern permanent utility easement line (Parcel 448, Tract D) said point being 15 feet left of and at right angles to existing Centerline Station 33+96.63; thence, northerly with said existing

permanent utility easement line 40 feet, more or less, to a point in the proposed northeastern permanent utility easement line, said point being 15 feet left of and at right angles to Centerline Station 33+68.7; thence, southeasterly with said proposed utility easement line and parallel to centerline 239 feet, more or less, to a point in the proposed southeastern permanent utility easement line, said point being 15 feet left of and at right angles to Centerline Station 36+07.5; thence, southwesterly with said proposed permanent utility easement line 30 feet to the place of beginning and containing 0.17 acre, more or less.

The above described tracts of land are a portion of the same real estate conveyed to Charles E. Compton by two deeds as follows: (1) by William Charles Callison and Eloise Mae Callison, his wife, to Charles E. Compton by deed dated June 2, 1966, of record in said Clerk's office in Deed Book No. 920, at page 483, which is the property under examination; and (2) by Harold M. Garrett and Margaret H. Garrett, his wife, by deed dated November 10, 1970, of record in said Clerk's office in Deed Book No. 981, at page 472.

7. By instrument dated February 3, 1982, (Deed Book No. 1114, page 381), Charles E. Compton and Julia Compton, his wife, conveyed to Monongahela Power Company a perpetual easement or distribution line easement over the property under examination for electric distribution lines and telephone lines and additions thereto.

8. By instrument dated May 18, 1994, (Deed Book No. 1255, page 216), Chas. E. Compton and Julia C. Compton, husband and wife, granted to Bell Atlantic - West Virginia, Inc. the right and easement now and in the future to install, construct, reconstruct, operate, maintain, repair, replace and remove an aerial telecommunications cable and any associated anchors, guys and other appurtenances all of which were to be installed on or attached to the poles of Harrison Rural Electrification Association, Inc., upon the present easement and right of way of Harrison Rural Electrification Association, Inc. located on the property which they owned in Simpson District, Harrison County, West Virginia.

9. As evidenced by Memorandum of Option to Purchase Real Property Agreement dated January 2, 2001, (Deed Book No. 1350, page 879) Charles E. Compton, Trustee, gave and granted an assignable option to Ann's Run Limited Liability Company to purchase three tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, including the property under examination. Said option is for a period of 20 years from January 2, 2001, and said option gives and grants to optionee the right to extend the option to purchase the property for one additional term of 20 years.

As evidenced by Memorandum of Assignment of Option Agreements and Assumption Agreement dated January 6, 2003 (Deed Book No. 1350, page 1059), Ann's Run Limited Liability Company transferred, assigned and set over to Five-J Energy, Inc., all of its right, title and interest in and to said option referenced above in Deed Book No. 1350, page 879.

By Assignment of Option Agreements and Assumption Agreement dated January 1, 2005, (Deed Book No. 1414, page 950) and recorded on March 5, 2008, Five-J-Energy, Inc., transferred, assigned and set over to Ann's Run Limited Liability Company all of its right, title and interest in and to the option referred to above.

10. By instrument dated October 20, 2003, (Deed Book. No 1357, page 329) C. E. Compton Trust granted to Harrison Rural Electrification Association, Inc., a non-exclusive right of way and easement for an underground electric distribution system over the property under examination.

11. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684).

12. There is of record in said Clerk's office in Trust Deed Book No. 1137, page 400 a Notice of Lien of Community Enhancement District Assessments which includes the property under examination.

13. There is of record in said Clerk's office in Trust Deed Book No. 1158, page 1113 a Notice of Lien of Community Enhancement District First Revised Assessments which includes the property under examination.

14. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

15. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

WATERS, WARNER & HARRIS, PLLC

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For the year 2009, the property under examination is assessed on the Land Books of Harrison County in Simpson District-Bridgeport to HLC, L.P. (Tax Map No. 289, Parcel No. 4, Account No. 6348044), as follows:

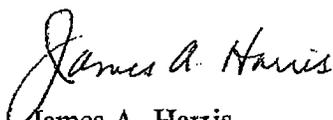
<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
132.34 Ac Barnett Run	\$7,020	\$3,120	\$10,140	\$73.84

The real estate taxes assessed against the property under examination have been paid to and including the year 2008.

The real estate taxes assessed against the property under examination for the year 2009 constitute a lien and are now due and payable. The real estate taxes assessed against the property under examination for the year 2010 constitute a lien, but are not due and payable until July, 2010.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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September 23, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Tax Map No. 289, Parcel No. 14

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all that certain tract or parcel of land situate in Simpson District, Harrison County, West Virginia, being more particularly bounded and described as follows:

Beginning at a rebar found in a line of the HLC, L.P. parcel, being a corner to the Julia Compton parcel; thence with a line of said HLC, L.P. parcel, N 66° 17' 34" E, 813.45 feet to a rebar found, a corner to a second HLC, L.P. parcel; thence with two lines of said second HLC, L.P. parcel, N 66° 17' 34" E, 332.64 feet to a rebar found; thence, S 64° 08' 26" E, 570.77 feet to a fence corner found, a corner to the Ann's Run Limited Liability Company parcel; thence with a line of said Ann's Run Limited Liability Company parcel, S 9° 24' 26" E, 193.05 feet to a fence corner found, a corner to the Midcity Land Company parcel; thence with two lines of said Midcity Land Company parcel, S 9° 24' 26" E, 1458.32 feet to a track spike in poplar

stump found; thence, S 2° 07' 26" E, 939.69 feet to a 24 inch hickory found; thence, S 73° 13' 34" W, 490.37 feet to a iron pipe found; thence, N 78° 21' 06" W, 320.00 feet to a rebar found, a corner to the James A and Jennifer C. Corton parcel; thence with five lines of said Corton parcel, N 3° 00' 13" E, 949.05 feet to a rebar found; thence, S 82° 03' 38" W, 593.02 feet to a rebar found; thence, S 39° 03' 21" W, 254.84 feet to a rebar found; thence, N 80° 43' 28" W, 187.60 feet to a rebar found; thence, N 7° 40' 20" W, 383.77 feet to a rebar found, a corner to the Julia C. Compton parcel; thence with two lines of said Compton parcel, N 52° 11' 34" E, 236.18 feet to a point; thence, N 15° 33' 26" W, 1255.98 feet to the beginning, containing 81.102 acres, more or less, as surveyed by Grafton Coal Company in May, 2006, and as shown on Plat of Survey of Properties of Julia C. Compton, Julia C. Compton Trust 2003, Ann's Run Limited Liability Company, James A. & Jennifer C. Corton Situate in Simpson District, Harrison County, West Virginia, dated May 2006, of record in said Clerk's office in Large Hanging Plat Rack 1, Sheet 200.

Our examination began with a deed dated April 26, 1912, (Deed Book No. 206, page 179), by Elmer F. Goodwin, Special Commissioner, to Chesteen C. Frum and ended on September 21, 2009, at 8:00 a.m., from which examination we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land was vested in SVR One, LLC, subject only to the following:

1. By instrument dated August 23, 1937, (Deed Book No. 485, page 242), Marie Frum Hatch and Darrell K. Hatch, her husband, leased the oil and gas within and underlying the property under examination to Hope Natural Gas Company for a term of ten years and as long thereafter as oil and gas is found on said premises.

2. By instrument dated December 18, 1937, (Deed Book No. 489, page 503), Marie Frum Hatch and Darrell K. Hatch, her husband, granted to Hope Natural Gas the right to erect, maintain, operate and remove a line of poles "situate on my property" in Simpson District, Harrison County, West Virginia.

3. By instrument dated June 10, 1957, (Deed Book No. 800, page 33), Jesse E. Jones and Nellie C. Jones, his wife, granted to Hope Natural Gas Company a right to lay, operate, maintain and remove pipelines for the transportation of water, oil and gas over a

tract situate in Simpson District, Harrison County, West Virginia, which right may affect the property under examination.

4. By instrument dated December 16, 1974, (Deed Book No. 1030, page 602), Jesse E. Jones and Nellie C. Jones, his wife, granted to Chesapeake & Potomac Telephone Company of West Virginia a right of way over all lands owned by them in Simpson District, Harrison County, West Virginia, to construct, operate and remove a communications system.

5. By instrument dated March 2, 1982, (Deed Book No. 1113, page 471), C. E. Compton and Julia C. Compton, his wife, granted to Consolidated Gas Supply Corporation a right of way to lay, maintain, operate and remove pipelines for the transportation of water, oil and gas over a tract of land situate in Simpson District, Harrison County, West Virginia, which right of way may affect the property under examination.

6. By instrument dated October 10, 1989, (Deed Book No. 1199, page 967), Chas. E. Compton and Julia C. Compton, his wife, granted to CNG Transmission Corporation the right to locate, maintain, replace and remove tanks and other containers on a tract of land situate in Simpson District, Harrison County, West Virginia, which includes the property under examination. Said instrument provided that if the grantors requested CNG Transmission Corporation would move the tanks to another location at its own expense.

7. As evidenced by Memorandum of Option To Purchase Real Property Agreement dated January 2, 2001, (Deed Book No. 1350, page 875), Charles E. Compton, by Julia C. Compton, his Attorney-In-Fact, and Julia C. Compton, husband and wife, granted to Ann's Run Limited Liability Company, a West Virginia limited liability company, an assignable option to purchase several tracts or parcels of land, including the property under examination. Said option is for a period of 20 years from January 2, 2001, with the right to optionee to extend the option for one additional twenty (20) year term.

As evidenced by Memorandum of Assignment of Option Agreements and Assumption Agreement dated January 6, 2003, (Deed Book No. 1350, page 1059), Ann's Run Limited Liability Company transferred, assigned and set over to Five-J Energy, Inc., all of its right, title and interest in and to said option referenced above in Deed Book No. 1350, page 875.

By Assignment of Option Agreements and Assumption Agreement dated January 1, 2005, (Deed Book No. 1414, page 950) and recorded on March 5, 2008, Five-J Energy, Inc., transferred, assigned and set over to Ann's Run Limited Liability Company all of its right, title and interest in and to the option referred to above.

8. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684).

9. By Credit Line Deed of Trust and Security Agreement dated November 13, 2006, (Trust Deed Book No. 1104, page 304, and Trust Deed Book No. 1105, page 121), SVR One, LLC, a West Virginia limited liability company, conveyed a portion of the property under examination to Randall C. Light and Evans L. King, Jr., Trustees, to secure The Huntington National Bank, payment of a negotiable promissory note in the amount of \$3,443,000.00. Said Credit Line Deed of Trust and Security Agreement has not been released of record and constitutes a lien against a portion of the property under examination.

10. There is an Agreement dated October 12, 2006, (Trust Deed Book No. 1104, page 325), among SVR One, LLC, a West Virginia limited liability company, S & A Homes, Inc., The Huntington National Bank, and Manufacturers and Traders Trust Company regarding a number of matters related to certain real estate, including the property under examination.

11. By Subordination Agreement dated October 12, 2006, (Trust Deed Book No. 1104, page 339), between S & A Homes, Inc., and The Huntington National Bank, S & A Homes, Inc., subordinated its rights as set forth in an Agreement for Development of Residential Real Estate dated September 15, 2006, between Ann's Run Limited Liability Company and others, as Sellers, and S & A Homes, Inc., a Buyer, to the lien of The Huntington National Bank, created by said Credit Line Deed of Trust dated November 13, 2006, (Trust Deed Book No. 1104, page 304).

12. By instrument titled Gas Pipeline Non-Exclusive Easement Agreement, dated October 23, 2007, (Deed Book No. 1411, page 450) and re-recorded in Deed Book No. 1427, page 260, and re-recorded again in Deed Book No. 1435, page 229, Ann's Run Limited Liability Company, a West Virginia limited liability company, Julia C. Compton Trust 2003, Julia C. Compton, an individual, HLC, L.P., a West Virginia limited partnership, and SVR One, LLC, a West Virginia limited liability company, granted to Hope Gas, Inc., dba Dominion Hope, a West Virginia corporation, non-exclusive easements for natural gas distribution pipelines and related appurtenances over and through those certain tracts or parcels of land situate in Phase III in the South Land Bay at Charles Pointe in the City of Bridgeport, Simpson District, Harrison County, West Virginia, of which the property under examination is a part.

13. By instrument dated October 16, 2008, (Deed Book No. 1424, page 994) Julia C. Compton Trust 2003, HLC, L.P., a West Virginia limited partnership, and SVR One, LLC, a West Virginia limited liability company, granted to Hope Gas, Inc., dba Dominion Hope, a West Virginia corporation, non-exclusive easements for underground natural gas distribution pipelines over and through those certain tracts or parcels of land situate in Phase II of Charles Pointe, a Master Plan Community, situate in the City of Bridgeport, Simpson District, Harrison County, West Virginia, of which the property under examination is a part.

14. There is of record in said Clerk's office in Trust Deed Book No. 1137, page 400 a Notice of Lien of Community Enhancement District Assessments which includes the property under examination.

15. There is of record in said Clerk's office in Trust Deed Book No. 1158, page 1113 a Notice of Lien of Community Enhancement District First Revised Assessments which includes the property under examination.

16. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

17. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2009, the property under examination is assessed on the Land Books of Harrison County in Simpson District - Bridgeport to SVR One LLC (Tax Map No. 289, Parcel No 14, Account No. 06352966), as follows:

Description	Land	Valuation Improvements	Total	Taxes Per Half Year
81.10 Ac. Anmoore Run	\$92,880.00	\$0	\$92,880.00	\$676.35

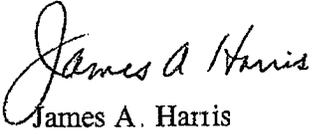
The real estate taxes assessed against the property under examination have been paid to and including the year 2008. The real estate taxes assessed against the property under examination for the year 2009 constitute a lien, and are now due and payable. The real estate taxes assessed the property under examination for the year 2010 constitute a lien, but are not due and payable until July, 2010.

WATERS, WARNER & HARRIS, PLLC

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If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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September 23, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Tax Map No. 289, Parcels Nos. 5 (100.91  
acres, more or less) and 6 (99.04 acres,  
more or less)

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of those two (2) certain tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, and being more particularly bounded and described as follows:

PARCEL NO. 1: Beginning at a rebar found, being a corner to the Julia C. Compton Trust 2003 parcel; thence with two lines of said Trust parcel, N 0° 53' 30" E, 2381.22 feet to a rebar found; thence, N 51° 36' 30" W, 474.16 feet to a rebar found in the southern right-of-way line of interstate I-79; thence with a line of said right-of-way, N 57° 05' 26" E, 1045.04 feet to a rebar found, being a corner to the Lemuel H. Higinbotham 99.04 acre parcel; thence with two lines of said 99.04 acre parcel, S 57° 24' 05" E, 571.50 feet to a rebar found; thence, S 22° 51' 45" E, 2456.72 feet to a rebar found, being a corner to the Julia C. Compton parcel; thence with a line of said Compton parcel, S 66° 17' 34" W, 813.45 feet to a rebar found, being a corner to a second Julia C. Compton parcel;

thence with three lines of said second Compton parcel, S 66° 17' 34" W, 726.99 feet to a rebar found; thence, S 77° 47' 34" W, 325.38 feet to a rebar found; thence, N 86° 12' 26" W, 250.80 feet to the beginning, containing 100.91 acres, more or less, as surveyed by Grafton Coal Company in November, 2004, and as shown on a plat of record in said Clerk's office in Deed Book No. 1374, page 253.

PARCEL NO. 2: Beginning at a corner fence post found, being a corner to the Julia C. Compton parcel; thence with two lines of said Compton parcel, N 64° 08' 26" W, 570.77 feet to a rebar found; thence, S 66° 17' 34" W, 332.64 feet to a rebar found, being a corner to the Lemuel H. Higinbotham parcel; thence with two lines of said Higinbotham parcel, N 22° 51' 45" W, 2456.72 feet to a rebar found; thence, N 57° 24' 05" W, 571.50 feet to a rebar found in the southern right-of-way line of interstate I-79; thence with a line of said right-of-way, N 3° 06' 43" E, 531.34 feet to a rebar found, being a corner to the Julia C. Compton parcel; thence with a line of said Compton parcel, S 63° 18' 07" E, 694.96 feet to a rebar found, being a corner to the Julia C. Compton Trust 2003 parcel; thence with a line of said Trust parcel, S 61° 44' 46" E, 3023.63 feet to a rebar found, being a corner to the Ann's Run Limited Liability Company parcel; thence with a four lines of said Ann's Run Limited Liability Company parcel, S 34° 21' 24" W, 49.62 feet to a rebar found; thence, S 47° 27' 45" W, 38.29 feet to a rebar found; thence, S 26° 27' 45" W, 171.60 feet to a rebar found; thence, S 38° 57' 45" W, 183.15 feet to a rebar found, being a corner to a second Ann's Run Limited Liability Company parcel; thence with a four lines of said second Ann's Run Limited Liability Company parcel, S 38° 57' 45" W, 44.88 feet to a rebar found; thence, S 65° 12' 45" W, 364.51 feet to a rebar found; thence, S 49° 27' 45" W, 417.12 feet to a rebar found; thence, S 11° 41' 34" W, 665.94 feet to the beginning, containing 99.04 acres, more or less, as surveyed by Grafton Coal Company in November, 2004, and as shown on a plat of record in said Clerk's office in Deed Book No. 1374, page 254.

Our examination began with two deeds as follows. As to Tract No. 1, 100.91 acres, our examination began with a deed dated November 1, 1902 (Deed Book No. 134, page 214), from Lemuel E. Stout, widower, to George H. Stout. As to Tract No. 2, 99.04 acres, our examination began with a deed dated February 15, 1917 (Deed Book No. 263, page 479), from W. Frank Stout and Biagio Merendino, Special Commissioners, to George Harter Stout.

Our examination as to both tracts or parcels of land ended on September 21,

2009, at 8:00 a.m., from which examination we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land was vested in HLC, L.P., subject only to the following:

1. By instrument dated August 9, 1909, (Deed Book No. 192, page 315), G. H. Stout and Belle Stout, his wife, granted to Hope Natural Gas Company an oil and gas lease upon 100 acres on Barnett's Run of Simpson Creek in Simpson District for a primary term of five (5) years from November 8, 1909, and as long thereafter as oil or gas or either of them is produced from said land. Said lease may affect the property under examination.

2. By instrument dated May 21, 1914, (Deed Book No. 234, page 152), G.H. Stout and Belle Stout, his wife, granted to Bridgeport Natural Gas and Oil Company an oil and gas lease on five acres on Simpson Creek, Simpson District for a primary term of one (1) year from its date and as long thereafter as oil or gas or either of them is produced from said land. Said lease may affect the property under examination.

3. By instrument dated October 18, 1916, (Deed Book No. 266, page 318), G. Harter Stout and Belle Stout, his wife, granted to Hope Natural Gas Company a right of way for a pipeline for the transportation of oil or gas over a tract in Simpson District. Said right of way may affect the property under examination.

4. By instrument dated January 1, 1917, (Deed Book No. 346, page 442), G. Harter Stout and Belle Stout, his wife, et al., granted to Olandus West an oil and gas lease upon five acres on Simpson Creek in Simpson District for a primary term of ten (10) years from its date and as long thereafter as said land is operated by lessee in the search for or production of oil or gas. Said lease may affect the property under examination.

5. By instrument dated October 11, 1934, (Deed Book No. 453, page 238), G. H. Stout, widower, and Hope Natural Gas Company modified a lease dated August 9, 1909 (Deed Book No. 192, page 315), regarding the royalty to be paid every three (3) months from Well No. 3645 drilled thereon. Said agreement may affect the property under examination.

6. By instrument dated May 4, 1937, (Deed Book No. 483, page 29), W. Frank Stout and Adah A. Stout, his wife, et al., granted to Hope Natural Gas Company an oil and gas lease upon 100 acres on Barnett's Run in Simpson District for a primary term of ten (10) years from its date and as long thereafter as said land is operated by lessee in the search for or production of oil or gas. Said lease may affect the property under examination.

7. By instrument dated May 4, 1937, (Deed book No. 483, page 32), W. Frank Stout and Adah A. Stout, his wife, and G. Harter Stout, widower, granted to Hope

Natural Gas Company an oil and gas lease upon 4 1/2 acres, Ann's Run and Barnett's Run for a primary term of ten (10) years from its date and as long thereafter as said land is operated by lessee in the search for or production of oil or gas. Said lease may affect the property under examination.

8. By instrument dated May 4, 1937, (Deed Book No. 483, page 35), W. Frank Stout and Adah A. Stout, his wife, and G. Harter Stout, widower, granted to Hope Natural Gas Company an oil and gas lease upon 5 41 acres on Barnett's Run in Simpson District for a primary term of ten (10) years from its date and as long thereafter as said land is operated by lessee in the search for or production of oil or gas. Said lease may affect the property under examination.

9. By instrument dated December 16, 1937, (Deed Book No. 488, page 295), G. Harter Stout granted to Hope Natural Gas Company a right of way to operate telephone and telegraph lines on his lands in Simpson District. Said right of way may affect the property under examination.

10. By instrument dated December 10, 1942, (Deed Book No. 545, page 238), Dale Stout Higinbotham and F. E. Higinbotham, her husband, and Hope Natural Gas Company modified a lease dated August 9, 1909 (Deed Book No. 192, page 315), granting Hope Natural Gas Company the right to inject and store gas. Said modification may affect the property under examination.

11. By instrument dated November 18, 1942, (Deed Book No. 545, page 240), Dale Stout Higinbotham and F. E. Higinbotham, her husband, granted to Hope Natural Gas Company a right to inject and store gas on 100 acres in Simpson District, together with the right of ingress and egress over the surface. Said right may affect the property under examination.

12. By instrument dated December 10, 1942, (Deed Book No. 550, page 527), Dale Stout Higinbotham and F. E. Higinbotham, her husband, and W. Frank Stout and Adah A. Stout, his wife, and Hope Natural Gas Company modified a lease dated May 4, 1937 (Deed Book No. 483, page 29), granting Hope Natural Gas Company the right to inject and store gas. Said modification may affect the property under examination.

13. By instrument dated December 10, 1942, (Deed Book No. 550, page 537), Dale Stout Higinbotham and F. E. Higinbotham, her husband, and W. Frank Stout and Adah A. Stout, his wife, and Hope Natural Gas Company modified a lease agreement dated May 4, 1937 (Deed Book No. 483, page 32), granting Hope Natural Gas Company the right to inject and store gas. Said modification may affect the property under examination.

14. By instrument dated December 10, 1942, (Deed Book No. 550, page 539), Dale Stout Higinbotham and F. E. Higinbotham, her husband, and W. Frank Stout and Adah A. Stout, his wife, granted to Hope Natural Gas Company the right to inject and store gas, together with ingress and egress over the surface of 4 1/2 acres in Simpson District. Said right may affect the property under examination.

15. By instrument dated November 23, 1942, (Deed Book No. 550, page 541), Dale Stout Higinbotham and F. E. Higinbotham, her husband, and W. Frank Stout and Adah A. Stout, his wife, granted to Hope Natural Gas Company the right to inject and store gas, together with the right of ingress and egress over the surface of 100 acres in Simpson District. Said right may affect the property under examination.

16. By instrument dated October 28, 1971, (Deed Book No. 997, page 269), Don F. Higinbotham, divorced, et al., granted to Consolidated Gas Supply Corporation a pipeline right of way over a tract in Simpson District for the transportation of water, gas, oil and other products. Said right of way may affect the property under examination.

17. By instrument dated February 8, 1972, (Deed Book No. 998, page 952), Lemuel H. Higinbotham and JoAnn Higinbotham, his wife, et al, granted to Consolidated Gas Supply Corporation a right of way for a vehicular roadway upon a tract in Simpson District to Consolidated Gas Supply Corporation Well No. 3645. Said right of way may affect the property under examination.

18. By instrument dated October 28, 1971, (Deed Book No. 998, page 86), Don F. Higinbotham, divorced, et al., granted to Consolidated Gas Supply Corporation a right of way pipeline for transportation of water, oil, gas and other products over a tract of land in Simpson District. Said right of way may affect the property under examination.

19. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684).

20. There is of record in said Clerk's office in Trust Deed Book No. 1137, page 400 a Notice of Lien of Community Enhancement District Assessments which includes the property under examination.

21. There is of record in said Clerk's office a Notice of Lien of Community Enhancement District First Revised Assessments in Trust Deed Book No. 1158, page 1113 which includes the property under examination.

22. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

23. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil, and gas, within and underlying the property under examination, and this letter does not constitute a certification of title with respect to said minerals.

For the year 2009, the property under examination is assessed on the Land Books of Harrison County in Simpson District - Bridgeport to HLC, L.P. (Tax Map No. 289, Parcel Nos. 5 and 6, Account Nos. 06358050 and 06358041), as follows:

Description	Land	Valuation Improvements	Total	Taxes Per Half Year
100.91 As Barnett Run	\$4,980.00	\$0	\$4,980.00	\$36.27
99.04 As Barnett Run	\$4,080.00	\$120.00	\$4,200.00	\$30.59

The real estate taxes assessed against the property under examination have been paid to and including the year 2008. The real estate taxes assessed against the property under examination for the year 2009 constitute a lien and are now due and payable. The real estate taxes assessed against the property under examination for the year 2010 constitute a lien, but are not due and payable until July, 2010.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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Writer's E-Mail: j9harris@aol.com

September 23, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Tax Map No. 289, Parcel No. 51

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia pertaining to the title to all that certain tract or parcel of land situate on the easterly side of Interstate 79 in Simpson District, Harrison County, West Virginia, being more particularly bounded and described as follows:

BEGINNING at a rebar found, being a corner to the Barbara Warner, et al. parcel, bearing N 89° 35' 01" E, 436.70 feet from a fence corner found; thence with a line of said Warner parcel, N 0° 12' 50" E, 1096.16 feet to a iron pipe found in the southern right-of-way line of interstate I-79; thence with six lines of said right-of-way, N 80° 34' 47" E, 580.79 feet to a rebar found; thence, S 82° 33' 10" E, 329.57 feet to a concrete monument found; thence, N 13° 54' 40" E, 89.94 feet to a rebar found; thence, N 82° 55' 39" E, 798.44 feet to a rebar found; thence, N 62° 24' 43" E, 922.12 feet to a rebar found; thence, S 39° 42' 55" E, 339.00 feet to a rebar found, being a corner to the Julia C. Compton Trust 2003 parcel; thence with two lines of said Trust parcel, S 71° 17' 33" W, 319.04 feet to a rebar found; thence, S 35° 02' 19" W, 2025.67 feet to a rebar found, being a

corner to a second Julia C. Compton Trust 2003 parcel; thence with two lines of said Trust parcel, N 10° 32' 10" W, 168.10 feet to a rebar found; thence, N 85° 02' 10" W, 1113.02 feet to a rebar found, being a corner to the Ridge way Estates Subdivision; thence with a line of said Subdivision, S 89° 35' 01" W, 146.95 feet to the beginning, containing 61.06 acres, more or less, as surveyed by Grafton Coal Company in November, 2004, and as shown on a plat of record in said Clerk's office in Deed Book No. 1374, page 249.

For the purpose of our examination, we assumed good title to said tract or parcel of land as vested in J. Dunkin Lodge and Edna W. Lodge, as tenants in common, on October 16, 1924, the date of death of Aaron J. Lodge. Our examination ended on September 21, 2009, at 8:00 a.m., from which examination we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land was vested in HLC, L.P., a West Virginia limited partnership, subject only to the following:

1. By instrument dated September 4, 1909, (Deed Book No. 192, page 238), A. J. Lodge and Amanda Lodge granted to Hope Natural Gas Company an oil and gas lease, which covered a tract or parcel of land containing 255 acres, more or less, of which the property under examination was a part.

There is of record in said Clerk's office an Agreement dated January 23, 1934, (Deed Book No. 447, page 183), between Edna W. Curry, J. Dunkin Lodge, et al. and Hope Natural Gas Company modifying the terms of said lease.

There is of record in said Clerk's office a Modification of Lease dated December 17, 1942, (Deed Book No. 545, page 250), between J. Dunkin Lodge, et al. and Hope Natural Gas Company modifying the terms of said lease.

2. By instrument dated June 23, 1933, (Deed Book No. 442, page 184), J. Dunkin Lodge and Edna W. Curry, et al., submitted to Hope Natural Gas Company an application for free gas.

3. By instrument dated November 18, 1942, (Deed Book No. 545, page 252), J. Dunkin Lodge and Mary H. Lodge, husband and wife, and Edna W. Curry and E. E. Curry, wife and husband, granted to Hope Natural Gas Company the right to store gas under a tract or parcel of land containing 266 acres, more or less, of which the property under examination was a part, with the right to enter on the surface of said tract or parcel of land for the purpose of storing gas.

4. The following rights of way have been granted by predecessors in title to the property under examination across larger tracts or parcels of land of which the property under examination was a part. Due to vague descriptions contained within the instruments conveying said rights of way, we were unable to determine from the records in said Clerk's office whether the property under examination is affected thereby. Because of the large number of these instruments, we have set them forth below in abbreviated form, as follows:

DEED BOOK/ PAGE	DATE	GRANTOR	GRANTEE	PURPOSE
554/529	8/13/1943	J. Dunkin Lodge, et al.	Hope Natural Gas Co	Gas regulators, meters and heaters
708/123	6/6/1951	J. Dunkin Lodge, et al.	Monongahela Power Co	Transmission system
708/445	6/1/1951	J. Dunkin Lodge, et al.	Hope Natural Gas Co	Pipelines
758/291	3/26/1954	J. Dunkin Lodge	The Chesapeake & Potomac Telephone Co of West Virginia	Telephone and telegraph lines

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773/35	12/30/1955	J. Dunkin Lodge, et al.	The Chesapeake & Potomac Telephone Co of West Virginia	Telephone and telegraph lines
862/494	4/19/1962	J. Dunkin Lodge, et al.	Hope Natural Gas Co	Pipelines
979/617	7/1/1970	Mary H. Lodge, et al.	Consolidated Gas Supply Corporation	Pipelines
979/636	7/28/1970	Mary H. Lodge, et al.	Consolidated Gas Supply Corporation	Gas regulators, meters, and heaters and power and telephone lines
980/152	7/1/1970	Mary H. Lodge, et al.	Consolidated Gas Supply Corporation	Pipelines
998/68	10/20/1971	John H. Lodge, et al.	Consolidated Gas Supply Corporation	Pipelines

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998/434	8/4/1971	William D. Lodge	The Chesapeake & Potomac Telephone Co of West Virginia	Communications system
998/82	10/20/1971	John H. Lodge, et al.	Consolidated Gas Supply Corporation	Pipelines
998/632	10/20/1971	Mary H. Lodge, et al.	Consolidated Gas Supply Corporation	Roadway
1005/716	10/20/1971	Mary H. Lodge, et al.	Consolidated Gas Supply Corporation	Pipelines
1008/467	10/20/1971	John H. Lodge, et al.	Consolidated Gas Supply Corporation	Pipelines and poles and underground cables for telephone and other wires
1255/212	3/2/1994	William D. Lodge, et al.	Bell Atlantic-West Virginia, Inc.	Communications system

5. By Agreement dated May 19, 1997, (Deed Book No. 1287, page 647), William D. Lodge and John H. Lodge granted to the City of Bridgeport, as part of a sewerage system, a temporary construction right of way and easement and a permanent right of way and easement twenty (20) feet in width, to lay, construct, alter, maintain, repair, and remove a line of pipe, manholes, and other devices or structures necessary for transportation of sewage and maintenance of a public sewer on, over, and through the property under examination.

6. By instrument dated July 5, 2002, (Deed Book No. 1343, page 637), John H. Lodge granted to Harrison Rural Electrification Association, Inc. a perpetual easement to enter upon the property under examination to construct, operate, and maintain a distribution line or system on the property under examination.

7. By instrument dated August 1, 2002, (Deed Book No. 1343, page 639), William D. Lodge and Linda Chennel Lodge, husband and wife, granted to Harrison Rural Electrification Association, Inc. a perpetual easement to enter upon the property under examination to construct, operate, and maintain a distribution line or system on the property under examination.

8. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684).

9. Our examination is subject to such state of facts as would be disclosed by a visual inspection or an accurate survey of the property under examination.

10. We did not examine the title to the minerals within and underlying the property under examination, and this letter does not constitute a certification of title with respect to ownership of the minerals.

For the year 2009, the property under examination is assessed on the Land Books of Harrison County in Simpson District - Bridgeport in the name of HLC, L.P. (Tax Map No. 289, Parcel No. 51, Account No. 06821941) as follows:

Description	Land	Valuation Improvements	Total	Taxes Per Half Year
61.06 Ac Barnett Run	\$2,580.00	\$0.00	\$2,580.00	\$18.79

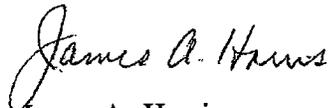
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7

The real estate taxes assessed against the property under examination have been paid to and including the year 2008. The real estate taxes assessed against the property under examination for the year 2009 constitute a lien and are now due and payable. The real estate taxes assessed against the property under examination for the year 2010 constitute a lien, but are now due and payable until July, 2010.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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September 23, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Tax Map No. 290, Parcel Nos. 6 (57.0232  
acres, more or less), 7 (28.1208 acres, more  
or less) and 15 (4.4068 acres, more or less)

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all those three tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, and by recent survey shown to contain 57.0232 acres, more or less, 28.1208 acres, more or less, and 4.4068 acres, more or less, or 87.5508 acres in the aggregate, more or less, as surveyed by Grafton Coal Company in December 2000, being more particularly bounded and described as follows:

Beginning at a roof bolt found in the western right-of-way line of West Virginia State Route 131, being a corner to the Charles E. & Julia C. Compton parcel; thence with ten lines of said right-of-way line, S 21° 20' 41" W, 618.00 feet to a point; thence, S 22° 06' 27" W, 228.13 feet to a point; thence, S 29° 08' 52" W, 115.05 feet to a point; thence, S 38° 43' 36" W, 69.00 feet to a point; thence, S 41° 32' 42" W, 128.98 feet to a point; thence, S 44° 54' 29" W, 217.74 feet to a point; thence, S 51° 58' 17" W, 65.62 feet to a point; thence, S 56° 18' 18" W, 658.90 feet to a point; thence, S 55° 09' 16" W, 139.06 feet to a

point; thence, S 44° 41' 23" W, 81.61 feet to a ¾" rebar found, being a corner to the Midcity Land Company parcel; thence with four lines of said Midcity Land Company parcel, N 33° 23' 59" W, 442.61 feet to a ¾" rebar found; thence, N 42° 08' 54" W, 644.68 feet to a ¾" rebar found; thence, N 7° 53' 55" W, 720.96 feet to a ¾" rebar found; thence, N 2° 36' 05" E, 728.72 feet to a ¾" rebar found in a line of the Betty Y. Gawthrop parcel; thence with a line of said Gawthrop parcel, N 74° 47' 50" E, 173.56 feet to a set stone found, being a corner to a second Betty Y. Gawthrop parcel; thence with a line of said second Gawthrop parcel, N 76° 57' 45" E, 916.79 feet to a 5/8" rebar set, being a corner to a third Betty Y. Gawthrop parcel; thence with a line of said third Gawthrop parcel, S 80° 41' 56" E, 358.33 feet to a set stone found, being a corner to the Charles E. & Julia C. Compton parcel; thence with a line of said Compton parcel, S 45° 57' 27" E, 1062.36 feet to the beginning, containing 87.5508 acres, more or less, as surveyed by Grafton Coal Company in December, 2000, and as shown on a plat of record in said Clerk's office in Deed Book No. 1344, page 1159.

There is excepted and reserved from said 87.5508 acres, all that certain lot or parcel of land containing 3.829 acres, more or less, being a part of a tract or parcel of land containing 40 acres, more or less, conveyed by Ann's Run Limited Liability Company to The County Commission of Harrison County, West Virginia, by deed dated December 30, 2008, of record in the office of the Clerk of the County Commission of Harrison County, West Virginia, in Deed Book No. 1426, page 399, and which is more particularly bounded and described in a Partial Release by First Central Bank, Inc., of record in said Clerk's office in Release Docket No. 334, page 1152, to which reference is hereby made for a more complete description of said 3.829 acres, more or less.

Our examination as to said 28.1205 acre tract or parcel of land began with a deed dated October 7, 1932, (Deed Book No. 436, page 270), from Dana H. Gawthrop and Florida C. Gawthrop, his wife, and Ray B. Gawthrop and Lena Gawthrop, his wife, to Perry C. Gawthrop. As to said 57.0232 acre tract or parcel of land, our examination began with a deed dated July 22, 1902, (Deed Book No. 131, page 343), from Claude G. Gawthrop to Cornelia Gawthrop. As to said 4.4068 acre tract or parcel of land, our examination began with a deed dated March 11, 1915, (Deed Book No. 242, page 121), from A. J. Williams and Francis G. Williams, his wife, to Cornelia Gawthrop. As to all of said tracts or parcels of land, our examination ended on September 21, 2009, at 8:00 a.m., from which examination

we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land was vested in Ann's Run Limited Liability Company, subject only to the following:

As To Tract Of 28.1205 Acres

1. By instrument dated December 20, 1899, (Deed Book No. 116, page 500), Cornelia Gawthrop, widow, et al., leased to South Penn Oil Company a tract of 71 acres, of which the property under examination was a part, for the purpose of mining and operating for oil and gas and laying pipelines and related appliances upon said tract. The term of said lease was five years and as long thereafter as oil or gas or either of them is produced from said tract.

2. By instrument dated July 30, 1908, (Deed Book No. 182, page 66), Cornelia Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for oil and gas mining and operations, including the laying of pipelines and building tank stations and related structures thereon. The term of said lease was ten years from said date or as long thereafter as oil or gas or either of them is produced.

3. By instrument dated July 8, 1918, (Deed Book No. 282, page 294), Cornelia Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for mining and operating for oil and gas, including laying pipelines, tanks and other structures. The term of said lease was five years from July 30, 1918, and as long thereafter as the tract was operated in search for or production of oil and gas, with extensions of the term by payment of rentals as set forth therein.

4. By instrument dated August 3, 1918, (Deed Book No. 287, page 384), Cornelia Gawthrop granted to Hope Natural Gas Company a right of way to open, repair, maintain and use a wagon roadway upon a tract or parcel of land, of which the property under examination was a part. Said roadway was to be used by Hope Natural Gas only for hauling on, to and from Well No. 5321 upon the lands of Perry C. Gawthrop. The term of this right of way was for as long as the P. C. Gawthrop lands were operated for oil and gas.

5. By instrument dated October 1, 1912, (Deed Book No. 300, page 430), Cornelia Gawthrop granted to Hope Natural Gas Company a right of way upon a tract, of which the property under examination was a part, to open, repair, maintain and use a wagon roadway.

6. By instrument dated September 8, 1923, (Deed Book No. 345, page 41), Cornelia Gawthrop, et al., leased to Bridgeport Natural Gas and Oil Company a tract of 71 acres, of which the property under examination was a part, for mining and operating for oil and gas. The term of said lease was five years from said date and as long thereafter as oil or gas or either of them was produced from said tract.

7. By instrument dated June 8, 1928, (Deed Book No. 389, page 530), Cornelia Gawthrop, et al., leased to Bridgeport Natural Gas and Oil Company a tract of 71 acres, of which the property under examination was a part, for oil and gas exploration. The term of said lease was five years from said date and as long as oil or gas or either of them is produced from said tract.

By instrument dated February 10, 1932, (Deed Book No. 432, page 189), R. N. Gawthrop, et al., agreed with Hope Natural Gas Company to a modification of said lease.

8. By instrument dated August 26, 1929, (Deed Book No. 405, page 156), Cornelia Gawthrop, et al., granted to Monongahela West Penn Public Service Company a right of way for electric distribution and telephone systems upon and over a tract of 70 acres, of which the property under examination was a part.

9. By deed dated October 7, 1932, (Deed Book No. 436, page 270), Dana H. Gawthrop and Florida C. Gawthrop, his wife, and Ray B. Gawthrop and Lena Gawthrop, his wife, conveyed a tract containing 38.69 acres, of which the property under examination was a part, to Perry C. Gawthrop. This conveyance was made subject to the oil and gas lease on a tract of 70.54 acres which lease was then held and operated by Hope Natural Gas Company.

10. By instrument dated January 11, 1939, (Deed Book No. 499, page 227), Dana H. Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for the operation and production of oil and gas, including a right of way for pipelines and telephone, telegraph and electric lines and related structures. The term of said lease was ten years from said date and as long thereafter as operated in search for or production of oil or gas with the extension of the term by payment of rentals as recited therein.

11. By instrument dated July 1, 1948, (Deed Book No. 655, page 556), R. B. Gawthrop and Lena Gawthrop, his wife, and P. C. Gawthrop and Nocal L. Gawthrop, his wife, leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for exploration and operation for oil and gas and for the storing of any kind of gas. The term of said lease was ten years from January 11, 1949, and as long thereafter as said tract was operated in search for or production of oil or gas with the extension

of the term by payment of rentals as set forth therein.

12. By instrument dated April 18, 1958, (Deed Book No. 808, page 419), R. B. Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for exploration and operation for oil and gas. The term of said lease was ten years from January 11, 1959, and as long thereafter as operated in search for and production of oil or gas or held for the storage of gas.

13. By instrument dated December 28, 1999, (Deed Book No. 1320, page 36), Asa R. Gawthrop granted to the City of Bridgeport a permanent right of way and easement 20 feet in width and a temporary construction easement 30 feet in width for a sanitary sewer system on the property under examination.

14. By instrument dated December 10, 2007, (Deed Book No. 1411, page 450) Ann's Run Limited Liability Company granted and conveyed to CPRW, LLC, Private Easement No. CPS-1 for utilities and other private uses over and upon a tract or parcel of land of which the property under examination is a part.

15. By instrument dated December 22, 2008, (Deed Book No. 1426, page 396) Ann's Run Limited Liability Company granted and conveyed to CPRW, LLC, Private Easement No. CPS-5 for utilities and other private uses over and upon a tract or parcel of land including the property under examination.

As To Tract Of 57.0232 Acres

1. By instrument dated July 30, 1908, (Deed Book No. 182, page 3), Cornelia Gawthrop leased the property under examination to Hope Natural Gas Company for mining and operating for oil and gas and the laying of pipelines and related structures. The term of said lease was ten years from its date or as long thereafter as oil or gas or either of them was produced from said tract.

By instrument dated July 2, 1918, (Deed Book No. 282, page 236), Cornelia Gawthrop and Hope Natural Gas Company entered a supplemental agreement regarding said lease concerning delay rental payments and providing that any extensions of term of said lease would be for five years from July 30, 1918.

2. By instrument dated September 8, 1923, (Deed Book No. 345, page 44), Cornelia Gawthrop leased the property under examination to Bridgeport Natural Gas and Oil Company for mining and operating for oil and gas. The term of said lease was five years from said date and as long thereafter as oil or gas or either of them was produced.

By instrument dated February 10, 1932, (Deed Book No. 432, page 222), Cornelia Gawthrop and Hope Natural Gas Company agreed to a modification of said lease concerning rentals from Well No. 7563.

By instrument dated July 27, 1961, (Deed Book No. 854, page 566), P. C. Gawthrop and Nocal L. Gawthrop, his wife, and Ray B. Gawthrop and Lena Gawthrop, his wife, and Hope Natural Gas Company agreed to a modification of said lease.

3. By instrument dated August 15, 1929, (Deed Book No. 405, page 150), Cornelia Gawthrop, widow, granted to Monongahela West Penn Public Service Company a right of way for electric distribution and telephone system upon the property under examination.

4. By instrument dated December 26, 1999, (Deed Book No. 1320, page 34), Asa R. Gawthrop granted the City of Bridgeport a permanent right of way and easement 20 feet in width and a temporary construction easement 30 feet in width for a sanitary sewer system on the property under examination.

As To Tract Of 4.4068 Acres

1. By said deed dated March 11, 1915, (Deed Book No. 242, page 121), A. J. Williams and Francis G. Williams, his wife, conveyed to Cornelia Gawthrop a tract of 5.20 acres subject to a reservation of all coal, oil and gas with the necessary rights for development of the same as recited in Deed Book No. 180, page 191.

2. By instrument dated May 21, 1937, (Deed Book No. 482, page 561), D. H. Gawthrop and Florida Gawthrop, his wife, leased to Hope Natural Gas Company, the property under examination, for oil and gas operation and production, together with rights of way for pipelines, telephone and telegraph lines and related structures. The term of said lease was five years from said date and as long thereafter as operated in search for and production of oil or gas with the extension of the term by payment of rentals as recited therein.

3. By instrument dated June 20, 1944, (Deed Book No. 526, page 546), Perry C. Gawthrop and Nocal C. Gawthrop, his wife, and Hope Natural Gas Company agreed to an extension of a prior lease dated May 21, 1937, (Deed Book No. 482, page 561) upon the property under examination. The term of said lease was extended to ten years from May 21, 1942, and as long thereafter as the property under examination was operated in search for or production of oil or gas with further extensions of the term by payment of rentals as recited therein.

4. By instrument dated May 11, 1961, (Deed Book No. 851, page 43), P. C. Gawthrop and Nocal Gawthrop, his wife, leased the property under examination to Hope Natural Gas Company for exploration and operation for oil and gas, including injecting, storing and withdrawing of any kind of gas. The term of said lease was ten years from said date and as long thereafter as said tract was operated in search for or production of oil or gas or held for storage of gas.

5 By instrument dated December 28, 1999, (Deed Book No. 1320, page 38), Asa R. Gawthrop granted to the City of Bridgeport a permanent right of way and easement 20 feet in width and a temporary construction easement 30 feet in width for sanitary sewer system on the property under examination.

6. By instrument dated December 10, 2007, (Deed Book No. 1411, page 450) Ann's Run Limited Liability Company granted and conveyed to CPRW, LLC, Private Easement No. CPS-1 for utilities and other private uses over and upon a tract or parcel of land of which the property under examination is a part.

As To All Tracts

1. By deed of trust dated December 18, 2007, (Trust Deed Book No. 1137, page 519) Ann's Run Limited Liability Company conveyed the property under examination to Billy Atkins and Robert W. Dinsmore, Trustees, to secure First Central Bank, Inc. payment of a negotiable promissory note in the amount of \$1,400,000.00. Said deed of trust has not been released of record and constitutes a lien against the property under examination.

2. There is of record in said Clerk's office in Trust Deed Book No. 1137, page 400, a Notice Of Lien Of Community Enhancement District Assessments which includes the property under examination.

3 There is of record in said Clerk's office in Trust Deed Book No. 1158, page 1113, a Notice Of Lien Of Community Enhancement District First Revised Assessments which includes the property under examination.

4 The following instruments were granted by Edward L. Gawthrop to Mid-City Land Co. affecting all tracts comprising the property under examination.

a. By instrument dated November 6, 1995, (Deed Book No. 1271, page 319), Edward L. Gawthrop leased to Mid-City Land Co., Inc. the property under examination for a term beginning on November 6, 1995, and ending on November 5, 2005, with three ten year options to extend the lease beginning on November 6, 2005.

b. By instrument dated February 6, 1996, (Deed Book No. 1273, page 557), Edward L. Gawthrop leased to Mid-City Land Co., Inc. the property under examination for a term beginning February 6, 1996, and ending on February 5, 2006. Said lease supercedes the lease dated November 6, 1995 (Deed Book No. 1271, page 319). The tenant has three ten year options to extend the lease beginning on February 6, 2006.

c. By instrument dated April 25, 1996, (Deed Book No. 1276, page 276), Edward L. Gawthrop conveyed to Mid-City Land Co., Inc. all of the coal owned by grantor in, upon and underlying the property under examination. Grantee was to have the right and privilege of using so much of the surface owned by grantor as necessary or convenient for strip mining, removing, hauling and shipping of said coal and other coal owned, leased or otherwise controlled by grantee whether in said property under examination or elsewhere.

d. By instrument dated April 25, 1996, (Deed Book No. 1276, page 280), Edward L. Gawthrop leased to Mid-City Land Co., Inc. the property under examination for the purpose of prospecting and exploring by geophysical and other methods, drilling, mining, operating for and producing oil and gas or both, including casing head gas, casing head gasoline, gas condensate (distillate) and any substance produced in a gaseous state or contained in such oil and gas, but excluding, without limitation, coal, coal seam gas, lignite, oil slated, and oil shale, together with the right to enter said lands with necessary equipment and to create necessary disturbance, to lay and construct necessary pipelines and utilities, to construct and use necessary roads, to occupy as much of said lands as necessary for said purpose, and to use such amount of water which may be necessary, subject to any limitations, reservations or exceptions contained therein.

e. By instrument dated June 21, 1996, (Deed Book No. 1277, page 1163), Edward L. Gawthrop and Mid-City Land Company agreed to an addendum which was to be made part of the Memorandum of Lease dated February 6, 1996, (Deed Book No. 1273, page 557). Said addendum regarded changes in monthly rentals and changes regarding insurance and responsibility for the red brick structure situated on the property under examination.

5. The following instruments have been granted by predecessors in title to the property under examination across larger tracts or parcels of land or multiple tracts of land of which the property under examination was a part. Due to vague descriptions contained within the instruments, we were unable to determine from the records in said Clerk's office whether the property under examination is affected thereby.

a. By undated instrument, recorded on June 4, 1926, (Deed Book No. 367, page 414), Cornelia Gawthrop, et al., granted to Bridgeport Natural Gas & Oil Co. a right of way over lands in Simpson District, Harrison County, West Virginia, for pipelines to transport oil or gas and for a telephone or telegraph line.

b. By instrument dated May 9, 1950, (Deed Book No. 692, page 396), P. C. Gawthrop and Nocal L. Gawthrop, his wife, granted to Hope Natural Gas Company a right of way for pipelines upon lands in Simpson District, Harrison County, West Virginia. Said instrument indicated that the pipeline was a 4 inch line.

c. By instrument dated January 16, 1953, (Deed Book No. 731, page 323), P. C. Gawthrop and Nocal L. Gawthrop, his wife, granted to Hope Natural Gas Company a right of way for pipelines upon their lands in Simpson District, Harrison County, West Virginia.

d. By instrument dated June 17, 1953, (Deed Book No. 758, page 265), P. C. Gawthrop and Nocal L. Gawthrop, his wife, conveyed to The Chesapeake & Potomac Telephone Company of West Virginia a right of way for telephone and telegraph systems upon their lands in Simpson District, Harrison County, West Virginia.

e. By instrument dated October 25, 1963, (Deed Book No. 884, page 18), Perry C. Gawthrop and Nocal Gawthrop, his wife, conveyed to Monongahela Power Company a 0.0143 acre parcel in Simpson District, Harrison County, West Virginia, and further conveyed a right of way across their property which adjoined the conveyed parcel. This parcel was for construction, maintenance and removal of an aeronautical hazard beacon.

f. By instrument dated September 13, 1971, (Deed Book No. 994, page 714), Edward L. Gawthrop and Betty H. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution lines and telephone lines upon 217 acres along Route No. 73 in Simpson District.

g. By instrument dated November 3, 1971, (Deed Book No. 998, page 304), Edward L. Gawthrop and Betty H. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution and telephone lines with additions thereto upon 217 acres along Route No. 73 in Simpson District.

h. By instrument dated January 11, 1972, (Deed Book No. 999, page 310), Edward Gawthrop granted to C & P Telephone Company of West Virginia a right of way for buried cable upon his lands in Simpson District.

i. By instrument dated June 27, 1972, (Deed Book No. 1002, page 1225), Edward L. Gawthrop and Betty H. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution lines and telephone lines upon 217 acres in Simpson District.

j. By instrument dated December 12, 1974, (Deed Book No. 1029, page 534), E. L. Gawthrop, divorced, granted to Consolidated Gas Supply Corporation a right of way to construct, lay and maintain gas regulators, meters and similar appliances and buildings to house appliances and pipelines, together with the right of ingress and egress upon lands in Simpson District, not to exceed an area 20 feet by 20 feet with the right to fence the same.

k. By instrument dated March 2, 1987, (Deed Book No. 1171, page 690), Edward Gawthrop and Martha Gawthrop, his wife, leased to Petroleum Development Corporation 117.2 acres on Ann's Run, Simpson District, for exploration and operation for oil and gas and natural gas, casing head gas, condensate and related hydrocarbons. The term of said lease was for one year from said date and as long thereafter as operations for oil or gas were being conducted on the premises or oil or gas was found in paying quantities thereon.

l. By instrument dated March 1, 1988, (Deed Book No. 1183, page 953), Edward Gawthrop and Martha Gawthrop, his wife, and Petroleum Development Corporation extended the term of said prior lease dated March 2, 1987, (Deed Book No. 1171, page 690), for one year from March 2, 1988.

m. By instrument dated July 27, 1988, (Deed Book No. 1187, page 1255), Edward Gawthrop and Mary Lou Gawthrop conveyed to Blaney Hardwoods of Ohio, Inc. all saw timber 18 inches stump diameter and larger located upon 217 acres in Simpson District. This conveyance included the right to enter upon said lands with equipment for the purposes of timbering. The term of said lease was two and one-half years to cut and remove and an extension of one year by paying an additional six percent of the selling price per each year of extension.

n. By instrument dated February 27, 1989, (Deed Book No. 1193, page 298), Edward Gawthrop and Martha Gawthrop, his wife, and Petroleum Development Corporation agreed to a modification of the terms of said prior lease dated March 2, 1987, (Deed Book No. 1171, page 690), extending the term for one year from March 2, 1989, and as long thereafter as said land was operated in search for or production of oil or gas.

6. By deed dated June 7, 2006, (Deed Book No. 1390, page 1112), Ann's Run Limited Liability Company conveyed to Five-J Energy, Inc., all right, title and interest in and to the oil and gas within and underlying the property under examination.

7. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684).

8. By Gas Pipeline Non-Exclusive Easement Agreement dated October 23, 2007, (Deed Book No. 1411, page 450) Ann's Run Limited Liability Company and others entered into an Agreement with Hope Gas, Inc., d/b/a Dominion Hope, wherein grantors granted and conveyed to Hope, its successors and assigns, non-exclusive easements for underground pipelines and appurtenances necessary thereto, over and through those certain tracts or parcels of land situate in Phase 3 in the South Land Bay at Charles Pointe in the City of Bridgeport, Simpson District, Harrison County, West Virginia, of which the property under examination is a part, within private easements to be specifically identified as "Conveyed Private Easements" to be recorded in said Clerk's office.

Said Agreement was subsequently re-recorded two times in said Clerk's office in Deed Book No. 1427, page 260, and in Deed book No. 1435, page 450.

9. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

10. We did not examine title to the minerals, including the coal, oil and gas within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2009, the property under examination is assessed on the Land Books of Harrison County in Simpson District - Bridgeport to Ann's Run Limited Liability Company as follows:

WATERS, WARNER & HARRIS, PLLC

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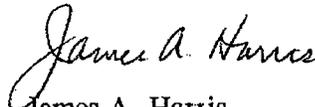
<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
Tax Map No. 290, Parcel No. 7, Account No. 6351164:				
25.75 As ADJ Hunters Chase At Charles Pointe	\$7,200.00	\$0	\$7,200.00	\$52.43
Tax Map No. 290, Parcel No. 6, Account No. 6351100:				
54.06 As ADJ Hunters Chase At Charles Pointe	\$3,480.00	\$0	\$3,480.00	\$25.34
Tax Map No. 290, Parcel No. 15, Account No. 6351119:				
3.28 As ADJ Hunters Chase At Charles Pointe	\$240.00	\$0	\$240.00	\$1.75

The real estate taxes assessed against the property under examination have been paid to and including the year 2008. The real estate taxes assessed against the property under examination for the year 2009 constitute a lien, and are now due and payable.

The real estate taxes assessed against the property under examination for the year 2010 constitute a lien, but are not due and payable until July, 2010.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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September 23, 2009

WV DEP - CW SRF Program  
601 57th Street, S.E.  
Charleston, WV 25304

Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

Re: Tax Map No. 269, Parcel No. 23, (89.30 acres,  
more or less )  
Tax Map No. 270, Parcel No. 24.4 (71.95 acres,  
more or less)

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all those two (2) certain tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a rebar found, being a corner to the Ann's Run Limited Liability Company parcel and the Higinbotham parcel; thence with a line of said Higinbotham parcel, N 61° 44' 46" W, 2882.79 feet to a rebar set, bearing S 61° 44' 46" E, 140.84 feet from a iron rod found; thence with twenty two lines through two Julia C. Compton Trust 2003 parcels, N 43° 00' 23" E, 519.69 feet to a rebar set; thence, S 73° 01' 47" E, 236.81 feet to a rebar set; thence, S 53° 30' 11" E, 619.16 feet to a rebar set; thence, N 18° 54' 36" E, 218.02 feet to a rebar set; thence, N 12° 14' 50" W, 433.89 feet to a rebar set; thence, N 18° 36' 51" E, 210.06 feet to a rebar set; thence, N 64° 16' 10" E, 164.19 feet to a rebar set; thence, S

56° 33' 58" E, 330.44 feet to a rebar set; thence, S 39° 29' 59" E, 388.84 feet to a rebar set; thence, N 51° 45' 57" E, 317.33 feet to a rebar set; thence, N 4° 57' 52" E, 198.72 feet to a rebar set; thence, N 6° 35' 06" W, 460.37 feet to a rebar set; thence, N 83° 54' 28" E, 497.11 feet to a rebar set; thence, S 9° 04' 28" E, 414.97 feet to a rebar set; thence, S 60° 44' 57" E, 201.92 feet to a rebar set; thence, S 80° 30' 36" E, 218.65 feet to a rebar set; thence, S 34° 48' 42" E, 188.38 feet to a rebar set; thence, S 18° 40' 29" E, 218.67 feet to a rebar set; thence, S 16° 59' 57" W, 406.61 feet to a rebar set; thence, S 50° 59' 51" W, 295.87 feet to a rebar set; thence, S 23° 43' 48" W, 181.61 feet to a rebar set; thence, S 24° 51' 12" E, 475.49 feet to a rebar found in a line of a third Julia C. Compton Trust 2003 parcel; thence with a line of said third Trust parcel, S 34° 21' 24" W, 129.78 feet to a track spike found in root of 36 inch forked oak, being a corner to the Ann's Run Limited Liability Company parcel; thence with a line of said Ann's Run Limited Liability Company parcel, S 34° 21' 24" W, 537.90 feet to the beginning, containing 89.30 acres, more or less, as surveyed by Grafton Coal Company in November, 2004; and as shown on a plat of record in said Clerk's office in Deed Book No. 1374, page 970.

TRACT NO. 2: All that certain tract or parcel of land containing 71.95 acres as shown on a plat entitled "Plat of Survey of Julia C. Compton Trust 2003 Property a Portion of Tax Map - 269, Parcel 23 & Tax Map - 270, Parcel 24 Situate in Simpson District, Harrison County, West Virginia" of record in said Clerk's office in Deed Book No. 1374, page 970.

Our examination began with an Order of the Circuit Court of Harrison County, West Virginia, dated September 14, 1896, (Deed Book No. 99, page 296), wherein Grace Sandusky was awarded title to the surface of a tract or parcel of land containing 63.9 acres, more or less, and with the following seven deeds:

a. Deed dated October 9, 1899, (Deed Book No. 109, page 401), from Lewis C. Lawson, Special Commissioner, to Hugh Jarvis and W. Brent Maxwell conveying a tract or parcel of land containing 190 acres and 15 poles, more or less.

b. Deed dated September 25, 1918, (Deed Book No. 282, page 220), from Ashby E. Cropp and Martha J. Cropp, his wife, to Hugh Jarvis and W. Brent Maxwell conveying an undivided interest in a tract or parcel of land containing 20 acres.

c. Deed dated October 8, 1919, (Deed Book No. 333, page 400), from A. T. Cropp, et al., to Hugh Jarvis and W. Brent Maxwell conveying an undivided interest in said tract or parcel of land containing 20 acres.

d. Deed dated October 27, 1922, (Deed Book No. 333, page 399), from Mabel McEldowney and Dewey McEldowney, her husband, to Hugh Jarvis and W. Brent Maxwell conveying an undivided interest in said tract or parcel of land containing 20 acres.

e. Deed dated July 1, 1927, (Deed Book No. 377, page 331), from Plesora Cropp, et al., to Hugh Jarvis and W. Brent Maxwell conveying an undivided interest in said tract or parcel of land containing 20 acres.

f. Deed dated January 2, 1926, (Deed Book No. 364, page 201), from J. R. Nuzum and Maude M. Nuzum, his wife, to W. Brent Maxwell and Hugh Jarvis conveying a tract or parcel of land containing 98.5 acres, more or less.

g. Deed dated February 17, 1917, (Deed Book No. 265, page 27), from Adah Alexander Stout and Frank Stout, her husband, to Hugh Jarvis conveying a tract or parcel of land containing 3-3/4 acres, more or less.

Our examination ended on September 21, 2009, at 8:00 a.m., from which examination we certify that at that time on September 21, 2009, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land containing 89.30 acres, more or less, was vested in HLC, L.P., and good title to the surface of said tract or parcel of land containing 71.95 acres, more or less, was vested in James A. Corton, Trustee, Rickey D. Lambert, Trustee, James M. Compton, Trustee, Jennifer C. Corton, Trustee, as Trustees of the Julia C. Compton Trust 2003, subject only to the following:

1. There is no metes and bounds description of record for TRACT NO. 2. However, Tract No. 2 is adequately described on said plat of record in Deed Book No. 1374, page 970.

2. By Decree entered in the Circuit Court of Harrison County, West Virginia, on November 2, 1946, styled Frank J. Maxwell, et al., Plaintiffs, vs. Claude B. Maxwell, et al., Defendants, Chancery No. 11568, the Court ordered that the plaintiffs, Frank

J. Maxwell, W. Brent Maxwell, Jr., and Susan Maxwell Tutenberg, take and hold, as tenants in common, a tract or parcel of land containing 144 acres and 146 square poles, and said tract or parcel of land containing 190 acres and 15 poles and 20 acres, excepting and reserving 107/108 of the oil and gas within and underlying said tract or parcel of land containing 20 acres. Said Decree further provided that all of the coal within and underlying all of said tracts or parcels of land and all easements, siding rights, agreements, and privileges appurtenant to such coal be, and they were, reserved and excepted from the assignment and allotment, together with full and free rights of ingress and egress to enter upon, over, and under said lands to mine, excavate, and remove all of said coal, either by deep or drift mining or by strip mining methods, leaving no pillars or other supports for the overlying surface; and to enter upon and under said tracts of land and to make and construct thereon, therein, and thereunder all structures, roads, ways, excavations, air shafts, drains, drainways, and openings, and to build and erect thereon all tipples, switches, sidetracks, sidings, buildings, and other structures reasonably necessary, incidental, or convenient for mining and removing all of said coal; and to enter upon and under said tracts of land and to make and construct thereon, therein and thereunder all structures, roads, ways, excavations, and air shafts.

3. By instrument dated January 10, 1939, (Deed Book No. 504, page 419), Hugh Jarvis, et al., granted to Hope Natural Gas Company a lease upon said 20 acre tract or parcel of land for operating and producing oil and gas, together with a right of way for any necessary lines. Said lease was for a primary term of ten years from January 10, 1939.

4. By instrument dated January 1, 1929, (Deed Book No. 403, page 236), Hugh Jarvis and Harriet M. Jarvis, his wife, and W. Brent Maxwell and Lilly J. Maxwell, his wife, conveyed to Aizpuru Oil and Gas Company two certain gas wells and the right to conduct oil and gas exploration upon 334-7/8 acres in Simpson District for a primary term of five years from January 1, 1929.

5. By instrument dated February 19, 1932, (Deed Book No. 432, page 159), Hugh Jarvis, et al., made an application to Hope Natural Gas Company for a gas meter and for free gas upon 334-7/8 acres in Simpson District.

6. By instrument dated April 20, 1932, (Deed Book No. 433, page 82), between Hugh Jarvis, et al., and Hope Natural Gas Company said lease described in paragraph 4 above was modified with regard to the terms of payment.

7. By instrument dated April 20, 1932, (Deed Book No. 434, page 279), between Hugh Jarvis, et al., and Hope Natural Gas Company certain terms of the lease upon 334 acres in Simpson District were canceled or modified.

8. By instrument dated May 3, 1937, (Deed Book No. 483 page 12), W. Brent Maxwell, Jr., et al., granted to Hope Natural Gas Company a lease for operation and production of oil and gas, together with the necessary rights of way upon 101 acres on Barnetts Run in Simpson District. Said lease was for a primary term of ten years from May 3, 1937.

9. By instrument dated June 10, 1937, (Deed Book No. 482, page 545), Martha Maxwell Davis, et al., granted to Hope Natural Gas Company a ratification and confirmation of said oil and gas lease described in paragraph 8 above.

10. By instrument dated February 17, 1943, (Deed Book No. 566, page 22), Hugh Jarvis, et al., granted to Hope Natural Gas Company the right to inject, store, and withdraw any kind of gas in the oil or gas bearing sand, strata, formation and horizon known as "Fifty foot sand" upon 334-7/8 acres in Simpson District.

11. By instrument dated February 17, 1943, (Deed Book No. 566, page 28), Hugh Jarvis, et al., granted to Hope Natural Gas Company a modification of said lease described in paragraph 8 above.

12. By instrument dated February 17, 1943, (Deed Book No. 566, page 201), Hugh Jarvis, et al., granted to Hope Natural Gas Company the right to inject, store, and withdraw any kind of gas and oil in the oil and gas bearing sand, strata and formation known as "Fifty foot sand" on 101 acres in Simpson District.

13. By instrument dated February 17, 1943, (Deed Book No. 566, page 233), Hugh Jarvis granted to Hope Natural Gas Company a modification of the lease upon 334-7/8 acres in Simpson District referred to in paragraph 4 above.

14. By instrument dated November 6, 1943, (Deed Book No. 556, page 1), J. Hornor Davis, II, Union National Bank of Clarksburg, as guardian for James Hornor Davis, III and William Maxwell Davis, infants, granted to Sherrodsville Mining Company an undivided one-twelfth (1/12) interest in the Pittsburgh or nine foot seam of coal under a 20 acre, 144 acre and 190 acre tracts, of which the property under examination was a part, together with mining rights and privileges, including strip mining and deep mining, without obligation to support the overlying surface and without liability for damage done to the overlying surface.

15. By instrument dated November 23, 1942, (Deed Book No. 566, page 227), Hugh Jarvis, et al., granted to Hope Natural Gas Company the right to inject, store, and withdraw gas from the "50 foot sand" on 20 acres in Simpson District.

16. By instrument dated December 11, 1942, (Deed Book No. 566, page 237), between Hugh Jarvis, et al., and Hope Natural Gas Company the lease referred to in paragraph 3 above was modified.

17. By instrument dated August 10, 1953, (Deed Book No. 745, page 483), Hugh Jarvis, et al., granted to D. S. Blount full and complete rights of ingress and egress for mining and removing coal by the auger mining method, including the right to make cuts, trenches, haulways, drainways, and other excavations as may be reasonably necessary or convenient for mining and removal of coal by the auger method and transporting to the public road upon a 30 acre tract, 144 acre tract and 190 acre tract.

18. By instrument dated November 30, 1956, (Deed Book No. 788, page 141), Harriet M. Jarvis, Lemuel D. Jarvis and Porter M. Jarvis released D. S. Blount from any claims or demands which they had against D. S. Blount because of the mining operations and other operations performed under the instrument referred to in paragraph 17 above.

19. By instrument dated May 1, 1963, (Deed Book No. 875, page 64), Claude J. Ryan and Mary Lola Ryan, his wife, granted to Monongahela Power Company a right of way for electric distribution and telephone systems upon 200 acres in Simpson District.

20. By instrument dated November 4, 1963, (Deed Book No. 887, page 381), Claude J. Ryan and Mary L. Ryan granted to Monongahela Power Company a right of way for an electric distribution and telephone system on 300 acres in Simpson District.

21. By three deeds following, Charles E. Compton acquired said tract or parcel of land containing 63.9 acres, more or less: (1) deed dated September 3, 1968, (Deed Book No. 955, page 351), by John A. Willis and Katherine Willis, his wife, Byrdie R. Evans, widow, Anne W. Hetlage and Robert O. Hetlage, her husband, and Hazel G. Lapeer; (2) deed dated December 27, 1968, (Deed Book No. 955, page 347), from Ruth L. Warren, in her own right and as Guardian of Kimberly Ann Willis, Patricia Lynn Willis and James Sturgis Willis, III, infants; and (3) deed dated December 10, 1970, (Deed Book No. 985, page 781), from Arch F. Sandy and Ann C. Sandy, his wife. Several of the owners of said tract or parcel of land resided and died outside of Harrison County and outside the State of West Virginia. The public records in said Clerk's office do not include affidavits or other evidence listing the heirs of the various owners. Deeds in the chain of title to the surface of said tract containing 63.9 acres, more or less, contain various recitations regarding the deaths of various owners and their heirs. In completing our examination of title to said tract or parcel of land, we have relied on the recitations contained in said deeds.

22. By deed dated April 1, 1970, (Deed Book No. 970, page 133), Frank J. Maxwell, Clerk of the County Commission of Harrison County, West Virginia, conveyed an undivided one-sixth (1/6) interest in and to the oil and gas and surface of said tract or parcel of land containing 63.9 acres, more or less, to A. F. Sandy. Said deed was made pursuant to a sale of said tract or parcel of land for delinquent taxes in the name of Marjorie H. Buckley. We have assumed that Marjorie H. Buckley or any person who may have had the right to redeem said taxes in 1967 were not under a legal disability at the time of the sale by the Clerk to A. F. Sandy.

23. By instrument dated October 28, 1971, (Deed Book No. 997, page 269, Deed Book No. 998, page 86), Don Higinbotham, C. E. Compton and Julia Compton, his wife, and Lemuel H. Higinbotham and Jo Ann T. Higinbotham, his wife, granted to Consolidated Gas Supply Corporation a right of way to lay, maintain, operate, replace and remove a pipeline for the transportation of water, oil and gas over a tract of land situate in Simpson District.

24. By instrument dated December 18, 1975, (Deed Book No. 1078, page 81), Charles E. Compton and Julia C. Compton, his wife, entered into an agreement with Consolidated Gas Supply Corporation regarding and pertaining to usage of free gas upon all surface lands then owned by the Comptons and within boundaries of lands covered in described oil and gas leases and modifications thereof. Said described oil and gas leases or modifications thereof included tracts or parcels of land of which the property under examination is a part.

25. By instrument dated July 25, 1980, (Deed Book No. 1095, page 350), Charles E. Compton and Julia Compton, his wife, granted to Monongahela Power Company an easement for electric distribution lines and telephone lines and additions thereto upon 209 acres, more or less, in Simpson District, Harrison County. Said instrument described said lines as service to the F.A.A.A.S.R. RT site, off Route 73.

26. By instrument dated July 25, 1980, (Deed Book No. 1095, page 352), Charles E. Compton and Julia Compton, his wife, granted to Monongahela Power Company an easement for underground electric distribution lines and telephone lines on 209 acres, more or less, in Simpson District, Harrison County.

27. By instrument dated July 25, 1980, (Deed Book No. 1096, page 93), Charles E. Compton and Julia Compton, his wife, granted to Monongahela Power Company an underground distribution line easement upon the same site as described in paragraph 25 above.

28. By instrument dated August 6, 1980, (Deed Book No. 1097, page 114), Charles E. Compton and Julia C. Compton, husband and wife, entered into a lease with the United States of America, Department of Transportation, Federal Aviation Administration, whereby the Comptons, as lessors, leased to the government a certain tract or parcel of land containing 0.33 acres, more or less, in Simpson District, Harrison County, West Virginia. Said lease provides that at the option of the government, the lease may be renewed from year to year, provided that no renewal thereof shall extend the period of occupancy of the premises beyond the 30<sup>th</sup> day of September, 2030.

29. By instrument dated September 16, 1982, (Deed Book No. 1119, page 1041), Charles E. Compton and Julia Compton, his wife, granted to Consolidated Gas Supply Corporation a right of way for a pipeline with fittings and appliances for transportation of water, oil, gas and other products over their lands in Simpson District, Harrison County.

30. By instrument dated October 10, 1989, (Deed Book No. 1199, page 967), Chas. E. Compton and Julia C. Compton, his wife, granted to CNG Transmission Corporation the right to locate, construct, maintain, use, replace, and remove tanks and other containers upon lands in Simpson District, Harrison County.

31. By instrument dated October 13, 1995, (Deed Book No. 1271, page 1141), C. E. Compton and Julia C. Compton, his wife, granted to Monongahela Power Company an easement for electric distribution lines and Monongahela Power Company facilities and additions thereto upon 239.66 acres in Simpson District, Harrison County, West Virginia. Said easement is for electric distribution lines and Monongahela Power Company facilities and additions thereto.

32. The following rights of way have been granted by predecessors in title to the properties under examination across larger tracts or parcels of land of which the property under examination was a part. Due to vague descriptions contained within in the instruments conveying said rights of way, we were unable to determine from the records in said Clerk's office whether the property under examination is affected thereby. Because of the large number of these instruments, we have set them forth below in abbreviated form, as follows:

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DEED BOOK/PAGE	DATE	GRANTOR	GRANTEE	PURPOSE
506/488	01/13/39	Hugh Jarvis, et al.	Hope Natural Gas Company	Oil and gas pipelines
521/553	11/19/40	Hugh Jarvis and Harriet M. Jarvis	Monongahela West Penn Public Service Company	Electric distribution and telephone systems
528/468	03/04/41	Hugh Jarvis, et al.	Hope Natural Gas Company	Pipeline
551/414	03/01/43	Hugh Jarvis, et al.	Hope Natural Gas Company	Pipeline
551/420	03/01/43	Hugh Jarvis, et al.	Hope Natural Gas Company	Pipelines and telephone and telegraph poles
748/329	04/10/54	Harriet M. Jarvis, et al.	Hope Natural Gas Company	Pipeline

757/6	10/22/54	Harriet M. Jarvis, et al.	Hope Natural Gas Company	Pipeline
758/280	07/31/53	Hugh Jarvis	The Chesapeake & Potomac Telephone Company of West Virginia	Telephone and telegraph poles and appliances

33. As evidenced by Memorandum of Option To Purchase Real Property Agreement dated January 2, 2001, (Deed Book No. 1350, page 879), Charles E. Compton, Trustee, and his successor Trustees, James A. Corton and Rickey B. Lambert, granted to Ann's Run Limited Liability Company, a West Virginia limited liability company, an assignable option to purchase tracts or parcels of land, including the property under examination. Said option is for a period of 20 years from January 2, 2001, with the right to optionee to extend the option for one additional twenty (20)-year term.

As evidenced by Memorandum of Assignment of Option Agreements and Assumption Agreement dated January 6, 2003, (Deed Book No. 1350, page 1059), Ann's Run Limited Liability Company transferred, assigned, and set over to Five-J Energy, Inc., all of its right, title, and interest in and to said option referenced above in Deed Book No. 1350, page 879.

By Assignment of Option Agreements and Assumption Agreement dated January 1, 2005, (Deed Book No. 1414, page 950) and recorded on March 5, 2008, Five-J-Energy, Inc., transferred, assigned and set over to Ann's Run Limited Liability Company all of its right, title and interest in and to the option referred to above.

34. By instrument dated June 19, 2003, (Deed Book No. 1399, page 264), Ann's Run Limited Liability Company, a West Virginia limited liability company, and Charles E. Compton, Trustee, and his successors as Trustee(s), of the C. E. Compton Trust dated February 27, 1984, as restated in its entirety on December 21, 1987, and amended further on January 15, 1992, granted to Dominion Transmission, Inc., the right to lay, maintain, operate, change the size of, replace, and remove a pipeline for the transportation of gas and oil and other fluids over various tracts or parcels of land situate in Simpson District, Harrison County, including a portion of each of the tracts or parcels of land under examination.

35. By instrument dated June 7, 2006, (Deed Book No. 1390, page 1108), the Julia C. Compton Trust 2003 conveyed to Grafton Coal Company all right, title, and interest in and to the coal within and underlying two (2) tracts or parcels of land containing 44.93 acres and 164.33 acres, more or less. The latter parcel of coal is located under a portion of each of the tracts or parcels of land under examination

36. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684).

37. By Gas Pipeline Non-Exclusive Easement Agreement dated October 23, 2007, (Deed Book No. 1411, page 450) Ann's Run Limited Liability Company and others entered into an Agreement with Hope Gas, Inc., d/b/a Dominion Hope, wherein grantors granted and conveyed to Hope, its successors and assigns, non-exclusive easements for underground pipelines and appurtenances necessary thereto, over and through those certain tracts or parcels of land situate in Phase 3 in the South Land Bay at Charles Pointe in the City of Bridgeport, Simpson District, Harrison County, West Virginia, of which the property under examination is a part, within private easements to be specifically identified as "Conveyed Private Easements" to be recorded in said Clerk's office.

Said Agreement was subsequently re-recorded two times in said Clerk's office in Deed Book No. 1427, page 260 and in Deed Book No. 1435, page 450.

38. There is of record in said Clerk's office in Trust Deed Book No. 1137, page 400, a Notice Of Lien Of Community Enhancement District Assessments which includes the property under examination.

39. There is of record in said Clerk's office in Trust Deed Book No. 1158, page 1113, a Notice Of Lien Of Community Enhancement District First Revised Assessments which includes the property under examination.

40. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

41. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil, and gas, within and underlying the property under examination, and this letter does not constitute a certification of title with respect to said minerals.

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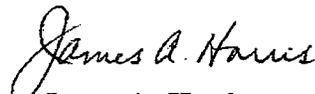
For the year 2009, the property under examination are assessed on the Land Books of Harrison County in Simpson District-Bridgeport to HLC, L.P. (Tax Map No. 269, Parcel No. 23, Account No. 06348384), and to C. E. Compton Trust (Tax Map No. 270, Parcel No. 24.4, Account No. 06822192), as follows:

Description	Land	Valuation Improvements	Total	Taxes Per Half Year
89.30 Ac Barnett Run	\$2,400.00	\$0	\$2,400.00	\$17.48
71.95 Ac Barnett & Anns Run	\$57,000.00	\$0	\$57,000.00	\$415.08

The real estate taxes assessed against the properties under examination have been paid to and including the year 2008. The real estate taxes assessed against the properties under examination for the year 2009 constitute a lien, and are now due and payable. The real estate taxes assessed against the properties under examination for the year 2010 constitute a lien, but are not due and payable until July, 2010.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

  
James A. Harris

cc: Samme Gee, Esquire (via email)

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January 2, 2009

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Gentlemen:

Reference is hereby made to our title letters to you dated December 19, 2008, pertaining to the surface of six (6) tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, which compose the tract or parcel of land containing 40 acres, more or less, conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia, by deed dated December 30, 2008, (Deed Book No. 1426, page 399) and to our letters to you dated December 22, 2008, and December 29, 2008, supplementing our title letters to you dated December 19, 2008.

We have again examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of said six (6) tracts or parcels of land from December 29, 2008, to December 30, 2008, at 3:25 p.m., the date and time of recordation of said deed dated December 30, 2008, (Deed Book No. 1426, page 399) from which examination we certify that at that time on December 30, 2008, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land containing 40 acres, more or less, was vested in The County Commission of Harrison County, West Virginia, subject only to the matters reported in our prior letters except as follows:

1. The Credit Line Deed of Trust, Security Agreement and Fixture Filing dated December 18, 2007, (Trust Deed Book No. 1137, page 519) from Ann's Run Limited Liability Company, a West Virginia limited liability company, to Billy Atkins and Robert W. Dinsmore, Trustees, to secure First Central Bank, Inc., has now been released of record as to the tract or parcel of land containing 3.829 acres, more or less, which is a part of said tract or parcel of land containing 40 acres, more or less, and as to the appurtenant Roadway Easement, by Partial Release recorded in said Clerk's office on December 30, 2008, at 3:05 p.m., in Release Book No. 334, page 1152.

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2. The Deed of Trust dated December 14, 2007, (Trust Deed Book No. 1137, page 426) from Ann's Run Limited Liability Company, a West Virginia limited liability company, to Judy L. Shanholtz, Trustee, to secure Asa R. Gawthrop has now been released of record as to the tracts or parcels of land containing 0.013 acre, more or less, and 0.160 acre, more or less, each of which is a part of said tract or parcel of land containing 40 acres, more or less, and as to the appurtenant Roadway Easement, by Partial Release recorded in said Clerk's office on December 30, 2008, at 3:03 p.m., in Release Book No. 334, page 1149.

3. By Deed of Easement dated December 22, 2008, (Deed Book No. 1426, page 396) Ann's Run Limited Liability Company granted to CPRW, LLC, a West Virginia limited liability company, a private easement identified as Conveyed Private Easement No. CPS- 5 shown upon a plat attached to said Deed of Easement.

4. Plat of Minor Boundary Adjustment Charles Pointe Development South of WV 279 was recorded in said Clerk's office on December 30, 2008, in Plat Cabinet 2, Sheet 34.

5. Plat of Dedicated Roadway Easement Charles Pointe Development South of WV Route 279 was recorded in said Clerk's office on December 30, 2008, in Plat Cabinet 2, Sheet 35.

6. Exhibit "A" Fifth Amended Master Declaration Plat incorporating said tract or parcel of land containing 40 acres, more or less, in the Commerce District at Charles Pointe was recorded in said Clerk's office on December 30, 2008, in Plat Cabinet 2, Sheet 36.

7. Exhibit "D" Second Amended Declaration Plat Commerce District at Charles Pointe Section - 3 incorporating said tract or parcel of land containing 40 acres, more or less, into the Commerce District at Charles Pointe was recorded in said Clerk's office on December 30, 2008, in Plat Cabinet 2, Sheet 37.

8. Plat of 40 Acre Parcel Ann's Run Limited Liability Company Situate in the City of Bridgeport, Simpson District, Harrison County, West Virginia was recorded in said Clerk's office on December 30, 2008, in Plat Cabinet 3, Sheet 38, and depicts the private easement referred to in paragraph 3 above and the Public Roadway Easement referred to in paragraph 5 above.

If you have any questions concerning the matters mentioned in this letter, please feel free to contact me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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Writer's E-Mail: j9harris@aol.com

December 29, 2008

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Gentlemen:

Reference is hereby made to our title letters to you dated December 19, 2008, pertaining to the surface of six (6) tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, which compose the tract or parcel of land containing 40 acres, more or less, to be conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia, and to our letter to you dated December 22, 2008, supplementing those title letters.

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of said six (6) tracts or parcels of land from December 5, 2008, to December 29, 2008, at 8:00 a.m., from which examination we certify that at that time on December 29, 2008, as appeared from our examination of such records as were properly indexed in said Clerk's office, there had been no change in the title to the surface of any of said six (6) tracts or parcels of land nor had there been any change in any of the matters affecting any of said six (6) tracts or parcels of land from December 5, 2008, to and including December 29, 2008, at 8:00 a.m.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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December 22, 2008

The Harrison County Commission  
Harrison County Courthouse  
301 West Main Street  
Clarksburg, West Virginia 26301

Gentlemen:

This letter supplements our title letters dated December 19, 2008, pertaining to six tracts or parcels of land which will compose the tract or parcel of land containing 40 acres, more or less, to be conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia. In addition to the matters reported in each of those title letters, each of the tracts or parcels of land which will compose the tract or parcel of land containing 40 acres, more or less, are subject to a Gas Pipeline Non-Exclusive Agreement dated October 23, 2007, (Deed Book No. 1411, page 450) between Ann's Run Limited Liability Company, a West Virginia limited liability company, Julia C. Compton Trust 2003, Julia C. Compton, an individual, HLC, L.P., a West Virginia limited partnership, and SVR ONE, LLC, a West Virginia limited liability company, and Hope Gas Inc., d/b/a Dominion Hope, granting non-exclusive easements for the sole purpose to lay, etc., underground natural gas distribution pipelines.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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December 19, 2008

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 270, Parcel Nos. 30 (50.748  
acres, more or less) and 30.1 (15.057  
acres, more or less)

Gentlemen:

Reference is hereby made to our title letter to you dated June 1, 2007, a copy of which is enclosed herewith, pertaining to the tract or parcel of land referenced above.

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all those two (2) certain tracts or parcels of land containing 1.001 acres, more or less, and 0.331 acre, more or less, situate in Simpson District, Harrison County, West Virginia, as shown on a plat titled "Plat of Minor Boundary Adjustment Charles Pointe Development South of WV Route 279", dated October, 2008, to be recorded in said Clerk's office and being portions of the tract or parcel of land containing 40 acres, more or less, to be conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia, pursuant to the Resolution and Order adopted and entered by The County Commission of Harrison County, West Virginia, on December 16, 2008.

Our examination began on May 25, 2007, the date ending our prior examination as reported to you in our title letter dated June 1, 2007, and ended on December 5, 2008, at 8:00 a.m., from which examination we certify that at that time on December 5, 2008, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land containing 1.001 acres, more or

less, and 0.331 acre, more or less, was vested in the Julia C. Compton Trust 2003, subject only to the following:

1. Those matters reported in our title letter dated June 1, 2007, except as follows:

(a) By Assignment of Option Agreements and Assumption Agreement dated January 1, 2005, (Deed Book No. 1414, page 950) and recorded on March 5, 2008, Five-J Energy, Inc., transferred, assigned and set over to Ann's Run Limited Liability Company all of its right, title and interest in and to the option described in paragraph 12 of our prior title letter.

(b) With respect to paragraph 16 of our prior title letter, by Confirmatory Quitclaim Deed dated October 12, 2007, (Deed Book No. 1415, page 720) James A. Corton, et al., as Trustees of The C. E. Compton Trust, granted and conveyed to James A. Corton, et al., as Trustees of the Julia C. Compton Trust 2003, all of their right, title and interest in and to all of the real property of The C. E. Compton Trust Dated February 27, 1984, wherever situate, including any right, title and interest in and to the property under examination

2. Notice of Lien of Community Enhancement District Assessments dated December 11, 2007, of record in said Clerk's office in Trust Deed Book No. 1137, page 400.

3. Notice of Lien of Community Enhancement District First Revised Assessments dated October 7, 2008, of record in said Clerk's office in Trust Deed Book No. 1158, page 1113.

4. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

5. We did not examine title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2008, the property under examination is a part of two separate entries on the Land Books of Harrison County in Simpson District - Bridgeport to Compton C E Trust (Charles J Miller & Wm J Snyder Trustee) (Tax Map No. 270, Parcels Nos. 30 and 30.1, Account Nos. 06348366 and 06723566, respectively), as follows:

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<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
47.99 As Anmoore Run	\$1,680.00	\$1,500.00	\$3,180.00	\$22.80
15.01 Ac Anmoore Run	\$12,000.00	\$116,520.00	\$128,520.00	\$921.23

The real estate taxes assessed against the tracts or parcels of land of which the property under examination is a part have been paid to and including the year 2007. The real estate taxes assessed against said tracts or parcels of land for the year 2008 constitute a lien and now are due and payable. The amount required to pay the taxes for the first half of the year 2008 on Account No. 06348366 is \$23.31 if paid by December 31, 2008, and the amount required to pay the taxes for the full year is \$45.54. The amount required to pay the taxes for the first half of the year on Account No. 06723566 is \$941.96 if paid by December 31, 2008, and the amount required to pay the taxes for the full year is \$1,840.16. The real estate taxes assessed against said tracts or parcels of land for the year 2009 constitute a lien, but are not due and payable until July, 2009

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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December 19, 2008

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 290, Parcels Nos. 2 (39.5289 acres,  
more or less) and 8.2 (0.8537 acre, more or less)

Gentlemen:

Reference is hereby made to our title letter to you dated June 1, 2007, a copy of which is enclosed herewith, pertaining to the tracts or parcels of land referenced above.

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of two (2) tracts or parcels of land containing 0.013 acre, more or less, and 0.160 acre, more or less, situate in Simpson District, Harrison County, West Virginia, as shown on a plat titled "Plat of Minor Boundary Adjustment Charles Pointe Development South of WV Route 279", dated October, 2008, to be recorded in the said Clerk's office and being portions of the tract or parcel of land containing 40 acres, more or less, to be conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia, pursuant to the Resolution and Order adopted and entered by The County Commission of Harrison County, West Virginia, on December 16, 2008.

Our examination began on May 25, 2007, the date ending our prior examination as reported to you in our title letter dated June 1, 2007, and ended on December 5, 2008, at 8:00 a.m., from which examination we certify that at that time on December 5, 2008, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land containing 0.013 acre, more or less, and 0.160 acre, more or less, was vested in Ann's Run Limited Liability Company, subject only to the following:

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1. As to said tract or parcel of land containing 0.013 acre, more or less, the matters reported in our title letter dated June 1, 2007, in paragraphs 10 through 12 under "As To Second Tract of 39.5289 Acres".

2. As to said tract or parcel of land containing 0.160 acre, more or less, the matters reported in our title letter dated June 1, 2007, in paragraphs 13 through 24 under "As To Third Tract Of 0.8537 Acre".

3. As to said tract or parcel of land containing 0.013 acre, more or less, and said tract containing 0.160 acre, more or less, the matters reported in our title letter dated June 1, 2007, in paragraphs 25 through 31 under "As To All Tracts".

4. By Deed of Trust dated December 14, 2007, (Trust Deed No. 1137, page 426), Ann's Run Limited Liability Company conveyed two tracts or parcels of land to Judy L. Shanholtz, as Trustee, to secure Asa Gawthrop. Said deed of trust has not been released of record and constitutes a lien against said tract or parcel of land containing 0.013 acre, more or less, and said tract or parcel of land containing 0.160 acre, more or less, both of which are a part of the tracts or parcels of land described in said Deed of Trust dated December 14, 2007. We understand that said deed of trust will be released with respect said tracts or parcels of land containing 0.013 acre, more or less, and 0.160 acre, more or less, prior to or contemporaneously with the conveyance of said tracts or parcels of land to The County Commission of Harrison County

5. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

6. We did not examine title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2008, the property under examination is a part of two separate entries on the Land Books of Harrison County in Simpson District - Bridgeport to Ann's Run Limited Liability Company (Tax Map No. 290, Parcels Nos. 2 and 8.2, Accounts Nos. 6351208 and 6351244, respectively), as follows:

<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
39.53 Ac 4 Ann Run	\$4,020.00	\$0	\$4,020.00	\$28.82
0.85 Ac Ann Run	\$100.00	\$0	\$100.00	\$0.72

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The real estate taxes assessed against the tracts or parcels of land of which the property under examination is a part have been paid to and including the year 2007. The real estate taxes assessed against said tracts or parcels of land for the year 2008 constitute a lien and now are due and payable. The amount required to pay the taxes for the first half of the year 2008 on Account No. 6351208 is \$29.47 if paid by December 31, 2008, and the amount required to pay the taxes for the full year is \$57.57. The amount required to pay the taxes for the first half of the year on Account No. 6351244 is \$0.74 if paid by December 31, 2008, and the amount required to pay the taxes for the full year is \$1.44. The real estate taxes assessed against said tracts or parcels of land for the year 2009 constitute a lien, but are not due and payable until July, 2009.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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December 19, 2008

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 290, Parcel No. 7 (28.1208  
acres, more or less)

Gentlemen:

Reference is hereby made to our title letter to you dated June 1, 2007, a copy of which is enclosed herewith, pertaining to the tract or parcel of land referenced above.

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all that certain tract or parcel of land containing 3.829 acres, more or less, situate in Simpson District, Harrison County, West Virginia, as shown on a plat titled "Plat of Minor Boundary Adjustment Charles Pointe Development South of WV Route 279", dated October, 2008, to be recorded in the said Clerk's office and being a portion of the tract or parcel of land referenced above and of the tract or parcel of land containing 40 acres, more or less, to be conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia, pursuant to the Resolution and Order adopted and entered by The County Commission of Harrison County, West Virginia, on December 16, 2008.

Our examination began on May 25, 2007, the date ending our prior examination as reported to you in our title letter dated June 1, 2007, and ended on December 5, 2008, at 8:00 a.m., from which examination we certify that at that time on December 5, 2008, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land containing 3.829 acres, more or less, was vested in Ann's Run Limited Liability Company, subject only to the following:

1. Those matters reported in paragraphs 1 through 13 of our title letter dated June 1, 2007, under the heading "As To Tract Of 28.1205 Acres".

2. By Credit Line Deed of Trust, Security Agreement and Fixture Filing dated December 18, 2007, (Trust Deed No. 1137, page 519) Ann's Run Limited Liability Company conveyed said tract or parcel of land containing 28.1205 acres, more or less, of which the property under examination is a part, to Billy Atkins and Robert W. Dinsmore, as Trustees, to secure First Central Bank, Inc. Said deed of trust has not been released of record and constitutes a lien against the property under examination, which is a part of said tract or parcel of land containing 28.1205 acres, more or less. It is our understanding that said deed of trust will be released as to the property under examination prior to or contemporaneously with conveyance of the property under examination to The County Commission of Harrison County.

3. Notice of Lien of Community Enhancement District Assessments dated December 11, 2007, of record in said Clerk's office in Trust Deed Book No. 1137, page 400.

4. Notice of Lien of Community Enhancement District First Revised Assessments dated October 7, 2008, of record in said Clerk's office in Trust Deed Book No. 1158, page 1113.

5. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

6. We did not examine title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2008, the property under examination is included in an entry on the Land Books of Harrison County in Simpson District - Bridgeport to Ann's Run Limited Liability Company (Tax Map No. 290, Parcel No. 7, Account No. 6351164), as follows:

<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
28.19 As Anmoore Run	\$50,400.00	\$37,980.00	\$88,380.00	\$1,267.02

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3

The real estate taxes assessed against the tract or parcel of land of which the property under examination is a part have been paid to and including the year 2007. The real estate taxes assessed against said tract or parcel of land for the year 2008 constitute a lien and now are due and payable. The amount required to pay the taxes for the first half of the year 2008 is \$1,295.53 if paid by December 31, 2008, and the amount required to pay the taxes for the full year is \$2,530.87 if paid by December 31, 2008. The 2009 real estate taxes assessed against the tract or parcel of land of which the property under examination is a part constitute a lien, but are not due and payable until July, 2009.

If you have any questions concerning the matters mentioned in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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December 19, 2008

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 290, Parcel No. 3

Gentlemen:

Reference is hereby made to our title letter to you dated June 1, 2007, a copy of which is enclosed herewith, pertaining to the tract or parcel of land referenced above.

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all that certain tract or parcel of land containing 34.66 acres, more or less, situate in Simpson District, Harrison County, West Virginia, as shown on a plat titled "Plat of Minor Boundary Adjustment Charles Pointe Development South of WV Route 279", dated October, 2008, to be recorded in said Clerk's office and being a portion of the tract or parcel of land containing 40 acres, more or less, to be conveyed by Ann's Run Limited Liability Company, a West Virginia limited liability company, to The County Commission of Harrison County, West Virginia, pursuant to the Resolution and Order adopted and entered by The County Commission of Harrison County, West Virginia, on December 16, 2008.

Our examination began on May 25, 2007, the date ending our prior examination as reported to you in our title letter dated June 1, 2007, and ended on December 5, 2008, at 8:00 a.m., from which examination we certify that at that time on December 5, 2008, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tract or parcel of land containing 34.66 acres, more or less, was vested in Julia C. Compton, subject only to the following:

1. Those matters reported in our prior title letter dated June 1, 2007, except that by Assignment of Option Agreements and Assumption Agreement dated January 1, 2005, (Deed Book No. 1414, page 950) and recorded on March 5, 2008, Five-J Energy, Inc., transferred, assigned and set over to Ann's Run Limited Liability Company all of its right, title and interest in and to the option referred to in paragraph 10 of our prior letter.

2. Notice of Lien of Community Enhancement District Assessments dated December 11, 2007, of record in said Clerk's office in Trust Deed Book No. 1137, page 400.

3. Notice of Lien of Community Enhancement District First Revised Assessments dated October 7, 2008, of record in said Clerk's office in Trust Deed Book No. 1158, page 1113.

4. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

5. We did not examine title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2008, the property under examination is included in an assessment on the Land Books of Harrison County in Simpson District - Bridgeport to Julia C. Compton (Tax Map No. 290, Parcel No. 3, Account No. 6351226), as follows:

Description	Land	Valuation Improvements	Total	Taxes Per Half Year
37.04 Acres Anns Run	\$26,640.00	\$0	\$26,640.00	\$190.96

The real estate taxes assessed against the property under examination have been paid to and including the year 2007. The real estate taxes assessed against the property under examination for the year 2008 constitute a lien and now are due and payable. The amount required to pay the taxes for the first half of the year 2008 is \$195.26 if paid by December 31, 2008, and the amount required to pay the taxes for the full year is \$381.45 if paid by December 31, 2008. The real estate taxes assessed against the property under examination for the year 2009 constitute a lien, but are not due and payable until July, 2009.

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3

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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June 1, 2007

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 270, Parcel Nos. 30 (50.748  
acres, more or less) and 30.1 (15.057  
acres, more or less)

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all those two (2) certain tracts or parcels of land situate on Ann's Run in Simpson District, Harrison County, West Virginia, being more particularly described as follows:

TRACT NO. 1: All that certain tract or parcel of land containing 50.75 acres, more or less, as shown on the First Amended Declaration Plat of Charles Pointe of record in said Clerk's office in Large Hanging Plat Rack No. 2, Sheet No. 6, and being shown on Tax Map No. 270, Parcel No. 30, as containing 47.99 acres, more or less.

TRACT NO. 2: All that certain tract or parcel of land containing 15.06 acres, more or less, as shown on said plat of record in said Clerk's office in Large Hanging Plat Rack No. 2, Sheet No. 6, and being shown on Tax Map No. 270, Parcel No. 30.1, as containing 15.01 acres, more or less.

Our examination began with a deed dated October 28, 1932, (Deed Book No. 436, page 479), from Ashby E. Cropp and Martha J. Cropp, his wife, to J. H. McDonald and Jennie M. McDonald, his wife, and ended on May 25, 2007, at 8:00 a.m., from which examination we certify that at that time on May 25, 2007, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land was vested in the C. E. Compton Trust, Dated February 27, 1984, as restated in its entirety on December 21, 1987, and amended further on January 15, 1992, and as the same may be further amended hereafter, subject only to the following:

1. There are no adequate descriptions of the property under examination of record in said Clerk's office.

2. By instrument dated May 28, 1937, (Deed Book No. 483, page 6), J. H. McDonald and Jennie M. McDonald, his wife, leased to Hope Natural Gas Company the property under examination for the operation and production of oil and gas, together with rights-of-way for pipelines, telephone and telegraph lines, and other structures and electric power lines for a period of five (5) years beginning July 18, 1938, or as long thereafter as operated in search for or production of oil and gas. (Ex. B 270-(30,30.1).1)

By instrument dated July 18, 1939, (Deed Book No. 504, page 646), J. H. McDonald and Jennie M. McDonald, his wife, granted to Hope Natural Gas Company an extension of said lease for an additional term of five (5) years from July 18, 1943, and as long thereafter as operated in search for or production of oil and gas. (Ex. B 270-30,30.1).2)

3. By instrument dated October 20, 1943, (Deed Book No. 554, page 514), J. H. McDonald and Jennie M. McDonald, his wife, conveyed to Sherrodsville Mining Company all of the Pittsburgh or 9 foot seam or vein of coal within and underlying the property under examination. (Ex. B 270-(30,30.1).3)

4. By instrument dated June 24, 1942, (Deed Book No. 633, page 446), J. H. McDonald and Jennie M. McDonald, his wife, granted to Monongahela Power Company a right-of-way for electric distribution and telephone systems over and upon the property under examination. (Ex. B 270-(30,30.1).4)

5. By instrument dated September 10, 1947, (Deed Book No. 639, page 127), J. H. McDonald and Jennie M. McDonald, his wife, and each in their own right, leased to Hope Natural Gas Company the property under examination for the purpose of exploring and operating for oil and gas and the storing of any kind of gas. The term of said lease was for a period of five (5) years from July 18, 1948, and as long thereafter as operated in search for or production of oil and gas. (Ex. B 270-(30,30.1).5)

By instrument dated October 15, 1952, (Deed Book No. 728, page 359), J. H. McDonald and Jennie M. McDonald, his wife, entered into a Modification of Lease with Hope Natural Gas Company which modified said lease dated September 10, 1947. (Ex. B 270-(30,30.1).13)

6. By instrument dated April 13, 1950, (Deed Book No. 687, page 468), J. H. McDonald and Jennie M. McDonald, his wife, granted to R. G. Pier and Pauline Pier a right-of-way for a road over and across the property under examination. Said deed provided that the roadway would be used in connection with mining and transporting the coal from a number of properties and would continue in existence until all said coal was mined and removed. (Ex. B 270-(30,30.1).6)

7. By instrument dated October 15, 1952, (Deed Book No. 728, page 351), J. H. McDonald and Jennie M. McDonald, his wife, granted to Hope Natural Gas Company the right to inject, store, and withdraw any kind of gas in the oil or gas bearing sand, strata, formation, and horizon known and designated as '50 foot sand' upon the property under examination. (Ex. B 270-(30,30.1).7)

8. By instrument dated April 5, 1957, (Deed Book No. 792, page 9), Mary Virginia Stevens and Troy Stevens, her husband, leased to J. Ross Nuzum, Jr., a strip or parcel of land being 60 feet in width and running with the center line of a certain roadway known as "Coal Road" over and through the property under examination. The term of said lease was for four (4) years beginning April 5, 1957, and ending April 4, 1961, when the lease was to terminate unless further written agreement was entered into. (Ex. B 270-(30,30.1).8)

9. By instrument dated December 18, 1975, (Deed Book No. 1078, page 81), Charles E. Compton and Julia C. Compton, his wife, entered into an Agreement with Consolidated Gas Supply Corporation regarding and pertaining to the usage of free gas and privileges. (Ex. B. 270-(30,30.1).14)

10. By instrument dated March 18, 1983, (Deed Book No. 1126, page 88), Chas E. Compton and Julia C. Compton, his wife, granted to Monongahela Power Company a perpetual easement for electric distribution lines and telephone lines and additions thereto on the property under examination. (Ex. B 270-(30,30.1).9)

11. By instrument dated November 2, 1987, (Deed Book No. 1183, page 292), Chas. E. Compton and Julia C. Compton, his wife, granted to Monongahela Power Company a perpetual easement for electric distribution lines and telephone lines and additions thereto over and upon the property under examination. (Ex. B 270-(30,30.1).10)

12. As evidenced by Memorandum of Option To Purchase Real Property Agreement dated January 2, 2001, (Deed Book No. 1350, page 879), Charles E. Compton, Trustee, and his successor Trustees, James A. Corton and Rickey B. Lambert, granted to Ann's Run Limited Liability Company, a West Virginia limited liability company, an assignable option to purchase tracts or parcels of land, including the property under examination. Said option is for a period of 20 years from January 2, 2001, with the right to optionee to extend the option for one additional twenty (20)-year term. (Ex. B 270-(30,30.1).15)

As evidenced by Memorandum of Assignment of Option Agreements and Assumption Agreement dated January 6, 2003, (Deed Book No. 1350, page 1059), Ann's Run Limited Liability Company transferred, assigned and set over to Five-J Energy, Inc., all of its right, title and interest in and to said option referenced above in Deed Book No. 1350, page 879. (Ex. B 270-(30,30.1).16)

13. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684). (Ex. C)

14. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

15. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil, and gas, within and underlying the property under examination, and this letter does not constitute a certification of title with respect to said minerals.

16. For your information, there are deeds of record in said Clerk's office from James A. Corton, Trustee; Rickey D. Lambert, Trustee; James M. Compton, Trustee; and Jennifer C. Corton, Trustee, under the Julia C. Compton Trust 2003, formerly known as the C. E. Compton Trust Dated February 27, 1984, which recite that the C. E. Compton Trust Dated February 27, 1984, provided, upon the death of Charles E. Compton, who died July 12, 2003, a resident of Harrison County, West Virginia, that the residue of the assets of the C. E. Compton Trust Dated February 27, 1984, would be allocated to a Trust named for Julia C. Compton, wife of said Charles E. Compton. A Memorandum of Trust with respect to said Trust is of record in said Clerk's office in Deed Book No. 1370, page 487. (Ex. B (270-(30,30.1).17)

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For the year 2006, the property under examination is assessed on the Land Books of Harrison County in Simpson District - Outside to C. E. Compton Trust (Charles J. Miller and Wm. P. Snyder, Trustees) (Tax Map No. 270, Parcel Nos. 30 and 30.1, Account Nos. 06348366 and 06723566, respectively), as follows:

<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
47.99 As Anmoore Run	\$1,680.00	\$1,500.00	\$3,180.00	\$19.98
15.01 Ac Anmoore Run	\$10,200.00	\$98,940.00	\$109,140.00	\$685.51

The real estate taxes assessed against the property under examination have been paid to and including the year 2006. The real estate taxes assessed against the property under examination for the year 2007 constitute a lien, but are not due and payable until July 1, 2007.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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June 1, 2007

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 290, Parcels Nos. 1 (21.2601 acres,  
more or less), 2 (39.5289 acres, more or less), and  
8.2 (0.8537 acre, more or less)

Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all those three tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, and by recent survey shown to contain 21.2601 acres, more or less, 39.5289 acres, more or less, and 0.8537 acre, more or less, or 61.6427 acres in the aggregate, more or less, as surveyed by Grafton Coal Company in July 2001, being more particularly bounded and described as follows:

Beginning at a corner fence post found in a line of the Chas. E. & Julia C. Compton parcel, being a corner to the Mid City Land Company parcel, and bearing N 9° 24' 26" W, 1651.37 feet from a track spike found in poplar stump; thence with a line of said Compton parcel, N 9° 24' 26" W, 193.05 feet to a corner fence post found, being a corner to the Lemuel H. Higinbotham parcel; thence with eight lines of said Higinbotham parcel, N 11° 41' 34" E, 665.94 feet to a 5/8" rebar set; thence, N 49° 27' 45" E, 417.12 feet to a 5/8" rebar set; thence, N 65° 12' 45" E, 364.51 feet to a 5/8" rebar set; thence, N 38° 57' 45" E, 44.88 feet to a 5/8" rebar set; thence, N 38° 57' 45" E, 183.15 feet to a 5/8" rebar set; thence, N 26° 27' 45" E, 171.60

feet to a 5/8" rebar set; thence, N 47° 27' 45" E, 38.29 feet to a 5/8" rebar set; thence, N 34° 21' 24" E, 49.62 feet to a 5/8" rebar set, being a corner to the C.E. Compton Trust parcel; thence with a line of said C.E. Compton Trust parcel, N 34° 21' 24" E, 537.90 feet to a 5/8" rebar set, being a corner to a second C.E. Compton Trust parcel; thence with a line of said second C.E. Compton Trust parcel, S 44° 13' 36" E, 1733.05 feet to a set stone found, being a corner to the Charles E. & Julia C. Compton parcel; thence with two lines of said Compton parcel, S 55° 02' 45" W, 308.47 feet to a 5/8" rebar set; thence, S 25° 41' 44" E, 253.36 feet to a set stone found, being a corner to the Asa R. Gawthrop parcel, and bearing N 45° 57' 27" W, 1062.36 feet from a roof bolt found; thence with a line of said Gawthrop parcel, N 80° 41' 56" W, 358.33 feet to a 5/8" rebar set, being a corner to a second Asa R. Gawthrop parcel; thence with two lines of said second Gawthrop parcel, S 76° 57' 45" W, 916.79 feet to a set stone found; thence, S 74° 47' 50" W, 173.56 feet to a 3/4" rebar found, being a corner to the Mid City Land Company parcel; thence with a line of two Mid City Land Company parcels, S 74° 47' 50" W, 1018.17 feet to the beginning, containing 61.6427 acres, more or less, as surveyed by Grafton Coal Company in July, 2001, and as shown on a plat of record in said Clerk's office in Deed Book No. 1344, page 1163.

Our examination regarding the First Tract of 21.2601 acres, more or less, began with an Order of the Circuit Court of Harrison County, West Virginia, dated May 18, 1899, in the partition suit in the Circuit Court of Harrison County, West Virginia, in which John L. Gawthrop was Plaintiff and Cornelia A. Gawthrop, et al., were Defendants. Our examination as to the Second Tract of 39.5289 acres, more or less, began with a deed dated September 14, 1932, (Deed Book No. 436, page 265), from Dana H. Gawthrop and Florida C. Gawthrop, his wife, to Ray B. Gawthrop. As to the Third Tract of 0.8537 acres, more or less, our examination began with a deed dated October 7, 1932, (Deed Book No. 436, page 267), from Dana H. Gawthrop and Florida G. Gawthrop, his wife, and Perry C. Gawthrop and Nocal Gawthrop, his wife, to Ray B. Gawthrop conveying a tract or parcel of land containing 18.24 acres, more or less, of which said Third Tract was a part. Our examination as to all three tracts or parcels of land ended on May 25, 2007, at 8:00 a.m., from which examination we certify that at that time on May 25, 2007, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land was vested in Ann's Run Limited Liability Company, subject only to the following:

As To First Tract Of 21.2601 Acres

1. By instrument dated December 20, 1899, (Deed Book No. 116, page 531), Cornelia Gawthrop, widow, et al., leased to South Penn Oil Company the property under examination for mining and operating for oil and gas. The term of said lease was five years from said date or as long thereafter as oil or gas was produced from said tract.

(Ex. B 290-(1,2,8.2).1)

2. By instrument dated July 30, 1908, (Deed Book No. 182, page 18), Ray B. Gawthrop, single, leased to Hope Natural Gas Company the property under examination for mining and operating for oil and gas and laying pipelines. The term of said lease was ten years from said date or as long thereafter as oil or gas was produced from said tract.

(Ex. B 290-(1,2,8.2).2)

3. By instrument dated July 2, 1918, (Deed Book No. 282, page 301), Ray B. Gawthrop leased to Hope Natural Gas Company the property under examination for mining and operating for oil and gas and laying pipelines. The term of said lease was five years from said date or as long thereafter as operated in search for or production of oil or gas with the extension of the term by payment of rentals as set forth therein.

(Ex. B 290-(1,2,8.2).3)

4. By instrument dated September 8, 1923, (Deed Book No. 345, page 39), R. B. Gawthrop and Lena Gawthrop, his wife, leased to Bridgeport Natural Gas and Oil Company the property under examination for mining and operating for oil and gas and laying pipelines. The term of said lease was five years from said date or as long thereafter as oil or gas was produced from said tract. (Ex. B 290-(1,2,8.2).4)

5. By instrument dated June 8, 1928, (Deed Book No. 389, page 528), R. B. Gawthrop and Lena Gawthrop, his wife, leased to The Bridgeport Natural Gas and Oil Company the property under examination for mining and operating for oil and gas. The term of said lease was five years from said date and as long thereafter as oil or gas was produced.

(Ex. B 290-(1,2,8.2).5)

6. By instrument dated August 17, 1932, (Deed Book No. 437, page 70), R. B. Gawthrop and Lena Gawthrop, his wife, leased the property under examination to Hope Natural Gas Company for oil and gas exploration, including rights of way for pipelines, telephone, and telegraph systems. The term of said lease was five years from June 8, 1933, and as long thereafter as operated in search for or production of oil or gas with the extension of the term by payment of rentals as recited therein. (Ex. B 290-(1,2,8.2).6)

7. By instrument dated May 20, 1937, (Deed Book No. 482, page 564), R. B. Gawthrop and Lena Gawthrop, his wife, leased to Hope Natural Gas Company the property under examination for oil and gas operations, including rights of way for telephone and telegraph systems. The term of said lease was ten years from said date and as long thereafter as operated in search for or production of oil or gas. (Ex. B 290-(1,2,8.2).7)

8. By instrument dated September 8, 1947, (Deed Book No. 639, page 117), R. B. Gawthrop and Lena L. Gawthrop, his wife, leased the property under examination to Hope Natural Gas Company for exploration and operation for oil and gas and for the storing of any kind of gas. The term of said lease was five years from June 8, 1948, and as long thereafter as operated in search for or production of oil or gas with the extension of the term by payment of rentals as set forth therein. (Ex. B 290-(1,2,8.2).8)

By instrument dated July 21, 1952, (Deed Book No. 725, page 22), between R. B. Gawthrop and Lena L. Gawthrop, his wife, and Hope Natural Gas Company, the term of said lease was extended for five years from June 8, 1953. (Ex. B 290-(1,2,8.2).9)

9. By instrument dated August 14, 1957. (Deed Book No. 799, page 221), R. B. Gawthrop and Lena L. Gawthrop, his wife, leased the property under examination to Hope Natural Gas Company for oil and gas exploration and operation. The term of said lease was five years from June 8, 1958, and as long thereafter as operated in search for or production of oil or gas and as long as gas was being injected, stored or held in storage. (Ex. B 290-(1,2,8.2).10)

As To Second Tract Of 39.5289 Acres

10. By instrument dated August 17, 1932, (Deed Book No. 437, page 58), D. H. Gawthrop and Florida C. Gawthrop, his wife, leased the property under examination to Hope Natural Gas Company for the operation and production of oil and gas, together with rights of way for pipelines and related structures and for telephone and telegraph systems. The term of said lease was five years from June 8, 1933, and as long thereafter as the land was operated in search for or production of oil or gas with the extension of the term by payment of rentals as recited therein. (Ex. B 290-(1,2,8.2).11)

11. By deed dated September 14, 1932, (Deed Book No. 436, page 265), Dana H. Gawthrop and Florida C. Gawthrop, his wife, conveyed to Ray B. Gawthrop the property under examination, subject to a reservation of the oil, gas, and other minerals, together with the right to enter in and upon said land to bore and explore for and to mine, operate, and produce the oil, gas, and other minerals. (Ex. B 290-(1,2,8.2).12)

12. By instrument dated May 21, 1937, (Deed Book No. 482, page 573), D. H. Gawthrop and Florida C. Gawthrop, his wife, leased to Hope Natural Gas Company the property under examination for oil and gas operation and production, together with rights of way for pipelines, telephone, telegraph, and electric power lines and related structures. The term of said lease was five years from June 8, 1933, and as long thereafter as the land was operated in search for or production of oil or gas with the extension of the term by payment of rentals as recited therein. (Ex. B 290-(1,2,8.2).13)

As To Third Tract Of 0.8537 Acre

13. By instrument dated December 20, 1899, (Deed Book No. 116, page 500), Cornelia Gawthrop, widow, et al., leased to South Penn Oil Company a tract of 71 acres, of which the property under examination was a part, for the purpose of mining and operating for oil and gas and laying pipelines and related appliances upon said tract. The term of said lease was five years from said date and as long thereafter as oil or gas was produced from said tract. (Ex. B 290-(1,2,8.2).14)

14. By instrument dated July 30, 1908, (Deed Book No. 182, page 66), Cornelia Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for oil and gas mining and operations, including the laying of pipelines and building tank stations and related structures thereon. The term of said lease was ten years from said date or as long thereafter as oil or gas was produced. (Ex. B 290-(1,2,8.2).15)

15. By instrument dated July 8, 1918, (Deed Book No. 282, page 294), Cornelia Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for mining and operating for oil and gas, including laying pipelines, tanks and other structures. The term of said lease was five years from July 30, 1918, and as long thereafter as the tract was operated in search for or production of oil and gas, with extensions of the term by payment of rentals as set forth therein. (Ex. B 290-(1,2,8.2).16)

16. By instrument dated August 3, 1918, (Deed Book No. 287, page 384), Cornelia Gawthrop granted to Hope Natural Gas Company a right of way to open, repair, maintain, and use a wagon roadway upon a tract or parcel of land, of which the property under examination was a part. Said roadway was to be used by Hope Natural Gas only for hauling on, to, and from Well No. 5321 upon the lands of Perry C. Gawthrop. The term of this right of way was for as long as the P. C. Gawthrop lands were operated for oil and gas. (Ex. B 290-(1,2,8.2).17)

17. By instrument dated October 1, 1912, (Deed Book No. 300, page 430), Cornelia Gawthrop granted to Hope Natural Gas Company a right of way upon a tract or parcel of land, of which the property under examination was a part, to open, repair, maintain, and use a wagon roadway. (Ex. B 290-(1,2,8.2).18)

18. By instrument dated September 8, 1923, (Deed Book No. 345, page 41), Cornelia Gawthrop, et al., leased to Bridgeport Natural Gas and Oil Company a tract of 71 acres, of which the property under examination was a part, for mining and operating for oil and gas. The term of said lease was five years from said date and as long thereafter as oil or gas was produced from said tract. (Ex. B 290-(1,2,8.2).19)

19. By instrument dated June 8, 1928, (Deed Book No. 389, page 530), Cornelia Gawthrop, et al., leased to Bridgeport Natural Gas and Oil Company a tract of 71 acres, of which the property under examination was a part, for oil and gas exploration. The term of said lease was five years from said date and as long as oil or gas was produced from said tract. (Ex. B 290-(1,2,8.2).20)

By instrument dated February 10, 1932, (Deed Book No. 432, page 189), R. N. Gawthrop, et al., agreed with Hope Natural Gas Company to a modification of said lease. (Ex. B 290-(1,2,8.2).22)

20. By instrument dated August 26, 1929, (Deed Book No. 405, page 156), Cornelia Gawthrop, et al., granted to Monongahela West Penn Public Service Company a right of way for electric distribution and telephone systems upon and over a tract of 70 acres, of which the property under examination was a part. (Ex. B 290-(1,2,8.2).21)

21. By deed dated October 7, 1932, (Deed Book No. 436, page 267), Dana H. Gawthrop and Florida G. Gawthrop, his wife, and Perry C. Gawthrop and Nocal Gawthrop, his wife, granted to Ray B. Gawthrop a right of way for gas lines over and across the property under examination. (Ex. B 290-(1,2,8.2).23)

22. By instrument dated January 11, 1939, (Deed Book No. 499, page 227), Dana H. Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for the operation and production of oil and gas, including a right of way for pipelines and for telephone, telegraph, and electric lines. The term of said lease was ten years from said date and as long thereafter as operated in search for or production of oil or gas with the extension of the term by payment of rentals as recited therein. (Ex. B 290-(1,2,8.2).24)

23. By instrument dated July 1, 1948, (Deed Book No. 655, page 556), R. B. Gawthrop and Lena Gawthrop, his wife, and P. C. Gawthrop and Nocal L. Gawthrop, his wife, leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for exploration and operation for oil and gas and for the storing of any kind of gas. The term of said lease was ten years from January 11, 1949, and as long thereafter as said tract was operated in search for or production of oil or gas with the extension of the term by payment of rentals as set forth therein. (Ex. B 290-(1,2,8.2).25)

24. By instrument dated April 18, 1958, (Deed Book No. 808, page 419), R. B. Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for exploration and operation for oil and gas. The term of said lease was ten years from January 11, 1959, and as long thereafter as operated in search for and production of oil or gas or held for the storage of gas. (Ex. B 290-(1,2,8.2).26)

As To All Tracts

The following instruments have been granted by predecessors in title to the property under examination across larger tracts or parcels of land or multiple tracts of land of which the property under examination was a part. Due to vague descriptions contained within the instruments, we were unable to determine from the records in said Clerk's office whether the property under examination is affected thereby.

25. By undated instrument recorded on June 4, 1926, (Deed Book No. 367, page 414), Cornelia Gawthrop, et al., granted to Bridgeport Natural Gas & Oil Co. a right of way over lands in Simpson District, Harrison County, West Virginia, for pipelines to transport oil or gas and for a telephone or telegraph line. (Ex. B 290-(1,2,8.2).27)

26. By instrument dated June 23, 1942, (Deed Book No. 633, page 436), R. B. Gawthrop and Lena Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution and telephone systems upon a tract of 137 acres. (Ex. B 290-(1,2,8.2).28)

27. By instrument dated March 30, 1953, (Deed Book No. 758, page 266), Ray B. Gawthrop and Lena L. Gawthrop, his wife, granted to The Chesapeake & Potomac Telephone Company of West Virginia a right of way for telephone and telegraph systems upon property situate in Simpson District, Harrison County, West Virginia. (Ex. B 290-(1,2,8.2).29)

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28. By instrument dated May 1, 1963, (Deed Book No. 875, page 63), R. B. Gawthrop and Lena L. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution and telephone systems upon a tract of 137 acres. (Ex. B 290-(1,2,8.2).30)

29. By instrument dated June 16, 1967, (Deed Book No. 943, page 720), Ray B. Gawthrop granted to The Chesapeake & Potomac Telephone Company of West Virginia a right of way for a communication system upon lands situate in Simpson District, Harrison County, West Virginia. (Ex. B 290-(1,2,8.2).31)

30. By instrument dated April 15, 1975, (Deed Book No. 1034, page 407), Asa D. Gawthrop, attorney-in-fact for Ray B. Gawthrop and Lena Gawthrop, his wife, granted to Consolidated Gas Supply Corporation a right of way for pipelines and related appliances for oil and gas transportation over lands located in Simpson District, Harrison County, West Virginia. (Ex. B 290-(1,2,8.2).32)

31. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684). (Ex. C)

32. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

33. We did not examine title to the minerals, including the coal, oil, and gas within and underlying the property under examination, and, this letter does not constitute a certification of title with respect to said minerals.

For the year 2006, the property under examination is assessed on the Land Books of Harrison County in Simpson District to Ann's Run Limited Liability Company (Tax Map No. 290, Parcels Nos. 1, 2 and 8.2, Account Nos. 6351217, 6351208, and 6351244, respectively), as follows:

<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
21.26 Ac Davisson Run	\$2,160.00	\$0	\$2,160.00	\$13.57

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39.53 Ac 4 Ann Run	\$4,020.00	\$0	\$4,020.00	\$25.25
0.85 Ac Ann Run	\$100.00	\$0	\$100.00	\$0.78

The real estate taxes assessed against the property under examination have been paid to and including the year 2006. The real estate taxes assessed against the property under examination for the year 2007 constitute a lien but are not due and payable until July 1, 2007.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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June 1, 2007

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 290, Parcel No. 3

Ladies and Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all that certain tract or parcel of land situate in Simpson District, Harrison County, West Virginia, containing 37.04 acres, more or less, described as follows:

Beginning at a stone, a corner to C. E. Compton and an original corner (found), thence N. 35° 58' 13" E. 1633.28 feet to a point; thence S. 23° 04' 47" E. 73.24 feet to a point; thence S. 44° 27' 13" W. 42.64 feet to a point; thence S. 24° 07' 47" E. 347.68 feet to a point; thence S. 37° 49' 47" E. 316.25 feet to a point in the right-of-way of West Virginia Route 73; thence with said right-of-way S. 30° 21' 09" W. 274.20 feet; thence S. 29° 05' 13" W. 139.24 feet; thence S. 27° 59' 08" W. 160.89 feet; thence S. 24° 34' 20" W. 120.24 feet; thence S. 21° 30' 37" W. 104.51 feet; thence S. 19° 21' 01" W. 76.60 feet; thence S. 16° 24' 36" W. 77.77 feet; thence S. 13° 34' 42" W. 98.05 feet; thence S. 11° 54' 18" W. 99.52 feet; thence S. 10° 50' 25" W. 61.73 feet; thence S. 9° 48' 09" W. 245.11 feet; thence S. 12° 19' 23" W. 60.44 feet; thence S. 16° 41' 18" W. 85.39 feet; thence S. 20° 13' 36" W. 90.82 feet; thence S. 21° 38' 54" W. 243.31 feet to an iron pin set in said Gawthrop line; thence leaving said right-of-way N. 46° 01' 35" W. 1062.36 feet to a post; thence N. 25° 45' 52" W. 250.22 feet to a point; thence N.

54° 18' 40" E. 310.20 feet to the beginning, containing 37.04 acres, more or less.

The tract of 37.04 acres under examination is made up of two tracts of land, one said to contain 20 acres, more or less, and the other said to contain 17.437 acres, more or less.

Our examination of said indices with regard to said tract of 20 acres, more or less, began with a deed dated April 1, 1919, (Deed Book No. 289, page 414), by Carrie V. Bartlett, widow, and others, to Ray B. Gawthrop. Our examination with regard to the tract of 17.437 acres, more or less, began with a deed dated October 7, 1932, (Deed Book No. 436, page 267), by Dana H. Gawthrop and Florida C. Gawthrop, his wife, to Ray B. Gawthrop.

Our examination ended on May 25, 2007, at 8:00 a.m., from which examination we certify that at that time on May 25, 2007, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of the property under examination was vested in Julia C. Compton, subject only to the following:

1. By instrument dated September 8, 1923, (Deed Book No. 345, page 50), R. B. Gawthrop and Lena Gawthrop, his wife, leased to Bridgeport Natural Oil and Gas Company for a term of five years all the oil and gas within and underlying said tract of land containing 20 acres, more or less. Said lease was renewed on six (6) different occasions beginning on June 8, 1928, and ending on August 14, 1957. (Ex. B 290-3.1)
2. By instrument dated September 8, 1923, (Deed Book No. 345, page 41), Cornelia Gawthrop, and others, leased to Bridgeport Natural Gas and Oil Company for a term of five years all the oil and gas within and underlying a tract of land containing 71 acres, more or less, which includes a portion of the property under examination. Said lease was renewed on five (5) different occasions beginning on June 8, 1928, and ending on April 18, 1958. (Ex. B 290-3.2)
3. By an undated instrument (Deed Book No. 367, page 414), Cornelia Gawthrop, and others, granted a right of way to Bridgeport Natural Oil and Gas Company to lay, maintain, repair and remove a pipeline over the property under examination. (Ex. B 290-3.3)
4. By instrument dated August 15, 1929, (Deed Book No. 405, page 148), R. B. Gawthrop and Lena Gawthrop, his wife, granted to Monongahela West Penn Public Service Company a right of way for the installation, maintenance and removal of a communication system over the property under examination. (Ex. B 290-3.4)

5. By instrument dated August 26, 1929, (Deed Book No. 405, page 156), Cornelia Gawthrop, widow, and others, granted a right of way to Monongahela West Penn Public Service Company for the installation, repair and removal of a communication system over the property under examination. (Ex. B 290-3.5)

6. By instrument dated March 30, 1953, (Deed Book No. 758, page 266), Ray B. Gawthrop and Lena L. Gawthrop, his wife, granted to The Chesapeake and Potomac Telephone Company of West Virginia a right of way to lay, maintain and remove a communication system over all lands owned by them in Simpson District, Harrison County, West Virginia. (Ex. B 290-3.6)

7. By instrument dated June 16, 1967, (Deed Book No. 943, page 720), Ray B. Gawthrop granted to The Chesapeake and Potomac Telephone Company of West Virginia a right of way to lay, maintain and remove a communication system over all land owned by him in Simpson District, Harrison County, West Virginia. (Ex. B 290-3.7)

8. The deed dated August 1, 1988, (Deed Book No. 1189, page 93), by Ruth G. Davis and Leon B. Davis, her husband, to Grafton Coal Company contained the following exception and reservation:

“There is expressly excepted and reserved from this conveyance unto parties of the first part all minerals thereunder lying, including, but not limited to, the coal, oil and gas, together with such drilling, mining and other rights and privileges necessary or convenient for the mining and removal of all of said minerals by practical mining methods; provided, however, such mining rights shall not include the “surface” or “strip” mining rights that pertain to surface mineable coal.”

9. The deed dated April 1, 1980, (Deed Book No. 1090, page 806), by Lena L. Gawthrop, widow, to Ruth G. Davis, conveying the property under examination was subject to an easement and right of way heretofore granted to Asa D. Gawthrop by Lena L. Gawthrop for ingress and egress of pedestrian, livestock and vehicular traffic across the property under examination to a tract of land designated as Parcel No. 5 in a conveyance from Lena L. Gawthrop, widow, to Asa Gawthrop. (Ex. B 290-3.8)

10. As evidenced by Memorandum of Option To Purchase Real Property Agreement dated January 2, 2001, (Deed Book No. 1350, page 875), Charles E. Compton, by Julia C. Compton, his Attorney-In-Fact, and Julia C. Compton, husband and wife, granted to Ann's Run Limited Liability Company, a West Virginia limited liability company, an

assignable option to purchase tracts or parcels of land, including the property under examination. Said option is for a period of 20 years from January 2, 2001, with the right to optionee to extend the option for one additional twenty (20)-year term. (Ex. B 290-3.9)

As evidenced by Memorandum of Assignment of Option Agreements and Assumption Agreement dated January 6, 2003, (Deed Book No. 1350, page 1059), Ann's Run Limited Liability Company transferred, assigned and set over to Five-J Energy, Inc., all of its right, title and interest in and to said option referenced above in Deed Book No. 1350, page 875. (Ex. B 290-3.10)

11. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684). Ex. C)

12. Any matters which would be disclosed by a visual inspection or an accurate survey of the property under examination are not included in this title examination.

13. We did not examine the indices to the public records in said Clerk's office with respect to the title to the minerals, including the coal, oil and gas, within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2006, the property under examination is assessed on the Land Books of Harrison County in Simpson District - Outside to Julia C. Compton (Tax Map No. 290, Parcel No. 3, Account No. 6351226), as follows:

Description	Land	Valuation Improvements	Total	Taxes Per Half Year
37.04 Acres Anns Run	\$22,800.00	\$0	\$22,800.00	\$143.21

The real estate taxes assessed against the property under examination have been paid to and including the year 2006. The real estate taxes assessed against the property under examination for the year 2007 constitute a lien, but are not due and payable until July, 2007.

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If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A. Harris

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June 1, 2007

The County Commission of Harrison County  
Harrison County Court House  
301 West Main Street  
Clarksburg, West Virginia 26301

Re: Tax Map No. 290, Parcel Nos. 6 (57.0232  
acres, more or less), 7 (28.1208 acres, more  
or less) and 15 (4.4068 acres, more or less)

Ladies and Gentlemen:

We have examined the indices to the public records in the office of the Clerk of the County Commission of Harrison County, West Virginia, pertaining to the title to the surface of all those three tracts or parcels of land situate in Simpson District, Harrison County, West Virginia, and by recent survey shown to contain 57.0232 acres, more or less, 28.1208 acres, more or less, and 4.4068 acres, more or less, or 87.5508 acres in the aggregate, more or less, as surveyed by Grafton Coal Company in December 2000, being more particularly bounded and described as follows:

Beginning at a roof bolt found in the western right-of-way line of West Virginia State Route 131, being a corner to the Charles E. & Julia C. Compton parcel; thence with ten lines of said right-of-way line, S 21° 20' 41" W, 618.00 feet to a point; thence, S 22° 06' 27" W, 228.13 feet to a point; thence, S 29° 08' 52" W, 115.05 feet to a point; thence, S 38° 43' 36" W, 69.00 feet to a point; thence, S 41° 32' 42" W, 128.98 feet to a point; thence, S 44° 54' 29" W, 217.74 feet to a point; thence, S 51° 58' 17" W, 65.62 feet to a point; thence, S 56° 18' 18" W, 658.90 feet to a point; thence, S 55° 09' 16" W, 139.06 feet to a point; thence, S 44° 41' 23" W, 81.61 feet to a ¾" rebar found, being a corner to the Midcity Land Company parcel; thence with four lines of said Midcity Land Company parcel, N 33° 23' 59"

W, 442.61 feet to a  $\frac{3}{4}$ " rebar found; thence, N 42° 08' 54" W, 644.68 feet to a  $\frac{3}{4}$ " rebar found; thence, N 7° 53' 55" W, 720.96 feet to a  $\frac{3}{4}$ " rebar found; thence, N 2° 36' 05" E, 728.72 feet to a  $\frac{3}{4}$ " rebar found in a line of the Betty Y. Gawthrop parcel; thence with a line of said Gawthrop parcel, N 74° 47' 50" E, 173.56 feet to a set stone found, being a corner to a second Betty Y. Gawthrop parcel; thence with a line of said second Gawthrop parcel, N 76° 57' 45" E, 916.79 feet to a  $\frac{5}{8}$ " rebar set, being a corner to a third Betty Y. Gawthrop parcel; thence with a line of said third Gawthrop parcel, S 80° 41' 56" E, 358.33 feet to a set stone found, being a corner to the Charles E. & Julia C. Compton parcel; thence with a line of said Compton parcel, S 45° 57' 27" E, 1062.36 feet to the beginning, containing 87.5508 acres, more or less, as surveyed by Grafton Coal Company in December, 2000, and as shown on a plat of record in said Clerk's office in Deed Book No. 1344, page 1159.

Our examination as to said 28.1205 acre tract or parcel of land began with a deed dated October 7, 1932, (Deed Book No. 436, page 270), from Dana H. Gawthrop and Florida C. Gawthrop, his wife, and Ray B. Gawthrop and Lena Gawthrop, his wife, to Perry C. Gawthrop. As to said 57.0232 acre tract or parcel of land, our examination began with a deed dated July 22, 1902, (Deed Book No. 131, page 343), from Claude G. Gawthrop to Cornelia Gawthrop. As to said 4.4068 acre tract or parcel of land, our examination began with a deed dated March 11, 1915, (Deed Book No. 242, page 121), from A. J. Williams and Francis G. Williams, his wife, to Cornelia Gawthrop. As to all of said tracts or parcels of land, our examination ended on May 25, 2007, at 8:00 a.m., from which examination we certify that at that time on May 25, 2007, as appeared from our examination of such records as were properly indexed in said Clerk's office, good title to the surface of said tracts or parcels of land was vested in Ann's Run Limited Liability Company, subject only to the following:

As To Tract Of 28.1205 Acres

1. By instrument dated December 20, 1899, (Deed Book No. 116, page 500), Cornelia Gawthrop, widow, et al., leased to South Penn Oil Company a tract of 71 acres, of which the property under examination was a part, for the purpose of mining and operating for oil and gas and laying pipelines and related appliances upon said tract. The term of said lease was five years and as long thereafter as oil or gas or either of them is produced from said tract. (Ex. B 290-(6,7,15).1)

2. By instrument dated July 30, 1908, (Deed Book No. 182, page 66), Cornelia Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for oil and gas mining and operations, including the laying of pipelines and building tank stations and related structures thereon. The term of said lease was ten years from said date or as long thereafter as oil or gas or either of them is produced. (Ex. B 290-(6,7,15).2)

3. By instrument dated July 8, 1918, (Deed Book No. 282, page 294), Cornelia Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for mining and operating for oil and gas, including laying pipelines, tanks and other structures. The term of said lease was five years from July 30, 1918, and as long thereafter as the tract was operated in search for or production of oil and gas, with extensions of the term by payment of rentals as set forth therein. (Ex. B 290-(6,7,15).3)

4. By instrument dated August 3, 1918, (Deed Book No. 287, page 384), Cornelia Gawthrop granted to Hope Natural Gas Company a right of way to open, repair, maintain and use a wagon roadway upon a tract or parcel of land, of which the property under examination was a part. Said roadway was to be used by Hope Natural Gas only for hauling on, to and from Well No. 5321 upon the lands of Perry C. Gawthrop. The term of this right of way was for as long as the P. C. Gawthrop lands were operated for oil and gas. (Ex. B 290-(6,7,15).4)

5. By instrument dated October 1, 1912, (Deed Book No. 300, page 430), Cornelia Gawthrop granted to Hope Natural Gas Company a right of way upon a tract, of which the property under examination was a part, to open, repair, maintain and use a wagon roadway. (Ex. B 290-(6,7,15).5)

6. By instrument dated September 8, 1923, (Deed Book No. 345, page 41), Cornelia Gawthrop, et al., leased to Bridgeport Natural Gas and Oil Company a tract of 71 acres, of which the property under examination was a part, for mining and operating for oil and gas. The term of said lease was five years from said date and as long thereafter as oil or gas or either of them was produced from said tract. (Ex. B 290-(6,7,15).6)

7. By instrument dated June 8, 1928, (Deed Book No. 389, page 530), Cornelia Gawthrop, et al., leased to Bridgeport Natural Gas and Oil Company a tract of 71 acres, of which the property under examination was a part, for oil and gas exploration. The term of said lease was five years from said date and as long as oil or gas or either of them is produced from said tract. (Ex. B 290-(6,7,15).7)

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By instrument dated February 10, 1932, (Deed Book No. 432, page 189), R. N. Gawthrop, et al., agreed with Hope Natural Gas Company to a modification of said lease. (Ex. B 290-(6,7,15).9)

8. By instrument dated August 26, 1929, (Deed Book No. 405, page 156), Cornelia Gawthrop, et al., granted to Monongahela West Penn Public Service Company a right of way for electric distribution and telephone systems upon and over a tract of 70 acres, of which the property under examination was a part. (Ex. B 290-(6,7,15).8)

9. By deed dated October 7, 1932, (Deed Book No. 436, page 270), Dana H. Gawthrop and Florida C. Gawthrop, his wife, and Ray B. Gawthrop and Lena Gawthrop, his wife, conveyed a tract containing 38.69 acres, of which the property under examination was a part, to Perry C. Gawthrop. This conveyance was made subject to the oil and gas lease on a tract of 70.54 acres which lease was then held and operated by Hope Natural Gas Company. (Ex. B 290-(6,7,15).10)

10. By instrument dated January 11, 1939, (Deed Book No. 499, page 227), Dana H. Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for the operation and production of oil and gas, including a right of way for pipelines and telephone, telegraph and electric lines and related structures. The term of said lease was ten years from said date and as long thereafter as operated in search for or production of oil or gas with the extension of the term by payment of rentals as recited therein. (Ex. B 290-(6,7,15).11)

11. By instrument dated July 1, 1948, (Deed Book No. 655, page 556), R. B. Gawthrop and Lena Gawthrop, his wife, and P. C. Gawthrop and Nocal L. Gawthrop, his wife, leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for exploration and operation for oil and gas and for the storing of any kind of gas. The term of said lease was ten years from January 11, 1949, and as long thereafter as said tract was operated in search for or production of oil or gas with the extension of the term by payment of rentals as set forth therein. (Ex. B 290-(6,7,15).12)

12. By instrument dated April 18, 1958, (Deed Book No. 808, page 419), R. B. Gawthrop, et al., leased to Hope Natural Gas Company a tract of 71 acres, of which the property under examination was a part, for exploration and operation for oil and gas. The term of said lease was ten years from January 11, 1959, and as long thereafter as operated in search for and production of oil or gas or held for the storage of gas. (Ex. B 290-(6,7,15).13)

13. By instrument dated December 28, 1999, (Deed Book No. 1320, page 36), Asa R. Gawthrop granted to the City of Bridgeport a permanent right of way and easement 20 feet in width and a temporary construction easement 30 feet in width for a sanitary sewer system on the property under examination (Ex. B 290-(6,7,15).14)

As To Tract Of 57.0232 Acres

1. By instrument dated July 30, 1908, (Deed Book No. 182, page 3), Cornelia Gawthrop leased the property under examination to Hope Natural Gas Company for mining and operating for oil and gas and the laying of pipelines and related structures. The term of said lease was ten years from its date or as long thereafter as oil or gas or either of them was produced from said tract. (Ex. B 290-(6,7,15).15)

By instrument dated July 2, 1918, (Deed Book No. 282, page 236), Cornelia Gawthrop and Hope Natural Gas Company entered a supplemental agreement regarding said lease concerning delay rental payments and providing that any extensions of term of said lease would be for five years from July 30, 1918. (Ex. B 290-(6,7,15).16)

2. By instrument dated September 8, 1923, (Deed Book No. 345, page 44), Cornelia Gawthrop leased the property under examination to Bridgeport Natural Gas and Oil Company for mining and operating for oil and gas. The term of said lease was five years from said date and as long thereafter as oil or gas or either of them was produced. (Ex. B 290-(6,7,15).17)

By instrument dated February 10, 1932, (Deed Book No. 432, page 222), Cornelia Gawthrop and Hope Natural Gas Company agreed to a modification of said lease concerning rentals from Well No. 7563. (Ex. B 290-(6,7,15).19)

By instrument dated July 27, 19612, (Deed Book No. 854, page 566), P. C. Gawthrop and Nocal L. Gawthrop, his wife, and Ray B. Gawthrop and Lena Gawthrop, his wife, and Hope Natural Gas Company agreed to a modification of said lease. (Ex. B 290-(6,7,15).20)

3. By instrument dated August 15, 1929, (Deed Book No. 405, page 150), Cornelia Gawthrop, widow, granted to Monongahela West Penn Public Service Company a right of way for electric distribution and telephone system upon the property under examination. (Ex. B 290-(6,7,15).18)

4. By instrument dated December 26, 1999, (Deed Book No. 1320, page 34), Asa R. Gawthrop granted the City of Bridgeport a permanent right of way and easement 20 feet in width and a temporary construction easement 30 feet in width for a sanitary sewer system on the property under examination. (Ex. B 290-(6,7,15).21)

As To Tract Of 4.4068 Acres

1. By said deed dated March 11, 1915, (Deed Book No. 242, page 121), A. J. Williams and Francis G. Williams, his wife, conveyed to Cornelia Gawthrop a tract of 5.20 acres subject to a reservation of all coal, oil and gas with the necessary rights for development of the same as recited in Deed Book No. 180, page 191. (Ex. B 290-(6,7,15).22)

2. By instrument dated May 21, 1937, (Deed Book No. 482, page 561), D. H., Gawthrop and Florida Gawthrop, his wife, leased to Hope natural Gas Company, the property under examination, for oil and gas operation and production, together with rights of way for pipelines, telephone and telegraph lines and related structures, The term of said lease was five years from said date and as long thereafter as operated in search for and production of oil or gas with the extension of the term by payment of rentals as recited therein. (Ex. B 290-(6,7,15).23)

3. By instrument dated June 20, 1944, (Deed Book No. 526, page 546), Perry C. Gawthrop and Nocal C. Gawthrop, his wife, and Hope Natural Gas Company agreed to an extension of a prior lease dated May 21, 1937, (Deed Book No. 482, page 561) upon the property under examination. The term of said lease was extended to ten years from May 21, 1942, and as long thereafter as the property under examination was operated in search for or production of oil or gas with further extensions of the term by payment of rentals as recited therein. (Ex. B 290-(6,7,15).24)

4. By instrument dated May 11, 1961, (Deed Book No. 851, page 43), P. C. Gawthrop and Nocal Gawthrop, his wife, leased the property under examination to Hope Natural Gas Company for exploration and operation for oil and gas, including injecting, storing and withdrawing of any kind of gas. The term of said lease was ten years from said date and as long thereafter as said tract was operated in search for or production of oil or gas or held for storage of gas. (Ex. B 290-(6,7,15).25)

5. By instrument dated December 28, 1999, (Deed Book No. 1320, page 38), Asa R. Gawthrop granted to the City of Bridgeport a permanent right of way and easement 20 feet in width and a temporary construction easement 30 feet in width for sanitary sewer system on the property under examination. (Ex. B 290-(6,7,15).26)

As To All Tracts

1. By deed of trust dated October 24, 2002, (Trust Deed Book No. 963, page 1089), Ann's Run Limited Liability Company conveyed the property under examination to J. Cecil Jarvis, Trustee, to secure Asa R. Gawthrop payment of a negotiable promissory note in the amount of \$716,000.00. Said deed of trust has not been released of record and constitutes a lien against the property under examination. (Ex. B 290-(6,7,15).47)

2. The following instruments were granted by Edward L. Gawthrop to Mid-City Land Co. affecting all tracts comprising the property under examination.

a. By instrument dated November 6, 1995, (Deed Book No. 1271, page 319), Edward L. Gawthrop leased to Mid-City Land Co., Inc. the property under examination for a term beginning on November 6, 1995, and ending on November 5, 2005, with three ten year options to extend the lease beginning on November 6, 2005. (Ex. B 290-(6,7,15) 27)

b. By instrument dated February 6, 1996, (Deed Book No. 1273, page 557), Edward L. Gawthrop leased to Mid-City Land Co., Inc. the property under examination for a term beginning February 6, 1996, and ending on February 5, 2006. Said lease supercedes the lease dated November 6, 1995 (Deed Book No. 1271, page 319). The tenant has three ten year options to extend the lease beginning on February 6, 2006. (Ex. B 290-(6,7,15).28)

c. By instrument dated April 25, 1996, (Deed Book No. 1276, page 276), Edward L. Gawthrop conveyed to Mid-City Land Co., Inc. all of the coal owned by grantor in, upon and underlying the property under examination. Grantee was to have the right and privilege of using so much of the surface owned by grantor as necessary or convenient for strip mining, removing, hauling and shipping of said coal and other coal owned, leased or otherwise controlled by grantee whether in said property under examination or elsewhere. (Ex. B 290-(6,7,15) 29)

d. By instrument dated April 25, 1996, (Deed Book No. 1276, page 280), Edward L. Gawthrop leased to Mid-City Land Co., Inc. the property under examination for the purpose of prospecting and exploring by geophysical and other methods, drilling, mining, operating for and producing oil and gas or both, including casing head gas, casing head gasoline, gas condensate (distillate) and any substance produced in a gaseous state or contained in such oil and gas, but excluding, without limitation, coal, coal seam gas, lignite, oil slated, and oil shale, together with the right to enter said lands with necessary equipment and to create necessary disturbance, to lay and construct necessary pipelines and utilities, to construct and use necessary roads, to occupy as much of said lands as necessary for said

purpose, and to use such amount of water which may be necessary, subject to any limitations, reservations or exceptions contained therein. (Ex. B 290-(6,7,15).30)

e. By instrument dated June 21, 1996, (Deed Book No. 1277, page 1163), Edward L. Gawthrop and Mid-City Land Company agreed to an addendum which was to be made part of the Memorandum of Lease dated February 6, 1996, (Deed Book No. 1273, page 557). Said addendum regarded changes in monthly rentals and changes regarding insurance and responsibility for the red brick structure situated on the property under examination. (Ex. B 290-(6,7,15) 31)

3. The following instruments have been granted by predecessors in title to the property under examination across larger tracts or parcels of land or multiple tracts of land of which the property under examination was a part. Due to vague descriptions contained within the instruments, we were unable to determine from the records in said Clerk's office whether the property under examination is affected thereby.

a. By undated instrument, recorded on June 4, 1926, (Deed Book No. 367, page 414), Cornelia Gawthrop, et al., granted to Bridgeport Natural Gas & Oil Co. a right of way over lands in Simpson District, Harrison County, West Virginia, for pipelines to transport oil or gas and for a telephone or telegraph line. (Ex. B 290-(6,7,15) 32)

b. By instrument dated May 9, 1950, (Deed Book No. 692, page 396), P. C. Gawthrop and Nocal L. Gawthrop, his wife, granted to Hope Natural Gas Company a right of way for pipelines upon lands in Simpson District, Harrison County, West Virginia. Said instrument indicated that the pipeline was a 4 inch line. (Ex. B 290-(6,7,15).33)

c. By instrument dated January 16, 1953, (Deed Book No. 731, page 323), P. C. Gawthrop and Nocal L. Gawthrop, his wife, granted to Hope Natural Gas Company a right of way for pipelines upon their lands in Simpson District, Harrison County, West Virginia. (Ex. B 290-(6,7,15).34)

d. By instrument dated June 17, 1953, (Deed Book No. 758, page 265), P. C. Gawthrop and Nocal L. Gawthrop, his wife, conveyed to The Chesapeake & Potomac Telephone Company of West Virginia a right of way for telephone and telegraph systems upon their lands in Simpson District, Harrison County, West Virginia. (Ex. B 290-(6,7,15).35)

e. By instrument dated October 25, 1963, (Deed Book No. 884, page 18), Perry C. Gawthrop and Nocal Gawthrop, his wife, conveyed to Monongahela Power Company a 0.0143 acre parcel in Simpson District, Harrison County, West Virginia, and

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further conveyed a right of way across their property which adjoined the conveyed parcel. This parcel was for construction, maintenance and removal of an aeronautical hazard beacon. (Ex. B 290-(6,7,15).36)

f. By instrument dated September 13, 1971, (Deed Book No. 994, page 714), Edward L. Gawthrop and Betty H. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution lines and telephone lines upon 217 acres along Route No. 73 in Simpson District. (Ex. B 290-(6,7,15).37)

g. By instrument dated November 3, 1971, (Deed Book No. 998, page 304), Edward L. Gawthrop and Betty H. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution and telephone lines with additions thereto upon 217 acres along Route No. 73 in Simpson District. (Ex. B 290-(6,7,15).38)

h. By instrument dated January 11, 1972, (Deed Book No. 999, page 310), Edward Gawthrop granted to C & P Telephone Company of West Virginia a right of way for buried cable upon his lands in Simpson District. (Ex. B 290-(6,7,15).39)

i. By instrument dated June 27, 1972, (Deed Book No. 1002, page 1225), Edward L. Gawthrop and Betty H. Gawthrop, his wife, granted to Monongahela Power Company a right of way for electric distribution lines and telephone lines upon 217 acres in Simpson District. (Ex. B 290-(6,7,15).40)

j. By instrument dated December 12, 1974, (Deed Book No. 1029, page 534), E. L. Gawthrop, divorced, granted to Consolidated Gas Supply Corporation a right of way to construct, lay and maintain gas regulators, meters and similar appliances and buildings to house appliances and pipelines, together with the right of ingress and egress upon lands in Simpson District, not to exceed an area 20 feet by 20 feet with the right to fence the same. (Ex. B 290-(6,7,15).41)

k. By instrument dated March 2, 1987, (Deed Book No. 1171, page 690), Edward Gawthrop and Martha Gawthrop, his wife, leased to Petroleum Development Corporation 117.2 acres on Ann's Run, Simpson District, for exploration and operation for oil and gas and natural gas, casing head gas, condensate and related hydrocarbons. The term of said lease was for one year from said date and as long thereafter as operations for oil or gas were being conducted on the premises or oil or gas was found in paying quantities thereon. (Ex. B 290-(6,7,15).42)

l. By instrument dated March 1, 1988, (Deed Book No. 1183, page 953), Edward Gawthrop and Martha Gawthrop, his wife, and Petroleum Development Corporation extended the term of said prior lease dated March 2, 1987, (Deed Book No. 1171, page 690), for one year from March 2, 1988. (Ex. B 290-(6,7,15).43)

m. By instrument dated July 27, 1988, (Deed Book No. 1187, page 1255), Edward Gawthrop and Mary Lou Gawthrop conveyed to Blaney Hardwoods of Ohio, Inc. all saw timber 18 inches stump diameter and larger located upon 217 acres in Simpson District. This conveyance included the right to enter upon said lands with equipment for the purposes of timbering. The term of said lease was two and one-half years to cut and remove and an extension of one year by paying an additional six percent of the selling price per each year of extension. (Ex. B 290-(6,7,15) 44)

n. By instrument dated February 27, 1989, (Deed Book No. 1193, page 298), Edward Gawthrop and Martha Gawthrop, his wife, and Petroleum Development Corporation agreed to a modification of the terms of said prior lease dated March 2, 1987, (Deed Book No. 1171, page 690), extending the term for one year from March 2, 1989, and as long thereafter as said land was operated in search for or production of oil or gas. (Ex. B 290-(6,7,15).45)

4. By deed dated June 7, 2006, (Deed Book No. 1390, page 1112), Ann's Run Limited Liability Company conveyed to Five-J Energy, Inc., all right, title and interest in and to the oil and gas within and underlying the property under examination. (Ex. B 290-(6,7,15).46)

5. The property under examination is subject to the Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1382, page 636), as amended and restated by the First Amended and Restated Master Declaration of the Common Interest Community Known As Charles Pointe (Deed Book No. 1392, page 684). (Ex. C)

6. Any matters which would be revealed by a visual inspection or an accurate survey of the property under examination are not included in this title opinion.

7. We did not examine title to the minerals, including the coal, oil and gas within and underlying the property under examination and this letter does not constitute a certification of title with respect to said minerals.

For the year 2006, the property under examination is assessed on the Land Books of Harrison County in Simpson District to Ann's Run Limited Liability Company as follows:

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<u>Description</u>	<u>Land</u>	<u>Valuation Improvements</u>	<u>Total</u>	<u>Taxes Per Half Year</u>
Tax Map No. 290, Parcel No. 7, Account No. 6351164:				
Pt 28.19 As Anmoore Run (Farm and 2 sheds)	\$12,220.00	\$440.00	\$12,660.00	\$53.40
Pt 28.19 As Anmoore Run (vacant dwelling)	\$7,100.00	\$31,780.00	\$38,880.00	\$349.88
Tax Map No. 290, Parcel No. 6, Account No. 6351100:				
55.02 Ac Anmoore Run	\$3,540.00	\$0	\$3,540.00	\$22.24
Tax Map No. 290, Parcel No. 15, Account No. 6351119:				
4.41 Ac NR Bridgeport	\$360.00	\$0	\$360.00	\$2.26

The real estate taxes assessed against the property under examination have been paid to and including the year 2006. The real estate taxes assessed against the property under examination for the year 2007 constitute a lien, but are not due and payable until July, 2007.

If you have any questions concerning the matters reported in this letter, please feel free to call me.

Very truly yours,

*/s/ James A. Harris*

James A Harris

**CITY OF BRIDGEPORT**  
**STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,**  
**SERIES 2010A**  
**(WVCWSRF PROGRAM/ARRA)**

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS, BIDDING AND AWARD OF CONTRACTS
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. ARRA ASSISTANCE AGREEMENT
11. SIGNATURES AND DELIVERY
12. BOND PROCEEDS
13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
14. SPECIMEN BOND
15. CONFLICT OF INTEREST
16. PROCUREMENT OF ENGINEERING SERVICES

We, the undersigned MAYOR and the undersigned RECORDER of the City of Bridgeport, in Harrison County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the \$1,978,974 aggregate principal amount of the City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA) (the "Bonds"), as follows:

1. **TERMS:** All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning as in the Bond Ordinance of the Issuer finally enacted on January 25, 2010, and put into effect after a public hearing held on January 25, 2010, as supplemented by a Supplemental Resolution adopted on January 25, 2010, authorizing the issuance of the Bonds (collectively, the "Bond Ordinance").

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 or construction of the Project, 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 Net 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, or such pledge or application of moneys and security or the collection of the Gross Revenues or pledge of the Net Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS, BIDDING AND AWARD OF CONTRACTS: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project were solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia of 1931. The winning bidders have submitted the Drug-Free Workplace Affidavit as required by Chapter 21, Article 1D of the Code of West Virginia, 1931, as amended. The Issuer has awarded the construction contract for the Project in 2 separate contracts to the respective lowest bidders thereof, being Anderson Excavating LLC for both contracts.

The Issuer has on or prior to this date issued a notice of award to said contractor for the Project and the Issuer contemplates entering into construction contracts with said contractor for the Project on or before January 28, 2010.

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 of the ARRA Assistance Agreement (Green Reserve) entered into among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") relating to the Bonds (the "ARRA Assistance Agreement"), and the Issuer has met all conditions prescribed in the ARRA Assistance Agreement. The Issuer has or can provide the financial, institutional, legal, and managerial capabilities necessary to complete the Project. There are no outstanding bonds or other obligations of the Issuer which are secured by revenues and/or assets of the Project.

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, altered, supplemented or changed in any way unless modifications appears from later documents also listed below:

Bond Ordinance

Supplemental Resolution

ARRA Assistance Agreement

Charter

Oaths of Office of Officers and Council Members

Minutes on Adoption of Bond Ordinance, Public Hearing Thereon and Supplemental Resolution

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

Evidence of Insurance

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Bridgeport." The Issuer is a municipal corporation in Harrison County, West Virginia, 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, Recorder and 5 Council members all duly elected or appointed as applicable, qualified and acting, whose names and dates of commencement and termination of current terms of office are as follows:

<u>Name</u>	<u>Office</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
James R. Christie	Mayor	July 1, 2009	June 30, 2013
Mario D. Blount	Recorder	July 1, 2007	June 30, 2011
Robert L. Greer	Council Member	July 1, 2009	June 30, 2013
Charles C. Lindsey	Council Member	July 1, 2007	June 30, 2011
Diana Marra	Council Member	July 1, 2009	June 30, 2013
Melissa S. Mathery	Council Member	July 1, 2007	June 30, 2011
John S. Wilson, Sr.	Council Member	July 1, 2009	June 30, 2013

The duly appointed and acting counsel to Issuer is [Dean C. Ramsey, Esq./ West and Jones], Clarksburg, 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 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, resolutions, ordinances, 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 were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to all applicable rules of the Governing Body and all applicable statutes, including, without limitation, Chapter 6, Article 9A, of the Code of West Virginia of 1931, as amended, and a quorum of duly elected or appointed, 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 Workers' Compensation, public liability and property damage insurance and builder's risk insurance in accordance with the Bond Ordinance. All insurance for the System required by the Bond Ordinance is in full force and effect.

10. ARRA ASSISTANCE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the ARRA Assistance Agreement are true and correct in all material respects as if made on the date hereof; (ii) the ARRA Assistance 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 ARRA Assistance 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 ARRA Assistance Agreement not misleading; and (iv) the Issuer is in compliance with the ARRA Assistance Agreement. The Issuer shall serve the customers, if any identified in the ARRA Assistance Agreement.

11. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor did officially sign the Bonds, consisting of a single bond for \$1,978,974, dated January 28, 2010, by his manual signature, and the undersigned Recorder did officially cause the official seal of the Issuer to be affixed upon each of said Bonds and to be attested by his manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the ARRA Assistance Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

12. BOND PROCEEDS: On the date hereof the Issuer received from the Authority and the DEP the sum of \$98,949.00, being the first advance of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as the acquisition and construction of the Project progress.

13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: An abstract of The Bond Ordinance, 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 Clarksburg Exponent Telegram, a newspaper published and of general circulation in the City of Bridgeport, West Virginia, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted by the Governing Body on first reading and that the Governing Body would consider and take final action on the enactment of the Bond Ordinance on January 25, 2010, which would grant final approval for the issuance of the Bonds, stating that a public hearing held on the Bond Ordinance at a public meeting of the Governing Body on the 25<sup>th</sup> day of January, 2010, at 7:00 p.m., in the Council Chambers at the Bridgeport City Hall and that at such hearing all objections and suggestions shall be heard by the Governing Body and it

shall then take such actions as it shall deem proper in the premises, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during regular office hours. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

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

15. CONFLICT OF INTEREST: No member, 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 Ordinance and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

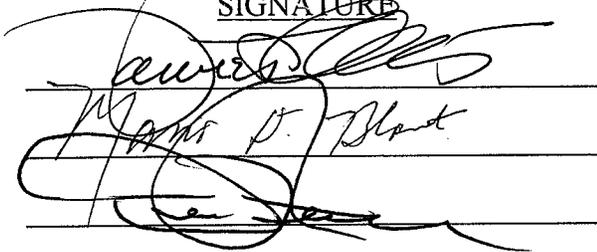
16. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

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WITNESS our signatures and the official seal of the CITY OF BRIDGEPORT on this 28th day of January, 2010.

[CORPORATE SEAL]

SIGNATURE



OFFICIAL TITLE

Mayor

Recorder

Counsel to Issuer

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**CERTIFICATE AS TO USE OF PROCEEDS**

The undersigned Mayor of the City of Bridgeport in Harrison County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of the \$1,978,974 aggregate principal amount of the Issuer's Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA) (the "Bonds"), dated January 28, 2010, hereby certify as follows:

1. I am one of the officers 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 same meanings set forth in the Bond Ordinance finally enacted by the Issuer on January 25, 2010, and put into effect after a public hearing held on January 25, 2010, as supplemented and amended by a Supplemental Resolution adopted January 25, 2010 (collectively, the "Bond Ordinance"), authorizing the issuance of 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 January 28, 2010, the date on which the Bonds are being physically delivered in exchange for an initial advance of a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Bonds were sold on January 28, 2010, to the Authority, pursuant to an ARRA Assistance Agreement (Green Reserve) dated January 28, 2010, by and among the Issuer, the Authority and the DEP, for an aggregate purchase price of \$1,978,974 (100% of par). On January 28, 2010, the Issuer received \$98,949.00 from the Authority and the DEP, being the first advance of the principal amount of the Bonds. The Bonds do not bear interest. The balance of the principal amount of the Bonds will be advanced to the Issuer as the acquisition and construction of the Project progress.

5. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of the construction of certain stormwater system improvements (collectively, the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

6. Not later than simultaneously with 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 construction of the Project, constituting a substantial binding commitment. The construction of the Project and the allocation of proceeds of the Bonds to such

expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest, if any, and proceeds, if any, deposited in the Series 2010B Bonds Reserve Account for the Bonds, 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 March 1, 2011. The construction of the Project is expected to be completed by December 31, 2010.

7. The total cost of the Project is estimated at \$1,978,974. Sources and uses of funds for the Project are as follows:

SOURCES	
Proceeds of the Bonds	<u>\$ 1,978,974</u>
Total Sources	\$ 1,978,974
USES	
Costs of the Project	\$ 1,960,474
Costs of Issuance	<u>18,500</u>
Total Uses	\$ 1,978,974

8. Pursuant to Article V of the Resolution, the following special funds or accounts have been created or continued in connection with the Bonds:

- (1) Revenue Fund;
- (2) Series 2010B Bonds Construction Trust Fund;
- (3) Series 2010B Bonds Sinking Fund; and
- (4) Series 2010B Bonds Reserve Account.

9. Pursuant to Article VI of the Resolution, the proceeds of the Series 2010B Bonds will be deposited in the Series 2010B 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 2010B Bonds and related costs.

10. Moneys held in the Series 2010B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2010B Bonds and will not be available to meet costs of the construction of the Project. All investment earnings on moneys in the Series 2010B Bonds Sinking Fund and Series 2010B Bonds Reserve Account will be withdrawn therefrom and deposited into the Series 2010B Bonds Construction Trust Fund during the 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.

11. Work with respect to the construction of the Project will proceed with due diligence to completion. The construction of the Project is expected to be completed within approximately 11 months of the date hereof.

12. With the exception of the amount deposited in the Series 2010B Bonds Sinking Fund for payment of interest, if any, on the Bonds and the amount deposited in the Series 2010B Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within approximately 13 months from the date of issuance thereof.

13. The Issuer does not expect that the Project will be sold or disposed of in whole or in part prior to the last maturity date of the Bonds.

14. 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.

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

16. The Issuer shall use the Bond proceeds solely for the costs of the construction of the Project.

17. The Bonds are not federally guaranteed.

18. The Issuer has either (a) funded the Series 2010B Bonds Reserve Account at the maximum amount of principal and interest, if any, 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 2010B Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2010B Bonds Reserve Account holds an amount equal to the respective maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2010B Bonds Reserve Account and the Series 2010B 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.

19. 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.

20. 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.

21. 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.

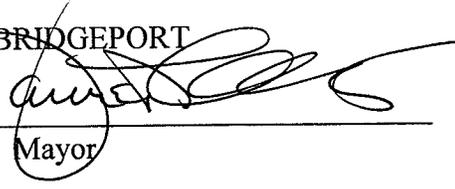
22. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature on this 28<sup>th</sup> day of January, 2010.

CITY OF BRIDGEPORT

By: \_\_\_\_\_

Its: Mayor

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the Mayor of Bridgeport. The word "Mayor" is printed below the line, with a circle around the 'M'.

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**CERTIFICATE OF ENGINEER**

I, Chad M. Riley, Registered Professional Engineer, West Virginia License No. 15189, of Thrasher Engineering, Inc., Consulting Engineers, Clarksburg, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain stormwater system improvements that are the subject of the "Contract # 2: Westfork Watershed Improvement Project Green Infrastructure Project in Bridgeport, West Virginia" described in the hereinafter defined Bond Ordinance (the "Project"), to be constructed primarily in Harrison County, West Virginia, which acquisition and construction are being permanently financed by the above-captioned bonds (the "Bonds") of the City of Bridgeport (the "Issuer"). Capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance finally enacted on January 25, 2010, and put into effect following a public hearing held on January 25, 2010, as supplemented and amended by the Supplemental Resolution adopted on January 25, 2010 (collectively, the "Bond Ordinance"), and the ARRA Assistance Agreement (Green Reserve) by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), dated January 28, 2010.

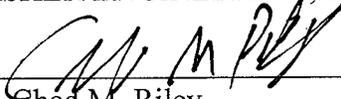
2. The Bonds are being issued for the purposes of (i) paying the costs of the Project as well as costs of other stormwater system improvements; and (ii) paying certain issuance and other costs in connection therewith.

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 the DEP and any change orders approved by the Issuer, DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 40 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 Schedule B attached hereto as Exhibit A, and in reliance on the opinion of West and Jones 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 bid documents relating to the Project reflect the Project as approved by the DEP 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;

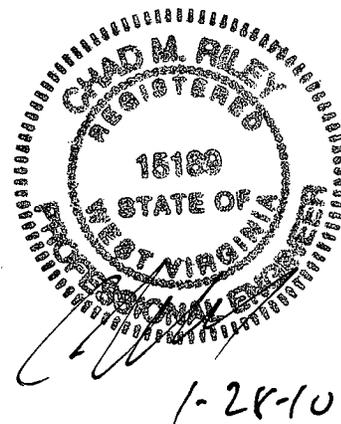
(viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project; (ix) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of the grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by DEP; and (x) attached hereto as Exhibit A is the final amended "Schedule B – Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 28<sup>th</sup> day of January, 2010.

THRASHER ENGINEERING, INC.

By:   
Chad M. Riley  
Its: Project Manager  
West Virginia License No. 15189

[SEAL]



SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: \_\_\_\_\_

ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

	<b>A. Cost of Project</b>		
1.	Construction	\$ <u>1,777,315.34</u>	
2.	Technical Services	\$ <u>133,158.66</u>	
3.	Legal and Fiscal	\$ <u>25,000.00</u>	
4.	Administrative	\$ <u>25,000.00</u>	
*5.	Site and Other Lands	\$ _____	
**6.	Fac. Plan/Design or Other Loan Repayment (Specify Type: _____ )	\$ _____	
7.	Interim Financing Costs	\$ _____	
8.	Contingency (5% of construction)	\$ _____	
9.	Miscellaneous <sup>1</sup>	\$ _____	
10.	Total of Lines 1 Through 9		\$ <u>1,960,474.00</u>
	<b>B. Sources of Funds</b>		
11.	Federal Grants: <sup>2</sup> _____ (Specify Sources) _____	\$ _____	
12.	State Grants: <sup>2</sup> _____ (Specify Sources) _____	\$ _____	
13.	Other Grants: <sup>2</sup> _____ (Specify Sources) _____	\$ _____	
14.	Any Other Source <sup>3</sup> _____ (Specify) _____	\$ _____	
15.	Total of Lines 11 Through 14		\$ <u>1,960,474.00</u>
16.	Net Proceeds Required from Bond Issue (Line 10 minus Line 15)		\$ _____
	<b>C. Cost of Financing</b>		
17.	Bond Council <sup>4</sup>	\$ <u>18,000.00</u>	
18.	Registrar fees	\$ <u>500.00</u>	
19.	Total Cost of Financing (lines 17 + 18)		\$ <u>18,500.00</u>
20.	Size of Bond Issue (Line 16 plus Line 19)		\$ <u>1,978,974.00</u>

\* not allowable for State Revolving Fund Assistance  
 \*\* WDA loans associated with EPA grants are not allowable

A. J. ... for A. K. ...  
 Signature of Authorized Representative  
 Date: 1/22/2010

A. J. ...  
 Signature of Consulting Engineer  
 Date: 1/22/2010

## SCHEDULE B

A. COST OF PROJECT	TOTAL	SRF		
1. Construction				
Contract #1	1,346,223.34	1,346,223.34		
Contract #3	431,092.00	431,092.00		
Contract				
Equipment				
2. Technical Services				
Planning				
Design				
Eng. During Const. Contract #3	6,000.00	6,000.00		
Special Services				
Inspection Services	127,158.66	127,158.66		
3. Legal/Fiscal	25,000.00	25,000.00		
4. Administrative	25,000.00	25,000.00		
5. Sites & Lands				
Land				
ROW Activities				
6. Loan Repayment				
7. Interim Financing				
8. Contingency				
9. Miscellaneous				
10. Total (Lines 1 - 9)	1,960,474.00	1,960,474.00		
B. SOURCE OF FUNDS				
11. Federal Grants				
12. State Grant				
13. Other Grants				
14. Any Other Source				
15. Total (Lines 11 - 15)				
16. Net Proceeds from Bond Issue				
C. COST OF FINANCING				
17. Funded Reserve				
a. SRF Funded Reserve				
b. Other Funded Reserve				
18. Other Costs				
a. Registrar Fees	500.00	500.00		
b. Bond Counsel	18,000.00	18,000.00		
19. Total Cost of Financing	18,500.00	18,500.00		
20. Size of Bond Issue	1,978,974.00	1,978,974.00		

*H. S. B. for A. Kimmons*  
Signature of Authorized Representative

Date: 1/22/2010

*H. S. B.*  
Signature of Consulting Engineer

Date: 1/22/2010

**CHARTER  
FOR THE CITY OF  
BRIDGEPORT, WEST VIRGINIA**

**EDITOR'S NOTE:** The Bridgeport City Charter was adopted on March 6, 1993. Dates appearing in parenthesis following a section heading indicate those provisions were amended, added or repealed on the date given.

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- Section 25. City Attorney; Assistant City Attorneys.
- Section 26. Superintendent of Public Works.
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- Section 29. Appointment of Municipal Court Judge.
- Section 30. Judge to Appoint Clerk.
- Section 31. Duties of Municipal Court Judge; Temporary Judge.
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- Section 37. Payment of Municipal Court Costs.
- Section 38. Appeals from Municipal Court: Bond.
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- Section 40. Audit of Boards and Commissions.
- Section 41. Fiscal Year Fixed by Ordinance.
- Section 42. Gender.
- Section 43. Separability.
- Section 44. Existing Ordinances, Rules, Regulations and Practices to Continue: Inconsistent Ordinances, Rules, Regulations and Practices Repealed.
- Section 45. Effective Date of Charter.

## PREAMBLE TO THE BRIDGEPORT CITY CHARTER

Bridgeport became an incorporated community on March 21, 1887, many years after having been carved out of the wilderness by our pioneer ancestors. From humble beginnings, it has become a small city of 7,000 friendly people who take pride in its growth, development, convenience and aesthetic values.

It was the mission of the Charter Board, elected and empowered by the citizens of Bridgeport at an election held June 3, 1992, to study and recommend such improvements in the city government as may be deemed necessary.

The study has identified the following two problem areas:

1. The lack of effective short and long term planning, as well as a lack of continuity and consistency, are the result of the short and unstaggered terms of the governing body.
2. City growth has created additional administrative needs in excess of the response capacity of the administrative authority which meets regularly two evenings per month. Inefficiencies result from the lack of access to an effective central authority on a daily basis.

The proposed charter contains the following remedies to the identified problems:

1. Retain as the governing body, with longer staggered terms, the present Council consisting of the Mayor, Recorder and 5 other members. The Council shall have full legislative powers and be responsible for governmental policy and citizen contacts.
2. Council shall be empowered and required to employ a Manager who is responsible for all the administrative duties of city operations.

In this charter we have provided for leadership of the city, as mandated by the electorate, and a government which is accountable to the citizens it represents, clearly delineating the duties, responsibilities and authorities of the administrative and legislative branches of the city's government.

In the hope that we have fulfilled our mission and our obligation, we, the Charter Board, have adopted and do propose to the electorate of the City of Bridgeport, the following charter:



CHARTER OF  
THE CITY OF BRIDGEPORT, WEST VIRGINIA

SECTION 1. INCORPORATION AND SUCCESSION.

The inhabitants within the corporate boundaries of the City of Bridgeport, as they now are or as they may hereafter be, shall be and continue to be a municipal body politic and corporate by the name of the "The City of Bridgeport" and as such shall have perpetual succession and shall succeed to and own, possess and enjoy all property, rights, title and interests of every kind and character owned or held by or vested in the City of Bridgeport, a municipal corporation, at the time this charter becomes effective and shall be subject to all existing debts, liabilities or obligations of said municipal corporation.

SECTION 2. FORM OF GOVERNMENT.

A "Manager-Mayor Plan", set forth as "Plan V" in Section 2 of Article 3 of Chapter 8 of the West Virginia Code 1931 as amended, is established as the form of government for the City of Bridgeport. There shall be a Mayor elected at large by the qualified voters of the City, as hereinafter provided, who shall serve as a member and the presiding officer of the Council; and a Manager who shall be appointed by the Council. The Council, Mayor and Recorder shall be the governing body. The Manager shall be the administrative authority. The Manager shall manage the affairs of the City under the supervision of the Council and shall be responsible to the Council. The Manager shall appoint or employ, in accordance with Chapter 8 of the West Virginia Code and this Charter, all subordinates and employees for whose duties or work the Manager is responsible to Council.

SECTION 3. POWERS OF THE CITY, SELF GOVERNMENT AND HOME RULE.

The City of Bridgeport shall have each and every authority and power granted to it by this Charter and any power and authority heretofore conferred on it by the legislature by general, special or local law or parts thereof not inconsistent with the constitution or general law of the State. The City of Bridgeport shall also have all powers granted to municipalities under the constitution and statutes of the State of West Virginia, including all powers of local self government and home rule granted by Chapter 8 of the Code of West Virginia, as amended, as well as any powers or authority fairly incidental thereto or reasonably implied and within the purpose thereof, and all such powers shall be executed in the manner prescribed by this Charter and if not prescribed herein, in such manner as shall be provided by ordinance of City Council.

**SECTION 4. LEGISLATIVE POWER OF COUNCIL; QUALIFICATIONS, TERM OF OFFICE, VACANCIES.**

All legislative powers of the City shall be vested, subject to the terms of this Charter and the constitution of the State, in the Governing Body consisting of five (5) Council members, the Mayor and Recorder, elected at large. The Governing Body shall have authority to pass all ordinances necessary and proper to carry into force and effect all of the powers of the City and to fix from time to time the salaries of all City employees and officers, including the Mayor, Manager, Recorder and members of Council: Provided, that no elected officer's salary shall be increased during the term for which he or she is elected. All members of Council shall be qualified voters of the City and shall hold no other elected public office or be employed by the City. Members of Council shall be elected for terms of four (4) years beginning on the 1st day of July following their election, except that of the five members of Council elected at the first election held under the provisions of this Charter, the two receiving the smallest number of votes shall be elected for terms of two (2) years. At each regular election thereafter either two or three members of Council as the case may be, shall be elected to succeed the incumbent members whose terms of office expire on the 30th day of June following the election. The terms of office of all members of Council in office on the date this Charter is adopted shall continue until the close of business on the 30th day of June following the first election held hereunder.

If any member of Council shall cease to be qualified as such, for any reason, the office shall immediately become vacant. Any vacancy on Council shall be filled by the affirmative vote of a majority of the remaining members of Council appointing a qualified person to fill the vacancy for the unexpired term. If the vacancy is not filled within sixty (60) days by the affirmative vote of the majority of the remaining members of Council, the Mayor shall appoint a qualified person to fill the vacancy. A council member, including the Mayor and Recorder, shall be subject to removal from office for neglect of duty pursuant to West Virginia Code 6-6-7 if he (1) lacks at any time during his term of office any qualification for the office prescribed by this Charter, (2) violates any express prohibition of this Charter, (3) is convicted of a crime involving moral turpitude, or (4) fails to attend three consecutive regular meetings of the Council without being excused by the Council as reflected in the minutes.

**SECTION 5. MEETINGS OF COUNCIL; RULES OF PROCEDURE.**

Regular meetings of City Council shall be held at least twice a month. Regular meetings of the City Council shall be held at 7:00 p.m. on the second and fourth Tuesdays of each month or on such other days as Council may by ordinance prescribe. Special meetings may be held at any time upon the call of the Mayor or any three (3) members of Council or upon such notice as Council by rule may prescribe. All meetings shall be open to the public. Four (4) members of Council shall constitute a quorum and the Mayor and Recorder shall be entitled to vote on all matters before Council. The Council may adopt such rules, procedures or order of business as it deems appropriate from time to time and in the absence of such rules adopted by Council, the proceedings of Council shall be governed by the rules of parliamentary procedure contained in Roberts' Rules of Order.

**SECTION 6. ATTENDANCE AT COUNCIL MEETING REQUIRED FOR VOTING.**

No member of Council may vote on any matter before Council unless that member is present at the time of the vote. No proxies or absentee votes shall be permitted.

**SECTION 7. SELECTION, POWERS AND DUTIES OF MAYOR.**

There shall be a Mayor elected at large by the qualified voters of the City who shall serve as a member and the presiding officer of the Council and shall perform such other duties as provided by this Charter or by law. The Mayor shall serve for a term of four (4) years beginning on July 1st following his or her election and continuing until June 30 following the next mayoral election. Any vacancy in the office of Mayor shall be filled by appointment by the remaining members of the Governing Body of one of its members to serve for the unexpired term.

**SECTION 8. DEVELOPMENT COMMITTEE; MAYOR'S ADVISORY COMMISSION ON ECONOMIC AND INDUSTRIAL DEVELOPMENT.**

The Mayor shall appoint and chair a Development Committee consisting of three members of Council, including the Mayor, and two residents of the City. The Development Committee shall consider and report annually to Council matters related to economic development, the use of public buildings and real estate, planning, zoning, housing and annexation.

**SECTION 9. LIMITATION ON TERMS OF THE MAYOR.**

The Mayor shall be elected to not more than two consecutive terms: Provided, that nothing herein shall be construed as preventing an incumbent Mayor from election to a Council term following the end of the Mayor's term.

**SECTION 10. RECORDER.**

There shall be a Recorder elected at large by the qualified voters of the City who shall serve as a member of the Council and shall keep the journal of proceedings of the Council and have charge of and preserve the records of the City. Whenever the Mayor is unable because of illness or absence from the municipality to perform the duties of his office and during any vacancy in the office of Mayor, the Recorder shall perform the duties of the Mayor and be vested with all of his power and authority. The Recorder shall serve for a term of four (4) years; provided however, that the Recorder elected at the first election held hereunder shall serve for a term of two (2) years. Any vacancy in the office of Recorder shall be filled by the affirmative vote of Council appointing a qualified person to fill the vacancy for the unexpired term.

**SECTION 11. OATHS OF MAYOR AND MEMBERS OF COUNCIL.**

The Mayor, Recorder, and all other members of Council, before entering upon the duties of the office, shall make an oath or affirmation to support the Constitutions of the United States and the State of West Virginia and to discharge faithfully the duties of the office to the best of their skill and judgment. This oath or affirmation must be before someone authorized to administer oaths and shall be filed with the City Recorder.

**SECTION 12. PERSONAL INTEREST OF MEMBERS OF THE GOVERNING BODY; EFFECT.**

Any member of the Governing Body having any interest, direct or indirect, other than as a citizen of Bridgeport, in any matter to be acted upon in any way by Council, shall have no vote on such matter, nor shall be privileged to take part in the discussion thereof except by unanimous consent, and, upon the request of any other member of the Governing Body, the member shall retire from the session until such matter has been disposed of.

**SECTION 13. APPOINTMENT, REMOVAL AND QUALIFICATIONS OF MANAGER.**

There shall be a Manager appointed by Council to serve at the pleasure of Council: Provided, that the removal of the Manager shall require a vote of a majority plus one of the members elected to Council: provided further, that, if removed at any time after the Manager has served six months, the Manager may demand written charges and the right to be heard thereon at a public meeting of the Council prior to the date on which the final removal shall take effect; but pending and during that hearing the Council may suspend the Manager from office. The action of suspending or removing the Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in the Council. The Council may designate some other officer of the City to perform the duties of the Manager during the Manager's absence or disability. No person shall be eligible to the office of Manager who has been convicted of bribery, perjury, a felony or other infamous crime. The Manager shall be appointed by Council solely on the basis of his executive and administrative qualifications, and he shall have at least three (3) years experience as a manager or assistant manager in city or county government, and shall hold at least a Bachelors Degree in a field reasonably related to his duties. The Manager need not be a resident of the City or State when appointed, but may be required by Council to reside within the City while in office. Neither the Mayor nor any member of Council shall be chosen as Manager. The performance of the Manager shall be reviewed by Council at least semiannually.

**SECTION 14. MANAGER, OATH, BOND.**

Before entering upon his duties, the Manager shall make an oath of affirmation to support and defend the Constitution of the United States and of this State and to perform the duties of the office faithfully, honestly and to the best of the Manager's skill and judgment. This oath or affirmation must be before someone authorized to administer oaths and shall be filed with the City Recorder. Before entering upon the duties of the office, the Manager shall give a good and sufficient bond, payable to the City in such amount as may be prescribed by Council but not less than ten thousand dollars, conditioned upon the faithful performance of the Manager's duties, and with a corporate surety authorized to do business within the State; and such bond shall be filed with the City Recorder after being approved as to form and surety by a judge of the Circuit Court of Harrison County. The premium on such bond shall be payable by the City.

**SECTION 15. MANAGER, POWERS AND DUTIES GENERALLY.**

It shall be the duty of the Manager unless otherwise specifically provided in this Charter; to supervise the administration of the affairs of the City; to see that the orders, bylaws, ordinances, acts and resolutions of the Council thereof are faithfully executed and enforced; and to see that the laws of the State are enforced within the corporate limits of the City. The Manager shall be an ex officio member of all committees of Council. It shall also be the duty of the Manager to make all appointments and removals in the administrative and executive services, except as otherwise provided in this Charter, and those appointments and removals shall be made exclusively by the Manager without the consultation, advice or approval of the Council or any member thereof; to recommend from time to time to the Council such measures as the Manager may deem necessary for the welfare of the City; to keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate; to prepare and submit to the Council such reports as may be required by that body, and to perform such other duties as may be prescribed by this Charter or required by ordinance or resolution of the Council. The Manager shall determine the needs and prepare, in consultation with City department heads, a long range plan, extending two, five, and ten years, setting forth the capital expenditures which are needed to enhance the growth, prosperity and future development of the City and the improvement and development of its facilities, suggesting funding sources to acquire the same. The Manager shall report his findings to Council prior to submission of the annual budget. The Manager shall be responsible to Council for the proper administration of the affairs of the City by the Manager's subordinates. Except as otherwise provided in this Charter, all other executive and administrative powers conferred by the laws of the State upon any municipal official shall be exercised by the Manager or persons designated by the Manager. The Manager shall be vested with discretion in the performance of his duties, and shall not be subject to direction or control by any member of the Council or any other person or persons. The Manager shall have the power to remove any officer whom he may appoint, or any employee of the City for whose duties or work the Manager is responsible, unless otherwise provided in this Charter; Provided, however, that the Manager may exercise this power only with the consent of Council during the first six (6) months of his employment.

**SECTION 16. MANAGER CONTRACTS; RATIFICATION.**

The Manager shall negotiate and enter into all contracts upon behalf of the City except as otherwise provided in this Charter or by ordinance. Such contracts to be negotiated and entered into by the Manager shall be within the limits of the budget, as determined by the purpose and subject matters of the contracts. If any such contract involves the expenditure of more than \$5,000.00, or the performance thereof extends beyond the budget year, or involves the expenditure of money not within the budget, such contract must be ratified by Council. The Manager shall report in writing to Council any negotiations and the terms of the contracts requiring their ratification, and the Council may in such cases alter, amend, ratify or reject any such contract. Any contract executed by the Manager on behalf of the City in violation of the terms of this section shall not be binding upon the City.

**SECTION 17. EXECUTIVE AND ADMINISTRATIVE OFFICIALS; QUALIFICATIONS, BOND.**

The duties assigned to administrative officers shall be exercised under the supervision of the Manager. In all cases required by ordinance or in which the Manager may deem it advisable, the Manager shall take, of any person appointed, a bond payable to the City of Bridgeport. Such bond shall be conditioned on the faithful performance of the person's duties and in such amount as the Manager shall deem requisite. Such bonds shall be filed with the Director of Finance. No person shall be appointed in the executive or administrative services of the City who has been convicted of bribery, perjury, felony or other infamous crime. Residence within the City at the time of such appointment shall not be a necessary qualification for appointment unless the Constitution of the State shall provide otherwise. If the Manager or any other officer of the City shall be a member, manager, officer or stockholder of any partnership, business, firm or corporation, which by contract furnished material and supplies to the City or to any workman or contractor for the City, that shall not of itself constitute a disqualification for office under this Charter.

**SECTION 18. COUNCIL SEATS FOR CITY OFFICERS; RIGHTS.**

The Manager and such other officers of the City as may be designated by vote of Council shall be entitled to seats in Council Chambers. None of those officials shall have a vote, but the Manager shall have the right to discuss any matter coming before the Council and the other officers shall be entitled to discuss any matter before the Council relating to their respective departments and offices.

**SECTION 19. ELECTIONS.**

A special City election of the Mayor, Recorder and members of Council shall be held on June 8, 1993. Regular City elections shall be held on the second Tuesday of June, 1995, and the second Tuesday of June of each odd year thereafter.

The conduct of all municipal elections shall be integrated with the system of "permanent registration of voters, " and those provisions of Chapter Three of the West Virginia Code that integrate county-state elections with the "permanent registration system" are hereby incorporated by reference, to the extent reasonably applicable.

Except as otherwise provided herein, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, conducting elections, and determining and certifying the results of such elections, shall apply to City elections.

All City elections shall be nonpartisan. Any person who is eligible to hold and seeks to hold the office of Mayor, Recorder, or member of Council shall file with the City Recorder at least sixty (60) days before the election, a certificate declaring candidacy for such office, accompanied by a \$25.00 filing fee, which certificate shall be in form and effect as follows:

I, \_\_\_\_\_, hereby certify that I am a candidate for the office of [Mayor, Recorder, or member of Council] of the City of Bridgeport, and desire my name to be printed on the official ballot of the City of Bridgeport to be voted at the election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; that I am a legally qualified voter of the City of Bridgeport; that my residence is \_\_\_\_\_, in the City of Bridgeport; that I am eligible to hold that office; and that I am a candidate for that office in good faith.

\_\_\_\_\_  
Candidate

#### SECTION 20. RECALL OF MAYOR, RECORDER OR MEMBER OF COUNCIL.

The Mayor, Recorder or any member of Council may be removed from office by the following procedure: a petition signed by at least ten percent of the qualified voters of the City shall be filed with the Recorder, which petition shall contain a general statement of the grounds for which the removal is sought. The petition shall be accompanied by a bond in an amount determined by the Recorder to equal the cost of the recall election with sufficient surety condition to pay the cost of the recall election if majority of the legal votes cast are against the recall. Such petition and bond shall be submitted to, examined and certified by the Recorder, and if such petition be deemed sufficient by the Recorder, the Recorder shall certify the same to the City Council without delay. Upon receipt of such petition the Council shall order and fix a date for holding a special recall election, not less than thirty days nor more than fifty days from the date of the Recorder's certificate. The Council shall publish notice of the election once a week for three successive weeks in two newspapers of general circulation in the City. The ballot for such recall election shall be substantially of the following form and effect:

#### OFFICIAL BALLOT

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_ Special recall  
election for the removal of \_\_\_\_ For the recall of \_\_\_\_\_  
\_\_\_\_ Against the recall of \_\_\_\_\_

Should a majority of the votes cast be in favor of recall the person recalled shall forthwith forfeit his office and the Council shall, at its next meeting following the recall election, appoint a successor to such office for the unexpired term of same.

The method of removal shall be cumulative and in addition to any other methods of removal provided by law. No recall petition shall be filed within ninety days succeeding or preceding any regular Council meeting.

**SECTION 21. CONTINUATION OF DEPARTMENTS.**

The existing departments, commissions, boards and other branches of the City government are continued, unless changed by the provisions of this Charter or by ordinance of the Council. Except as established by the provisions of this Charter, the Council may change, abolish, combine and rearrange the departments, commissions, boards and other branches of the City government provided for in the administrative code, but an ordinance creating, combining, abolishing or decreasing the powers of any department, commission, board of other branch, shall require a vote of a majority plus one of the members elected to Council.

**SECTION 22. APPOINTMENTS BY MAYOR.**

Unless otherwise provided by this Charter or by Ordinance, the appointments to be made by the Mayor shall be made with the advice and consent of the Council, and such appointees shall serve at the pleasure of Council.

**SECTION 23. CITY DIRECTOR OF FINANCE.**

The Manager shall appoint, and may discharge, a City Director of Finance who shall serve as chief financial advisor to the Council and the Manager. The Director of Finance shall review the budget with Council and the Manager at least quarterly and shall perform such duties as may be prescribed by ordinance and law, consistent with the office.

**SECTION 24. CHIEFS OF POLICE AND FIRE DEPARTMENTS.**

The Manager shall appoint, and may discharge, the Chief of Police and the Chief of the Fire Department.

**SECTION 25. CITY ATTORNEY; ASSISTANT CITY ATTORNEYS.**

The Manager shall appoint, and may discharge, a City Attorney, who need not be a resident of the City of Bridgeport. No person shall be eligible to the office who is not an attorney-at-law, duly admitted to practice in this State. The City Attorney shall serve the Council, officers, commissioners, and boards of the City as legal counsel and attorney, and shall represent the City in all proceedings in Court. The City Attorney may employ such assistant City Attorneys as are from time to time authorized by Council. The Manager may employ special counsel when such employment is authorized by Council.

**SECTION 26. SUPERINTENDENT OF PUBLIC WORKS.**

The Manager shall appoint and may discharge a Superintendent of Public Works who shall supervise the personnel and procedures of the various sections of the Public Works Department, including the Water Plant, the Water Department and the Street Department and perform such other duties as Council may prescribe by Ordinance or are assigned by the Manager.

**SECTION 27. DIRECTOR OF RECREATION.**

The Manager shall appoint and may discharge a Director of Recreation who shall be in charge of the recreation programs of the City and all playgrounds, recreation centers and recreation facilities of the City and shall perform such other duties as Council may provide by ordinance or be assigned by the Manager.

**SECTION 28. DIRECTOR OF LIBRARY SERVICES.**

The manager shall appoint and may discharge a Director of Library Services who shall hold a Masters Degree in Library Science and who shall be in charge of all library facilities of the City and shall perform such other duties as Council may provide by ordinance or be assigned by the Manager.

**SECTION 29. APPOINTMENT OF MUNICIPAL COURT JUDGE.**

The Manager shall appoint and may discharge a Judge of Municipal Court from among the members of the Harrison County Bar, who need not be a resident of the City of Bridgeport.

**SECTION 30. JUDGE TO APPOINT CLERK.**

The Judge of the Municipal Court shall appoint a Clerk of the Municipal Court who shall have the powers and duties set forth in Section 35 of the Charter.

**SECTION 31. DUTIES OF MUNICIPAL COURT JUDGE; TEMPORARY JUDGE.**

The Judge of the Municipal Court shall preside over that Court and try and determine all cases over which that Court has jurisdiction. In the event of the Judge's temporary absence or disability, the Manager shall appoint a member of the Harrison County Bar to preside over the Court, and perform the duties of the Judge thereof, during the absence or disability of the regular Judge, and the Judge's salary shall be transferred to and paid to the temporary Judge for the time of service as such Judge.

**SECTION 32. JURISDICTION OF MUNICIPAL COURT.**

The Judge of the Municipal Court shall have jurisdiction over all offenses against, or violation of, the ordinances of the City, and full authority to punish in any manner lawfully prescribed by such ordinances, the offenders against or violators of the same.

The Judge of the Municipal Court shall have the same misdemeanor criminal jurisdiction and powers within the City of Bridgeport as is now provided by law for magistrates elected in Harrison County.

**SECTION 33. PROCEEDINGS IN MUNICIPAL COURT.**

The proceedings for the recovery of the fines or for the enforcement of the penalty prescribed by any ordinance shall conform to the regulations, so far as they are applicable, prescribed in the Code of West Virginia for proceedings before magistrates.

**SECTION 34. ENFORCEMENT OF MUNICIPAL COURT ORDERS; JUDGMENTS; EXECUTION OF PROCESS; FEES.**

The Court shall have full power and authority to enforce its orders and judgments, by any process of law which may be necessary and proper for the purpose, and all processes, executions and orders of the Court shall be signed by the Judge or Clerk thereof. Such process and executions shall be directed to the Chief of Police. In the execution of any process or order of the Court, the Chief of Police or officer shall have the same powers, be governed in these proceedings by the same rules of law, and be subject to the same liabilities as the Sheriff of Harrison 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 the Court, shall be collected by the Police Department, and accounted for and paid by the Chief of Police to the Finance Director of the City. The City shall in no event be liable for any such fees.

**SECTION 35. POWERS AND DUTIES OF MUNICIPAL COURT CLERK; FEES.**

The Clerk of the Court shall have authority to administer oaths within the City and shall perform such duties as may be required by the Judge of the Court, or be prescribed by rule or order of the Council. Such Clerk may charge the same fees for the Clerk's services as are now allowed to be charged by magistrates for like services, and such fees shall be collected; but all such fees shall be accounted for by the Clerk to the City and paid over to its Finance Director.

**SECTION 36. MUNICIPAL COURT RECORDS AND CERTIFICATES; EFFECT; SEAL.**

A docket and other books required for the records and a seal shall be provided for the Court by the Council, and the seal may be altered or renewed as the Court may direct. Full faith and credit shall be given to the records of the Court, and the certificates of its Judge or Clerk, whether the seal of the Court be affixed thereto or not, in like manner and with the same effect as if the same were records of the Circuit Court or certificates of the Judge of a Circuit Court similarly authenticated.

**SECTION 37. PAYMENT OF MUNICIPAL COURT COSTS.**

The Municipal Court shall have power, upon rendering judgment against a defendant charged with the violation of an ordinance of the City, to render judgment against the defendant also for the cost of prosecution.

**SECTION 38. APPEALS FROM MUNICIPAL COURT: BOND.**

From the judgment of the Municipal Court in any case in which there is unpaid a fine of ten dollars or more, or imprisonment, or both, or in any case involving the validity of an ordinance of the City, an appeal shall lie as a matter of right, to the Circuit Court of Harrison County, either on behalf of the defendant or the City, and in any case where a fine is imposed, on demand of the defendant, such fine must be fixed at not less than ten dollars, so that such appeal may be taken; but no defendant shall be entitled to such appeal until and unless the defendant executes before the Municipal Court, or its Clerk, bond in such penalty, not exceeding five hundred dollars, as the Municipal Court may prescribe, conditioned for the

performance of the judgment or order of the Circuit Court of the County made or rendered upon such appeal. Every such bond shall be with security approved by the Municipal Court or its Clerk; but in any case in which an appeal is taken or granted on behalf of the City, no bond or security shall be required. Every such appeal shall be proceeded within the Circuit Court in the same manner as is provided by law for the proceedings in such Circuit Court, in cases appealed from magistrates. If, on such appeal, judgment be against the appellant, it shall also be against the sureties on the appeal bond for costs, and for any fine or pecuniary penalty adjudged against the defendant. No such appeal shall be allowed after ten days from the date of any final order or judgment desired to be appealed from.

#### SECTION 39. ANNUAL AUDIT OF BOOKS AND ACCOUNTS; PUBLICATION.

At the end of each fiscal year the City Council shall cause a full and complete examination of all the books and accounts of the City to be made by the West Virginia State Tax Department, Division of Tax and Revenue, or its successors, or by other competent accountants. The Finance Director shall publish such reports as are required by law.

#### SECTION 40. AUDIT OF BOARDS AND COMMISSIONS.

All boards and commissions of the City of Bridgeport that receive or disburse money independent of the City Finance Department shall be audited by an independent certified public accountant and the audit report shall be filed with the Director of Finance not later than 90 days after the end of the fiscal year of the board or commission.

#### SECTION 41. FISCAL YEAR FIXED BY ORDINANCE.

Unless otherwise provided by law the fiscal year of the City of Bridgeport shall be fixed by ordinance.

#### SECTION 42. GENDER.

The masculine gender has been used herein for convenience only and shall be deemed where appropriate to include the feminine and neuter.

#### SECTION 43. SEPARABILITY.

The provisions of this Charter shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, such holding shall in no way affect any other provision thereof.

#### SECTION 44. EXISTING ORDINANCES, RULES, REGULATIONS AND PRACTICES TO CONTINUE: INCONSISTENT ORDINANCES, RULES, REGULATIONS AND PRACTICES REPEALED.

All existing ordinances and all existing rules, regulations and practices, if not inconsistent or in conflict with this charter, shall continue in full force and effect until repealed or modified by competent authority. All ordinances, rules, regulations and practices that are inconsistent or in conflict with this charter are hereby repealed to the extent of such inconsistency or conflict.

SECTION 45. EFFECTIVE DATE OF CHARTER.

For the purpose of nominating candidates and conducting the first election held hereunder, this Charter shall be in effect from and after the date of its adoption by the voters of the City. For all other purposes it shall be in effect on and after the first day of July next following the first election held under its provisions.

Approved by voters of the City of Bridgeport at a special election held on March 6, 1993, with 739 votes cast for approval and 361 votes cast against approval as certified by the governing body of the City of Bridgeport, West Virginia, on March 17, 1993.

CHARTER BOARD MEMBERS

Dwight Fowler  
Dwight Fowler, Chairman

Robert V. Allen  
Robert V. Allen, Secretary

Carl E. Furbæ, Jr.  
Carl E. Furbæ, Jr.

Edgar A. Hess  
Edgar A. Hess

Sarah Limpert  
Sarah Limpert

Leonard J. Timms  
Leonard J. Timms

Mark B. Vecchio  
Mark B. Vecchio

ATTEST:

Walta Kay Bower  
Walta Kay Bower, Recorder

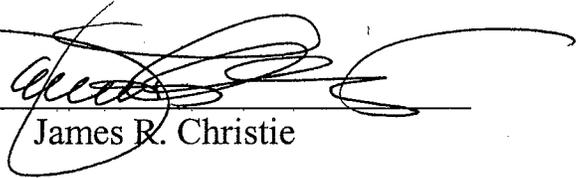
(seal)

## Oath of Office and Certificate

**State of West Virginia**  
**County of Harrison, to-wit:**

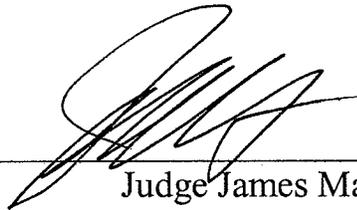
I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of mayor of the City of Bridgeport to the best of my skill and judgment: SO HELP ME GOD.

Signature of Affiant



James R. Christie

Subscribed and sworn to before me, in said County and State,  
this 6<sup>th</sup> day of July, 2009.



Judge James Matish

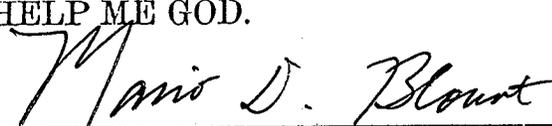
# Oath of Office and Certificate

State of West Virginia, }  
Harrison County, to-wit: }

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Recorder

to the best of my skill and judgment: SO HELP ME GOD.

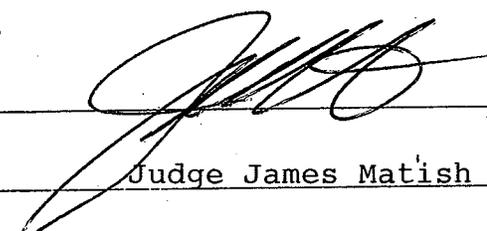
Signature of Affiant



Mario D. Blount

Subscribed and sworn to before me, in said County and State, this 2nd day of

July, 19 2007.



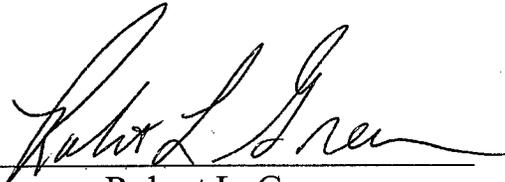
Judge James Matish

## Oath of Office and Certificate

**State of West Virginia**  
**County of Harrison, to-wit:**

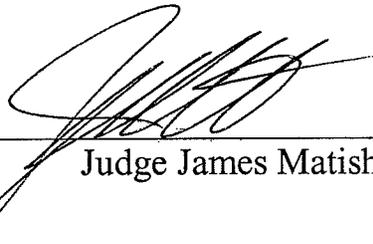
I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of council member of the City of Bridgeport to the best of my skill and judgment: SO HELP ME GOD.

Signature of Affiant



Robert L. Greer

Subscribed and sworn to before me, in said County and State,  
this 6<sup>th</sup> day of July, 2009.



Judge James Matish

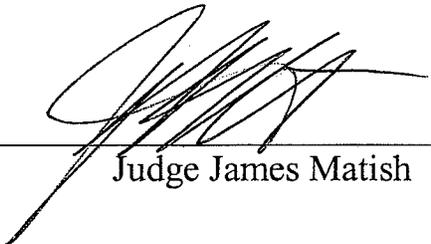
# Oath of Office and Certificate

**State of West Virginia**  
**County of Harrison, to-wit:**

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of council member of the City of Bridgeport to the best of my skill and judgment: SO HELP ME GOD.

Signature of Affiant   
John S. Wilson, Sr.

Subscribed and sworn to before me, in said County and State,  
this 6<sup>th</sup> day of July, 2009.

  
Judge James Matish

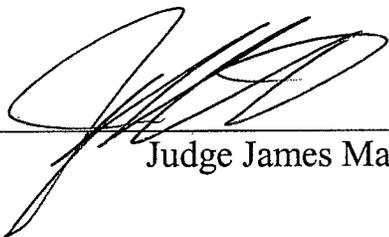
## Oath of Office and Certificate

**State of West Virginia**  
**County of Harrison, to-wit:**

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of council member of the City of Bridgeport to the best of my skill and judgment: SO HELP ME GOD.

Signature of Affiant   
Diana Cole Marra

Subscribed and sworn to before me, in said County and State,  
this 6<sup>th</sup> day of July, 2009.

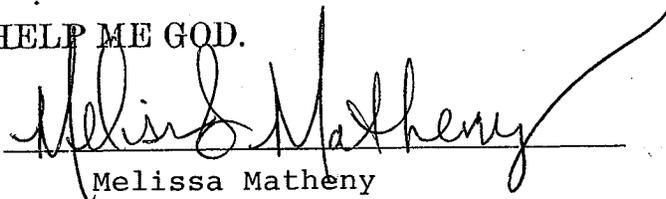
  
Judge James Matish

# Oath of Office and Certificate

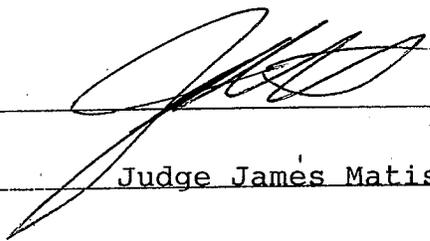
State of West Virginia, }  
Harrison County, to-wit: }

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council Member

to the best of my skill and judgment: SO HELP ME GOD.

Signature of Affiant   
Melissa Matheny

Subscribed and sworn to before me, in said County and State, this 2nd day of July, 19 2007.

  
Judge James Matish

# Oath of Office and Certificate

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State of West Virginia, }  
Harrison County, to-wit: }

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council Member

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to the best of my skill and judgment: SO HELP ME GOD.

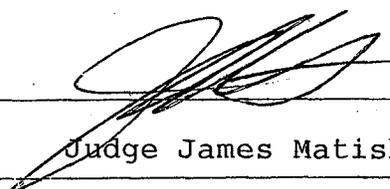
Signature of Affiant



Charles C. Lindsey

Subscribed and sworn to before me, in said County and State, this 2nd day of

July, 19 2007



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Judge James Matish

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January 11, 2010

**BRIDGEPORT CITY COUNCIL MINUTES**

City of Bridgeport  
County of Harrison  
State of West Virginia

**REGULAR SESSION:**

Bridgeport City Council met in regular session Monday, January 11, 2010, at 7:00 p.m. in the Bridgeport Municipal Complex, 515 West Main Street.

**COUNCIL MEMBERS PRESENT:**

Mayor James R. Christie; Recorder Mario D. Blount; Councilors Robert L. Greer, Charles C. Lindsey, Diana Cole Marra, and John S. Wilson Sr.

**COUNCIL MEMBER(S) ABSENT:**

Councilor Melissa S. Matheny.

**CITY STAFF PRESENT:**

City Manager A. Kim Haws, City Attorney Dean C. Ramsey, City Clerk Judy Lawson, Police Chief John Walker, Fire Chief Chuck Feathers, Finance Director Keith Boggs, and Parks and Recreation Director Don Burton.

**INVOCATION AND PLEDGE OF ALLEGIANCE:**

The Invocation was given by Recorder Blount, followed by the Pledge of Allegiance.

**APPROVAL OF MINUTES:**

Minutes of the December 21, 2009, council meeting were unanimously approved as presented on a motion by Recorder Blount, seconded by Councilor Marra.

**REPORT BY MAYOR:**

Mayor Christie discussed the recent organizational meeting of the Harrison County Mayors and stated that they would be meeting in Bridgeport on Wednesday, March 3, at 7:00 p.m. and he invited Bridgeport City Council members to attend.

The Mayor advised Council that the Fiscal Year 2010-2011 budget process has started and if anyone has requests concerning the proposed budget, they should be sent to the City Manager prior to January 29.

Mayor Christie reminded everyone of the West Virginia Municipal League Conference in Charleston January 17 and 18.

## **BRIDGEPORT CITY COUNCIL MINUTES**

January 11, 2010

Page Two

### **REPORT BY RECORDER:**

Recorder Blount congratulated the Bridgeport Middle School Dance Line for winning first place in the Harrison County Middle School competition. He also announced that Joshua Nicewarner has been recommended to replace Bridgeport High School Football Coach Bruce Carey.

### **REPORT BY CITY MANAGER:**

City Manager Haws gave an update on the status of the United Hospital Center and said according to Hospital Administrator Bruce Carter the Hospital is on schedule to open in October.

The Steptoe & Johnson office building at White Oaks is 80% complete on the exterior and work is underway on the interior.

The City is working with the Board of Education to improve the path to Simpson School and anticipates completion before June.

An application has been submitted for a grant for phase five of the Main Street project.

### **AWARDS AND PRESENTATIONS:**

Mayor Christie presented a Community Pride Award plaque to Penny Novak, representing JARA Group, L.P., in recognition of their extensive renovations at Gabriel's Plaza.

### **PUBLIC COMMENTS:**

Luke Nesler gave a presentation regarding an indoor BMX track.

### **EXECUTIVE SESSION:**

At 7:55 p.m. a motion was made by Councilor Wilson to enter into executive session to discuss matters with counsel pursuant to the attorney/client privilege. Motion was seconded by Recorder Blount and unanimously approved. No action was taken. At 8:40 p.m. a motion was made by Councilor Greer to end the executive session and return to regular session. Motion was seconded by Recorder Blount and unanimously approved.

### **UNFINISHED BUSINESS:**

1. A motion was made by Councilor Marra to approve and adopt on second and final reading an ordinance amending Section 737.40 of Chapter Three of the Bridgeport City Code regarding the City's economic development grants/loans. Motion was seconded by Councilor Wilson and unanimously approved.

## **BRIDGEPORT CITY COUNCIL MINUTES**

January 11, 2010

Page Three

### **NEW BUSINESS:**

1. Recorder Blount made a motion to approve and adopt the revised Emergency Action Plan for the City of Bridgeport. Motion was seconded by Councilor Marra and unanimously approved.

2. A motion was made by Councilor Greer to approve the resolution authorizing Mayor Christie to apply for a Land and Water Conservation Program Grant and, if approved, to sign all documents necessary for completion of the project. Motion was seconded by Recorder Blount and unanimously approved.

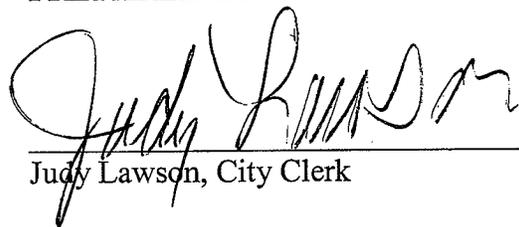
3. Recorder Blount made a motion to approve first reading of a bond ordinance authorizing certain stormwater system improvements and the financing of the costs thereof through the issuance by the City of not more than \$2,000,000.00 in aggregate principal amount of City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA); providing for the rights and remedies of and security for the holders of such bonds; authorizing execution and delivery of all documents relating to the issuance of such bonds; approving, ratifying and confirming an ARRA Assistance Agreement (Green Reserve); authorizing the sale and providing for the terms and provisions of such bonds; and adopting other provisions relating thereto. Motion was seconded by Councilor Wilson and unanimously approved.

4. General Fund Budget Revision #5 for fiscal year 2009-2010 was unanimously approved on a motion by Councilor Greer, seconded by Councilor Marra, and Fiscal Year 2009-2010 Capital Reserve Budget Revision #2 was unanimously approved on a motion by Recorder Blount, seconded by Councilor Marra.

### **ADJOURNMENT:**

Meeting adjourned at 9:05 p.m. on a motion by Councilor Wilson, seconded by Councilor Greer, and duly approved.

### **PREPARED BY:**



Judy Lawson, City Clerk

**BRIDGEPORT CITY COUNCIL MINUTES**

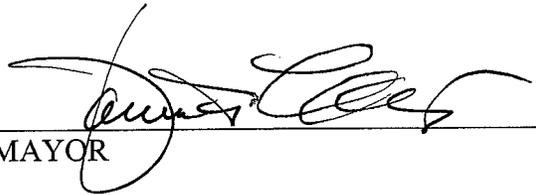
January 11, 2010

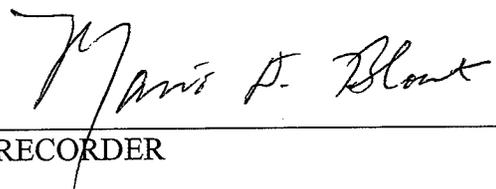
Page Four

**APPROVED:**

07/25/2010

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
RECORDER

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**MINUTES OF PUBLIC HEARING AND  
MEETING OF COUNCIL ON BOND ORDINANCE  
AND SUPPLEMENTAL RESOLUTION**

I, Mario D. Blount, Recorder of the City of Bridgeport, hereby certify that the following is a true and correct excerpt of the minutes of a public hearing and regular meeting of the Council of the City of Bridgeport.

The Council of the City of Bridgeport met in regular session, pursuant to notice given, on the 25<sup>th</sup> day of January, 2010, at Bridgeport, West Virginia, at the hour of 7:00 p.m., pursuant to the Bond Ordinance passed on first reading on January 11, 2010, by said Council and the Notice of Public Hearing relating thereto.

PRESENT:	James R. Christie, Mayor	A. Kim Haws, City Manager
	Mario D. Blount, Recorder	Dean C. Ramsey, City Attorney
	Robert L. Greer	Judy Lawson, City Clerk
	Charles C. Lindsey	
	Diana Cole Marra	
	Melissa S. Matheny	
	John S. Wilson, Sr.	

ABSENT: None

The Mayor called the meeting to order and stated the purpose of the meeting. The Mayor then presented the Bond Ordinance that was passed on first reading on January 11, 2010 in writing entitled:

ORDINANCE AUTHORIZING CERTAIN STORMWATER SYSTEM IMPROVEMENTS AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF BRIDGEPORT OF NOT MORE THAN TWO MILLION DOLLARS (\$2,000,000.00) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF BRIDGEPORT STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT (GREEN RESERVE); AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion by Council member Charles C. Lindsey, seconded by Council member Diana Cole Marra, it was unanimously ordered that the said Bond Ordinance be finally enacted on second reading.

He stated that the meeting was now open for public hearing and called for any persons present that would like to be recognized. Thereupon all persons desiring to protest or otherwise comment with respect to the said Bond Ordinance or to make any suggestions with reference thereto were heard and the public hearing was then closed.

After discussion, the Mayor stated that a motion would be required for the Bond Ordinance to be placed into effect. Thereupon, City Recorder Mario D. Blount made a motion that the Bond Ordinance be placed into effect immediately, Council member Melissa S. Matheny seconded the motion, and the motion was carried unanimously. The Mayor then announced that the Bond Ordinance is in effect immediately on the date hereof.

The Mayor then presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PRINCIPAL PAYMENT DATES, REDEMPTION PROVISIONS, SALE PRICE AND OTHER TERMS OF THE STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA) OF THE CITY OF BRIDGEPORT; AUTHORIZING, RATIFYING AND APPROVING AN ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A BONDS REGISTRAR, DEPOSITORY BANK, AND PAYING AGENT; MAKING OTHER PROVISIONS AS TO THE BONDS; AND APPROVING INVOICES RELATING TO SUCH BONDS AND THE STORMWATER SYSTEM IMPROVEMENTS TO BE FINANCED THEREBY AND AUTHORIZING PAYMENT OF THE SAME.

Thereupon, on motion by Council member John S. Wilson, Sr., seconded by Council member Charles C. Lindsey, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

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I further certify that the foregoing action of the Council remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 28<sup>th</sup> day of January, 2010.

*Marion D. Blount*

---

Recorder

**NOTICE OF PUBLIC HEARING**  
CITY OF BRIDGEPORT  
NOTICE OF PUBLIC HEARING  
ON STORMWATER SYSTEM IMPROVEMENTS REVENUE BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Bridgeport to be held on Monday, January 25, 2010, at 7:00 p.m., in the Council Chambers at the Bridgeport City Hall, 515 West Main Street, Bridgeport, West Virginia, and at such hearing all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING CERTAIN STORMWATER SYSTEM IMPROVEMENTS AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF BRIDGEPORT OF NOT MORE THAN TWO MILLION DOLLARS (\$2,000,000.00) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF BRIDGEPORT STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS, SERIES 2010B (WVCWSRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT (GREEN RESERVE); AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The Council of the City of Bridgeport adopted the above-entitled Ordinance on first reading on January 11, 2010 and will consider and take final action on the enactment of the above-entitled Ordinance on January 25, 2010, which will grant final approval for the issuance of the Bonds described in said Ordinance.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issue contemplated thereby.

The Bonds are to provide permanent financing of the costs of stormwater system improvements. The Bonds are payable solely from revenues derived from the projects to be financed with the proceeds of the Bonds. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the City Clerk of the City of Bridgeport for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to put said Ordinance into effect.

Dated: January 15, 2010.

/s/ Mario D. Blount,  
Recorder

## PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

### NOTICE OF PUBLIC HEARING CITY

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on the 15th day of January 2010 and ending on the 22nd day of January 2010 at the request of BOWLES RICE MCDAVID GRAFF & LOVE.  
Given under my hand this 25th day of January 2010

The publisher's fee for said publication is: \$87.13 for 383 words at \$0.1137 per word per day.

Sara V. Shingleton  
Classified Manager of The Exponent-Telegram

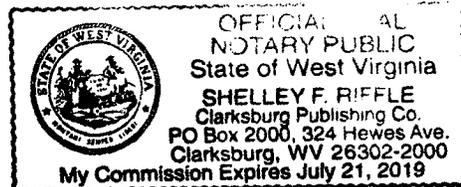
SEAL

Subscribed to and sworn to before me this 25th day of January 2010.

Shelley J. Riffle  
Notary Public in and for Harrison County, WV

My commission expires on:

The 21 day of July 2019



**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

Suite 401  
1207 Quarrier Street, Charleston, WV 25301  
(304) 558-3971 FAX: 558-1280

NEW ISSUE REPORT FORM

Date of Report: January 28, 2010

ISSUE: City of Bridgeport Stormwater System Improvements Sewer Revenue Bonds,  
Series 2010B (WVCWSRF Program/ARRA)

ADDRESS: 515 West Main Street, Bridgeport, WV 26330 COUNTY: Harrison

PURPOSE OF ISSUE: New Money  Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE January 28, 2010 CLOSING DATE: January 28, 2010

ISSUE AMOUNT: \$ 1,978,974 RATE: 0%  
1<sup>st</sup> DEBT SERVICE DUE: March 1, 2011 1<sup>st</sup> PRINCIPAL DUE: March 1, 2011  
1<sup>st</sup> DEBT SERVICE AMOUNT: \$ -49,475 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Bowles Rice McDavid  
Graff & Love LLP

Contact Person: Camden P. Siegrist  
Phone: (304) 347-1129

UNDERWRITER'S COUNSEL: Jackson Kelly PLLC  
Samme L. Gee

Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318

CLOSING BANK: WesBanco Bank, Inc.  
Contact Person: David Clarke  
Phone: (304) 231-1278

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUE CONTACT:  
Contact Person: H. Thomas Brown, P.E.  
Position: Director of Engineering  
Phone: (304) 842-8204  
Email: TomBrown@bridgeportwv.com

OTHER: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Function: \_\_\_\_\_  
Phone: \_\_\_\_\_

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_

By:  Wire  
 Check

Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \_\_\_\_\_  
Reserve Account: \$ \_\_\_\_\_  
Other: \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:

By:  Wire  
 Check  
 IGT

To Escrow Trustee: \$ \_\_\_\_\_  
To Issuer: \$ \_\_\_\_\_  
To Cons. Invest. Fund \$ \_\_\_\_\_  
To \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: Please note that the principal of this issue is forgivable quarterly as further set forth in the Bond. Please also  
note that a debt service reserve fund is not required.

FOR MUNICIPAL BOND COMMISSION USE ONLY:

Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_

**RECEIVED**

JUL 21 2011

**MBC**

**CITY OF BRIDGEPORT**  
**STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,**  
**SERIES 2010B**  
**(WVCWSRF PROGRAM/ARRA)**

**ACCEPTANCE OF DUTIES OF DEPOSITORY BANK**

WesBanco Bank, Inc., with offices in Bridgeport, West Virginia, hereby accepts appointment as Depository Bank in connection with the Bond Ordinance finally enacted on January 25, 2010, and put into effect after a public hearing held on January 25, 2010, as supplemented and amended by a Supplemental Resolution adopted January 25, 2010 (collectively, the "Bond Ordinance") authorizing the issuance of the City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA), dated January 28, 2010, in the aggregate principal amount of \$1,978,974 (the "Bonds") and agrees to perform all duties of Depository Bank in connection with such Bonds, all as set forth in said Bond Ordinance.

Dated this 28<sup>th</sup> day of January, 2010.

WESBANCO BANK, INC.

By: *William J. Bush*

Its: Authorized Representative

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**ACCEPTANCE OF DUTIES OF REGISTRAR**

United Bank, Inc., with offices in Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (WVCWSRF Program/ARRA), dated January 28, 2010, in the aggregate principal amount of \$1,978,974 (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.

Dated this 28<sup>th</sup> day of January, 2010.

UNITED BANK, INC

By: \_\_\_\_\_

*K. J. Smith*  
Its: Authorized Representative

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**CERTIFICATE OF REGISTRATION OF BONDS**

United Bank, Inc., Charleston, West Virginia, as Registrar for the Series 2010B Bonds under the Registrar Agreement and the Bond Ordinance providing for the issuance of the above-captioned bonds, hereby certifies that on the date hereof, the single, fully registered City of Bridgeport Stormwater System Improvements Revenue Bonds, Series 2010B (West Virginia SRF Program/ARRA), dated January 28, 2010, in the aggregate principal amount of \$1,978,974, numbered BR-1 was registered as to principal 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 United Bank, Inc., as Registrar.

WITNESS my signature as of this 28<sup>th</sup> day of January, 2010.

UNITED BANK, INC.

By: \_\_\_\_\_

Its: *Kaf Smith*  
Authorized Representative

**CITY OF BRIDGEPORT  
STORMWATER SYSTEM IMPROVEMENTS REVENUE BONDS,  
SERIES 2010B  
(WVCWSRF PROGRAM/ARRA)**

**REGISTRAR'S AGREEMENT**

THIS REGISTRAR'S AGREEMENT, dated as of the 28<sup>th</sup> day of January, 2010 by and between the CITY OF BRIDGEPORT, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and UNITED BANK, INC., a West Virginia banking corporation (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its Stormwater System Improvements Revenue Bonds, Series (WVCWSRF Program/ARRA), dated January 28, 2010, in the aggregate principal amount of \$1,978,974 (the "Bonds"), in fully registered form, pursuant to a Bond Ordinance finally enacted January 25, 2010, and put into effect after a public hearing held on January 25, 2010, as supplemented and amended by a Supplemental Resolution adopted January 25, 2010 (collectively, the "Bond Ordinance");

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 Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Bond Ordinance provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar for the Bonds under the Bond Ordinance 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 Ordinance, 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 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. For its fees and expenses hereunder, the Registrar shall receive the amount of \$500, said \$500 to be payable upon the issuance of the Bonds.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Ordinance with respect to the Registrar for the Bonds. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Ordinance, the terms of the Bond Ordinance 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 Ordinance 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:

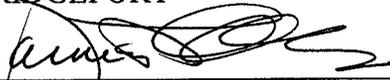
Issuer: City of Bridgeport  
515 West Main Street  
Bridgeport, West Virginia 26330

Registrar: United Bank, Inc.  
500 Virginia Street, East  
Charleston, West Virginia 25301

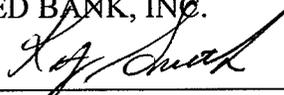
8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Ordinance.

IN WITNESS WHEREOF, the CITY OF BRIDGEPORT and UNITED BANK, INC., have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

CITY OF BRIDGEPORT

By:   
Its: Mayor

UNITED BANK, INC.

By:   
Its: Authorized Representative

**EXHIBIT A**

[SEE TRANSCRIPT DOCUMENT NOS. 1 AND 2]



# CERTIFICATE OF LIABILITY INSURANCE

OP ID#  
BRIDG-1DATE (MM/DD/YYYY)  
01/22/10

<b>PRODUCER</b>  Commercial Insurance Services 340 MacCorkle Ave. Ste #200 Charleston WV 25314 Phone: 304-345-8000 Fax: 304-345-8014	<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b>  City of Bridgeport P. O. Box 1310 Bridgeport WV 26330	INSURER A. Argonaut Genl Central Ins. Co	
	INSURER B.	
	INSURER C.	
	INSURER D.	
	INSURER E.	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG	PE-4615569-02	10/01/09	10/01/10	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 500,000 MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 6,000,000 PRODUCTS - COMPIOP AGG \$ 6,000,000 Emp Ben. 2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	PE-4615569-02	10/01/09	10/01/10	COMBINED SINGLE LIMIT (EA accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ GARAGE LIABILITY <input type="checkbox"/> ANY AUTO AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
A		<b>EXCESS / UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	PE-4615569-02	10/01/09	10/01/10	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below Y/N <input type="checkbox"/>	PE-4615569-02	10/01/09	10/01/10	WC STATU-TORY LIMITS OTH-ER E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Certificate holder is named as additional insured as respects Storm Water Project.

<b>CERTIFICATE HOLDER</b>  WVWDCHA  WV Water Development Authority 180 Association Drive Charleston WV 25311	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
--	--

ACORD 25 (2009/01)

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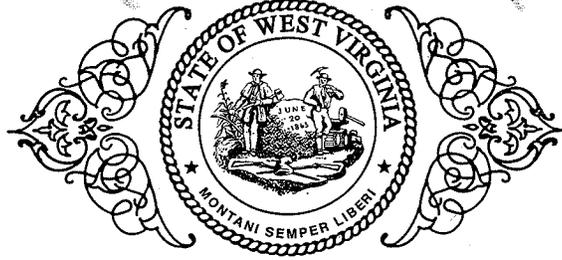
**CLOSING MEMORANDUM**

To: Financing Team  
From: Camden P. Siegrist, Esquire  
Date: January 28, 2010  
Re: City of Bridgeport  
Stormwater System Improvements Revenue Bonds, Series 2010B  
(WVCWSRF Program/ARRA)

**DISBURSEMENT TO THE CITY OF BRIDGEPORT**

Payor: West Virginia Department of Environmental Protection  
Source: Stormwater System Improvements Revenue Bonds Series 2010B  
Amount: \$98,949.00  
Form: Wire  
ABA #: 043400036  
Account: 712002108  
Bank: WesBanco Bank, Inc.  
Contact: David Clarke, Electronic Banking  
(304) 231-1278  
clarked@wesbanco.com  
Account: Series 2010B Bonds Construction Trust Fund

# State of West Virginia



## Certificate

*I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 16 OF THE WEST VIRGINIA CODE, AND CHAPTER 8, ARTICLE 16 OF THE 2009 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.



*Given under my hand and the Great Seal of the State of West Virginia on*

February 1, 2010

*Natalie E. Tennant*  
Secretary of State

CORPORATIONS

f the National Fire  
updated from year

orations §§ 548 to 552

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clé, and shall make  
training to secure

121, 136 to 138, 140

pliance with this  
aining board shall

to accomplish its

ARTICLE 16

MUNICIPAL PUBLIC WORKS; REVENUE  
BOND FINANCING

Part I—Definitions; Authorization of Municipal Public Works.

- Section
- 8-16-1. Definitions.
- 8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.
- 8-16-3. Special provisions as to certain municipal public works.

Part II—Control of Governing Body or Board.

- 8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.
- 8-16-4a. Additional special provisions as to motor vehicle parking facilities.
- 8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

Part III—General Powers and Authority.

- 8-16-5. Powers of board.
- 8-16-6. Preliminary expenses.
- 8-16-7. Ordinance for construction, etc., of works.

Part IV—Right of Eminent Domain.

- 8-16-8. Right of eminent domain.

Part V—Revenue Bond Financing.

- 8-16-9. Bonds for improvements, etc., of works.
- 8-16-10. Items of expense included in cost of works.
- 8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.
- 8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.
- 8-16-13. Obligations not to bind municipal official or officer or member of board personally.
- 8-16-14. Additional bonds for improvements, etc., of works.
- 8-16-15. How proceeds of bonds applied.
- 8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.
- 8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Part VI—Imposition of Rates or Charges.

- 8-16-18. Rates, fees or charges for services rendered by works.
- 8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.
- 8-16-19. Appeal to public service commission from rates fixed.

Part VII—Accounting System and Records.

- 8-16-20. Accounting system; yearly audit; custodian of funds.

Part VIII—Rates or Charges for Municipalities.

- 8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

## Section

**Part IX—Liens and Protection of Bondholders.**

- 8-16-22. Statutory mortgage lien upon works created.
- 8-16-23. Acquisition of property on which lien exists.
- 8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

**Part X—Construction; Extraterritorial Jurisdiction.**

- 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.
- 8-16-26. Construction of power and authority conferred.
- 8-16-27. Article liberally construed.
- 8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

**PART I—DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS****§ 8-16-1. Definitions**

As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(a) "Municipal public works" or "works" or "projects" means the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, stormwater systems and associated stormwater management program, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities considered necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), farms, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education; facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurb-ing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall also mean any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental

appurtenances and equipment in connection with any one or more of the above.

(b) "Stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater systems" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(c) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and shall include, but not be limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1935, c. 68, § 1; Acts 1945, c. 90; Acts 1951, c. 136; Acts 1955, c. 121; Acts 1959, c. 116; Acts 1961, c. 100; Acts 1969, c. 86; Acts 1981, c. 164; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Cross References

Creation by charter provision of certain independent city boards, home rule powers for cities, see § 8-12-3.

General powers of every municipality and its governing body, see § 8-12-5.

Hotel occupancy tax, payment on bonds, see § 8-13-3.

#### Notes of Decisions

<p>Construction and application 1 Municipal public works 3 Ordinances 4 Presumptions and burden of proof 5 Title of act 2</p>	<p>1938, 196 S.E. 552, 120 W.Va. 85. Levees And Flood Control ⇌ 22</p> <p>2. Title of act The title, "An Act to authorize municipalities to establish * * * municipal public works and to defray the cost of such construction * * * by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," having clearly expressed the principal object to authorize municipal public works, words descriptive of details ancillary thereto should not be narrowly defined. Acts 1935, c. 68; Const. art. 6, § 30. Duling Bros. Co. v. City:</p>
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#### 1. Construction and application

The requirement of the act conferring authority on a municipality to construct a flood control system, that public works conducted thereunder shall be self-sustaining, is not operative, where the work, like a flood wall, is incapable of producing an operating revenue. Acts 1935, c. 68. Duling Bros. Co. v. City of Huntington,

## § 8-16-1

### Note 2

of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⇨ 123(3)

The title, "An Act to authorize municipalities to establish \* \* \* municipal public works and to defray the cost of such construction \* \* \* by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," contemplates special assessments, or charges, for the service or benefit from a flood wall. Acts 1935, c. 68; Cost. art. 6, § 30. Duling Bros. Co. v. City of Huntington, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⇨ 123(3)

### 3. Municipal public works

Building that was to be acquired and owned by Charleston Building Commission but leased to state was a "municipal public work" for purposes of revenue bond financing statutes. Code, 8-16-1. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 911

The words "automobile parking buildings" as used in the statute authorizing municipalities to construct and operate municipal public works and to pay therefor, mean automobile parking facilities, and include an automobile lot equipped with a 95 foot elevator for use in its operation, and an issue of revenue bonds authorized by an ordinance duly enacted as provided by the statutes, was valid. Act 1935, c. 68, as amended. State ex rel. Holbert v. Robinson, 1950, 59 S.E.2d 884, 134 W.Va. 524. Municipal Corporations ⇨ 276

## § 8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs

Every municipality is and any two or more municipalities acting jointly, whether situate in the same county or different counties, are, hereby empowered and authorized to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, and shall have plenary power and authority to acquire by gift, grant, purchase, condemnation or otherwise, and thereafter hold, all necessary lands, rights, easements, rights-of-way, franchises and other property therefor within or without, or partly within and partly without, the corporate limits of any such municipality or municipalities, and to issue revenue bonds to pay the costs of such public works and properties: Provided, That this section shall not be construed to authorize any municipality to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain or operate any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by

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The paving or repaving of a public street in a municipality is a "municipal public work" which municipality is authorized to construct by statute providing for issuance of revenue bonds for construction of such work. Acts 1935, c. 68. City of Moundsville v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⇨ 269(2)

### 4. Ordinances

The purpose of ordinances required by statute authorizing municipalities to establish and maintain municipal public works and defray cost thereof by issuing revenue bonds is to inform residents and taxpayers of the municipalities concerning outlay by them and expected returns from special assessment to be laid pursuant to the statute. Acts 1935, c. 68. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations ⇨ 301

The statute requiring municipal ordinance authorizing construction of public work to set forth estimated cost thereof refers to the cost of the proposed work to the municipality, and not to other contributions. Acts 1935, c. 68, § 6. Smith v. City of Parkersburg, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations ⇨ 303(1)

### 5. Presumptions and burden of proof

In absence of contrary showing, public improvement is presumed to create a special benefit, and one attacking validity of assessment therefor has burden of establishing invalidity thereof. State ex rel. City of Huntington v. Hefley, 1944, 32 S.E.2d 456, 127 W.Va. 254. Municipal Corporations ⇨ 484(1)

any municipality in such construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement or increase, except such as is payable solely from the funds provided under the authority of this article. Acts 1935, c. 68, § 2; Acts 1969, c. 86.

## Library References

## Key Numbers

Municipal Corporations ⇨ 265.

Westlaw Key Number Search: 268k265.

## Encyclopedias

C.J.S. Municipal Corporations § 958.

## Notes of Decisions

## Injunctive relief 4

## Lease-purchase agreements 1

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## Revenue bonds 2

## 1. Lease-purchase agreements

Building that was to be acquired and owned by Charleston Building Commission but leased to state was a "municipal public work" for purposes of revenue bond financing statutes. Code, 8-16-1. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 911

Charleston Building Commission had authority to enter into lease-purchase agreement with state whereby commission would purchase and refurbish building, state would pay rent to commission in amount sufficient to discharge bonds or certificates of participation, and state would have option to purchase building from commission upon repayment of bonds or other such obligations. Code, 8-12-5(36), 8-33-4(f); Charleston, W.Va., Charter § 59. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 223

City of Charleston, in its distinctive role as capital of West Virginia, may provide property to state to be used as a state capitol or for other public buildings; this special authority extends to Charleston Building Commission and enables it, also, to provide property for state purposes. Code, 8-12-5(36), 8-33-4(f); Charleston, W.Va., Charter § 59. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 225(1)

## 2. Revenue bonds

State Constitution's prohibition against incurring excessive debt by municipal corporations was not violated by Charleston Building Commission's proposal to finance acquisition of building to be leased to state through issuance of bonds or certificates of participation. Const. Art. 10, § 8; Code, 8-33-5. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 864(3)

Charleston Building Commission has authority to issue bonds or certificates of participation to finance its acquisition and renovation of building that it intends to lease to state. Code, 8-33-4(h-j). State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 906

The proceeds of a series of general obligation bonds of city of Grafton issued for purpose of defraying part of expense of completing construction and equipment of a hospital owned by municipality, residue of which expense was paid from sale of revenue bonds could be used for such purpose. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 911

The validity of municipal revenue bonds issued by city of Grafton, the proceeds of which were to be used toward completion of hospital owned by city, was not impaired by fact that funds derived from general taxation, or from other sources, also had been, and were to be, used in construction of the hospital. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935 c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 911

A provision in ordinance of city of Grafton authorizing issuance of series of revenue bonds for completion of hospital building owned by city, which provides that bonds are to be a statutory mortgage lien on hospital when completed and on equipment and future additions thereto, and which pledges all of net profit from hospital for payment of the revenue bonds and interest thereon, is valid. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 8-4A-22, as added by Laws 1935, c. 68, § 22. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 917(1)

General obligation bonds issued by city of Grafton, proceeds of which were to be used by defraying a part of expenses of completing hospital owned by city, were valid, in view of manner in which election authorizing issuance of bonds was conducted, and that validity of bond issue was approved by attorney general

Note 2

and copy of his approval published in two newspapers of opposite politics and that no petition praying that attorney general's action be reversed was filed. Code 1931, 13-1-27. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 918(4)

A provision in ordinance of city of Grafton authorizing issuance by municipality of revenue bonds to aid in completion of hospital owned by municipality, to effect that municipality should pay legally established rates for use of hospital, did not create an "indebtedness" against the municipality within statutory or constitutional inhibition against creation of public debt. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 13-1-3; Const. art. 8, § 10. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 864(4)

Revenue bonds issued by municipality to aid in completion of hospital owned by municipality pursuant to act authorizing municipalities to issue revenue bonds for construction or maintenance of a municipal public works were not an "indebtedness" of municipality within statutory or constitutional inhibition against creation of public debt. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 13-1-3; Const. art. 8, § 10. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 864(4)

3. Refinancing

The statute authorizing municipalities to refinance "any enterprise" as therein defined does not authorize refinancing as a single issue three separate bond issues for three separate flood wall units constructed under separate ordinances and representing a variation in construction and maintenance costs, rates chargeable, etc. Acts 1937, c. 120; Acts 1935, c. 68; Const. art. 10, § 1; Code, 2-2-10. State ex rel. City of Huntington v. Heffley, 1944, 32 S.E.2d 456, 127 W.Va. 254. Levees And Flood Control ⇨ 34

4. Injunctive relief

Injunction would not lie to restrain enforcement of municipal ordinance transferring control of city's floodwall system from board to another local agency; municipality was authorized by statute to maintain control over municipal public works, including flood control systems and flood walls, petition for injunction did not indicate that ordinance would cause irreparable injury, and declaratory judgment action would be adequate remedy at law. Code, 8-16-1, 8-16-2, 8-16-4. Perdue v. Ferguson, 1986, 350 S.E.2d 555, 177 W.Va. 44. Injunction ⇨ 85(1)

§ 8-16-3. Special provisions as to certain municipal public works

When the municipal public works is a motor vehicle parking facility, any municipality involved therein shall have the plenary power and authority, in order to help finance the same, to use any revenue derived from other parking meters or other parking facilities, unless such revenue is otherwise pledged to pay for such other parking meters or other parking facilities.

When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

When the cost of the municipal public works is to be paid by special assessment against the abutting property, represented by assessment certificates which constitute a lien upon such property and said assessment certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost thereof, the payor of such assessment certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such assessment certificate the treasurer of such municipality shall deliver to the payor a release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds.

Acts 1951, c. 137; Acts 1953, c. 134; Acts 1955, c. 122; Acts 1963, c. 123; Acts 1969, c. 86.

## Library References

## Key Numbers

Municipal Corporations ⇨ 268.

Westlaw Key Number Search: 268k268.

## Notes of Decisions

- Financing 1
- Mandamus 4
- Parking facilities 2
- Parking meters 3

## 1. Financing

Fines generated by a municipal court may be dedicated to retire a debt created for a bond issue for not more than twenty years which finances the construction of a municipal building to the extent that said municipal building constitutes a jail or facility, the use or establishment of a jail which houses municipal prisoners. Magro, Op.Atty.Gen., June 7, 1988.

## 2. Parking facilities

Under statutes, municipal corporation which has appointed commission to supervise and control automobile parking facilities, when constructed, and has adopted bond ordinance to defray cost of construction, is empowered to pledge revenues derived from off street parking meters to help finance construction of automobile parking facilities, including payment of principal and interest on revenue bonds issued for purpose of financing construction of proposed automobile parking facility. Code, 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Municipal Corporations ⇨ 950(15)

Statute to effect that municipality shall have authority to establish automobile parking facilities and to create commission for supervision of such facilities and to pay to such commission revenue derived from parking meters or other parking facilities, unless otherwise pledged to pay for such meters or parking facilities, had as its underlying purpose alleviation of congested parking conditions in municipalities, and was enacted by Legislature in exercise of its police power. Code, 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Municipal Corporations ⇨ 276

## 3. Parking meters

Though on-street parking meters are designed to aid in controlling traffic on public streets of municipality, in exercise of police power, and fees may be employed to defray expense of regulatory service, fee charged may not be used for purely revenue raising purposes. Code, 8-4A-1 as amended by Acts 1945, c. 90, and Acts 1951, c. 136; 8-4A-1a, as added by acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Automobiles ⇨ 5(3)

In absence of affirmative showing that revenue to be derived from off-street parking facilities and curb line parking meters exceeded cost of constructing and operating off-street parking facility, and on-street parking meters, and principal and interest on revenue bonds issued for purpose of financing such facilities, municipal bond ordinance to finance construction of off-street parking facilities by revenues derived from off-street parking facilities and from curb line parking meters, was not invalid as revenue raising measure. Code, 8-4A-1 as amended by Acts 1945, c. 90, and Acts 1951, c. 136; 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Automobiles ⇨ 7

## 4. Mandamus

Where council of municipal corporation enacted valid ordinance providing for construction of public automobile parking lots, to be financed by revenue bonds to be issued over signature of mayor of municipality, mayor had mandatory administrative duty enforceable in mandamus, to sign revenue bond, and to perform other administrative acts to bring about issuance of bonds, and further construction of proposed parking lot. Code, 8-4A-1 as amended by Acts 1945, c. 90, and Acts 1951, c. 136; 8-4A-1a, as added by Acts 1951, c. 137, and amended by Acts 1953, c. 134. State ex rel. Bibb v. Chambers, 1953, 77 S.E.2d 297, 138 W.Va. 701. Mandamus ⇨ 90

## PART II—CONTROL OF GOVERNING BODY OR BOARD

**§ 8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.**

The construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), custody, maintenance and operation of any such works, and the collection of revenues therefrom, shall be under the supervision and control of the governing body, or of a committee, by whatever name called, composed of all or a portion of the governing body when only one municipality is involved, or of a board or commission appointed by such governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as may be provided by the governing body or bodies.

When such supervision and control are vested in a committee, board or commission, the governing body or bodies, as the case may be, may provide, by ordinance or ordinances, for said committee, board or commission to exercise such of the functions of the governing body or bodies in connection with the matter as it or they deem proper, and may provide for said committee, board or commission to receive such compensation as such body or bodies may deem proper, all of which authority and compensation shall be specifically provided for by ordinance or ordinances. Any such committee, board or commission shall consist of the number of members fixed in the ordinance or ordinances creating the same, and the manner and mode of the selection and appointment of the members of any such board or commission shall be stated in such ordinance or ordinances. The members of any such board or commission appointed by the governing body or bodies shall be chosen without regard to their political affiliations, but with regard to their business and professional experience or standing as citizens in the community. All compensation and expenses, including attorney's fees, of such committee, board or commission shall be paid solely from funds provided under the authority of this article. Any such committee, board or commission shall have the power to establish bylaws, rules and regulations for its own government.

When hereinafter used in this article, the term "board" shall be construed to mean the governing body or committee composed of all or a portion of the governing body when only one municipality is involved, or a board or commission appointed by the governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as the case may be. When two or more municipalities take joint action under the provisions of this article each governing body shall appoint to the board the number of members which the governing bodies have agreed shall be appointed by each such governing body.

The governing body or bodies also, in its or their discretion, may provide by ordinance or ordinances for the leasing of a municipal public works and provide for the custody, maintenance and operation thereof by a lessee in accordance with the provisions of such ordinance or ordinances and lease

contract executed pursuant thereto: Provided, That the lessee shall pay to the municipality or municipalities for the use and occupancy of such municipal public works so leased an amount sufficient to provide a sinking fund for the payment of the bonds and the interest thereon and all other charges mentioned in section seventeen of this article.

Acts 1935, c. 68, §§ 3, 21; Acts 1937, c. 55; Acts 1961, c. 100; Acts 1969, c. 86.

#### Library References

##### Key Numbers

Municipal Corporations ⇨284(1).  
Westlaw Key Number Search: 268k284(1).

##### Encyclopedias

C.J.S. Municipal Corporations § 967.

#### Notes of Decisions

##### Board, commission or committee 2

##### Injunctive relief 4

##### Leases 3

##### Title of act 1

##### 1. Title of act

The title, "An Act to authorize municipalities to establish \* \* \* municipal public works and to defray the cost of such construction \* \* \* by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," having clearly expressed the principal object to authorize municipal public works, words descriptive of details ancillary thereto should not be narrowly defined. Acts 1935, c. 68; Const. art. 6, § 30. *Duling Bros. Co. v. City of Huntington*, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⇨ 123(3)

The title, "An Act to authorize municipalities to establish \* \* \* municipal public works and to defray the cost of such construction \* \* \* by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same," contemplates special assessments, or charges, for the service or benefit from a flood wall. Acts 1935, c. 68; Const. art. 6, § 30. *Duling Bros. Co. v. City of Huntington*, 1938, 196 S.E. 552, 120 W.Va. 85. Statutes ⇨ 123(3)

##### 2. Board, commission or committee

Individual who has been appointed chairman pro tem of municipal building commission possesses same duties and responsibilities as regularly and duly elected chairman of that commission would possess. Code, 8-33-4. State ex rel. *Charleston Bldg. Com'n v. Dial*, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 192

A national bank could be regarded as a "committee" under act authorizing municipalities to construct and maintain flood control systems,

and placing the construction of a public work under the supervision of a "board, commission, or committee," but bank's decision as to reasonableness of agreed price for land needed for project is not final. Acts 1935, c. 68. *Duling Bros. Co. v. City of Huntington*, 1938, 196 S.E. 552, 120 W.Va. 85. *Levees And Flood Control* ⇨ 8

##### 3. Leases

Generally, a municipality may lease property which it holds in its proprietary capacity but the power to lease does not include the power to discriminate against members of a minority race in the exercise of their constitutional rights. U.S.C.A.Const. Amends. 11-15. *Lawrence v. Hancock*, 1948, 76 F.Supp. 1004. Constitutional Law ⇨ 220.5(1)

Where municipality constructed swimming pool with public funds under statutory authority, the municipality, if pool is operated must operate it itself or, if leased, must see that pool is operated without discrimination against citizens on account of race or color. Code W.Va. 8-4A-1 et seq., 8-4A-21, 8-14-1 et seq., 13-1-8, 13-1-22; U.S.C.A.Const. Amend. 14. *Lawrence v. Hancock*, 1948, 76 F.Supp. 1004. Constitutional Law ⇨ 217(3)

Where city constructed swimming pool with public funds and leased pool to private association without consideration under lease which did not permit association to make profits from operation of pool but required it to use all net revenue to improve and develop pool and to provide additional recreational facilities, city could not by such lease relieve itself of obligation to see that constitutional right of all citizens to equal protection of law in use of pool was preserved. Code W.Va. 8-4A-1 et seq., 8-14-1 et seq., 13-1-8, 13-1-22; Const. U.S.C.A.Amend. 14. *Lawrence v. Hancock*, 1948, 76 F.Supp. 1004. Municipal Corporations ⇨ 721(3)

## Note 4

## 4. Injunctive relief

Injunction would not lie to restrain enforcement of municipal ordinance transferring control of city's floodwall system from board to another local agency; municipality was authorized by statute to maintain control over municipal public works, including flood control sys-

tems and flood walls, petition for injunction did not indicate that ordinance would cause irreparable injury, and declaratory judgment action would be adequate remedy at law. Code, 8-16-1, 8-16-2, 8-16-4. *Perdue v. Ferguson*, 1986, 350 S.E.2d 555, 177 W.Va. 44. Injunction ⇔ 85(1)

**§ 8-16-4a. Additional special provisions as to motor vehicle parking facilities**

(a) The legislature hereby finds that the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of many municipalities in this State; that the lack of adequate planning and supervision of the location of parking facilities, the parking of motor vehicles of all kinds and the lack of adequate parking facilities for motor vehicles of all kinds substantially impede the free circulation of traffic in, through and from many municipalities in this State, impede the rapid and effective fighting of fires and disposition of police officers therein, contribute to the location and relocation of commercial and business enterprises outside of urban areas and retard the development of commerce and business within many municipalities in this State, thereby giving rise to urban blight and adversely affecting or threatening to adversely affect the tax base of such municipalities; that such parking crisis can be reduced by such municipalities providing adequate motor vehicle parking facilities strategically located there; that providing properly located terminal space for motor vehicles is a public responsibility; that fostering the development of commerce and business within municipalities, with the increased tax revenues resulting therefrom, is a public purpose; that fostering the availability of property for charitable use is a public purpose; that the closer the proximity between municipally owned motor vehicle parking facilities and commercial and business establishments the greater the development of commerce and business and the greater the level of revenue produced by such motor vehicle parking facilities; that the erection or construction of pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to and from motor vehicle parking facilities so as to facilitate the movement of pedestrians to and from such motor vehicle parking facilities fosters the development of commerce and business and increases the level of revenue produced by such motor vehicle parking facilities; that the leasing, particularly on a long-term basis, and the selling of space for commercial or business use in connection with a municipally owned motor vehicle parking facility will aid the development of commerce and business, increase the level of revenue produced by such motor vehicle parking facility and maintain and increase the tax base of such municipalities; that in many instances the authority for the leasing of space as provided for in this section would assist in financing the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of any such motor vehicle parking facility; that the enactment of this section is for the general welfare of the public and is a public necessity; and that the means and measures authorized in this section are, as a matter of public policy, for the

public purposes of such municipalities. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The governing body or bodies, in its or their discretion, may provide by ordinance or ordinances:

(1) For the leasing by the board as lessor of space in or on a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time and upon such other terms and conditions as such body or bodies or the board may agree to. In connection with the leasing of any such space, the board may agree to provide in or on such motor vehicle parking facility such structures, accommodations or improvements as may be necessary for such business, commercial or charitable use or such space may be leased upon condition that the lessee shall provide the same in or on the space so leased.

(2) For the leasing by the board as lessor or the selling of air space over a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time in the case of a lease and upon such other terms and conditions as such body or bodies or the board may agree to. Any lease or deed of sale of such air space may contain provisions (i) authorizing the use of such areas of the underlying motor vehicle parking facility as are essential for ingress and egress to and from such air space, (ii) relating to the support of any building or other structure to be erected in such air space, and (iii) relating to the connection of essential public or private utilities to any building or other structure in such air space.

(3) For the erection or construction by the board of any pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility leading to and from a municipal public works which is a motor vehicle parking facility; and any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility shall, for all purposes of this article, be considered to be a part of a municipal public works which is a motor vehicle parking facility with like effect as if the term "municipal public works" were expressly defined in section one of this article to include pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities: Provided, That any cost incurred by any municipality or municipalities in erecting or constructing any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility which connects a municipal public works which is a motor vehicle parking facility with a privately owned building or buildings or other privately owned structure or structures shall be paid for by the owner or owners of such building or buildings or such other structure or structures.

Any such lease may be privately negotiated without any public notice or advertising, and any such sale may be a public sale pursuant to the provisions of section eighteen, article twelve of this chapter or such sale may be privately negotiated, notwithstanding the provisions of said section eighteen.

(c) The proceeds received from any lease, sale or payment as provided in this section shall be deemed revenue of the works and used as provided in section seventeen of this article.

(d) Notwithstanding the fact that any motor vehicle parking facility subject to the provisions of this article is municipally owned and the fact that a lease or sale under the provisions of subdivision (1) or subdivision (2), subsection (b) of this section is for a public purpose as declared in subsection (a) of this section, any leasehold interest under said subdivision (1), and any building, structure, accommodation or improvement erected, made or operated in any air space leased or sold under said subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or grantee, as the case may be, unless the use of such leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine, article three, chapter eleven of this code.

Acts 1971, c. 99.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ268.

Westlaw Key Number Search: 268k268.

#### Notes of Decisions

##### Condemnation 3

##### Powers of legislature 2

##### Validity 1

##### 1. Validity

West Virginia statute authorizing municipalities to lease space in municipally owned parking facilities to private interests, as construed by the West Virginia Supreme Court to authorize sale or lease to private interests of ancillary or incidental space which has as its primary and dominant purpose the conferring of benefits on the public generally, is constitutional on its face and West Virginia law provides adequate means to assure against unconstitutional application should private purpose utilization be allowed to advance beyond the threshold of incidental use. 28 U.S.C.A. §§ 2201, 2202; Code W.Va. 8-16-4a; U.S.C.A.Const. Amend. 14. *Washington-Summers, Inc. v. City of Charleston*, 1977, 430 F.Supp. 1013. Municipal Corporations Ⓒ722

Exemption from taxation of municipally owned parking facility, some of whose space was being leased to private business, and the bonds and interest which financed the facility did not violate constitutional limitation on exemption from taxation or constitutional requirement that taxation be uniform. Code, 8-16-4a(a); Const. art. 10, §§ 1, 9. State ex rel. *City of Charleston v. Coghill*, 1973, 207 S.E.2d 113, 156 W.Va. 877. Taxation Ⓒ193

City's operation of parking facility in which a portion of the parking space was devoted to private business did not violate the State or Federal Constitutions on theory that such facilities were in competition with private persons providing the similar service, thus denying equal protection and taking property for private purposes. Code, 8-16-4a(a); Const. art. 3, §§ 9, 10; U.S.C.A.Const. Amend. 14. State ex rel. *City of Charleston v. Coghill*, 1973, 207 S.E.2d 113, 156 W.Va. 877. Constitutional Law Ⓒ234.6

Statute, which authorizes the creation of municipal parking authorities and which allows for leasing of space within municipal parking lots to private concerns, does not violate state constitutional provisions relating to uniformity of taxation and exemption of certain items from taxation nor does it violate the due process or equal protection guarantees of the State or Federal Constitutions. Code, 8-16-4a(a); Const. art. 3, §§ 9, 10, art. 5, §§ 1, 5; U.S.C.A.Const. Amend. 14. State ex rel. *City of Charleston v. Coghill*, 1973, 207 S.E.2d 113, 156 W.Va. 877. Constitutional Law Ⓒ234.6

If any municipal parking facility project is challenged on the constitutional grounds of lack of "public purpose", court must look to an expansive definition of "public purpose" and evaluate the project in terms of the necessity of commercial sale or leasing of space to finance the facility, the degree to which the facility will enhance or implement any plan of urban devel-

opment, and the degree to which the proposed project will enhance the public policy of encouraging economic development and expansion of industry and commerce. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Municipal Corporations ⇨ 267

Although municipally owned parking facility designed for an acknowledged public purpose is constitutional, even though it confers ancillary and incidental benefits upon private persons, a municipally owned parking facility which has, as its primary and dominant purpose, the conferring of private benefits, with only ancillary public benefits, would be an unconstitutional use of the authority conferred on municipalities by the legislature. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Municipal Corporations ⇨ 267

### 2. Powers of legislature

Public parking is among the public purposes on which the legislature may direct or authorize government action. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. States ⇨ 21

Legislature was entitled to delegate power to municipal corporation to determine the amount of space in a public parking facility which would be leased or sold to private business, commercial or charitable uses, subject to the constitutional limits on a municipality's discretion. Code, 8-16-4a(a). State ex rel. City of Charleston v. Coghill, 1973, 207 S.E.2d 113, 156 W.Va. 877. Constitutional Law ⇨ 63(2)

### 3. Condemnation

A finding that a public condemnor has the right to take property for purposes stated in petition for commencement of condemnation proceedings and enter the property is immediately appealable. Code W.Va. 8-16-4a, 54-2-2, 54-2-5, 54-2-14. Washington-Summers, Inc. v. City of Charleston, 1977, 430 F.Supp. 1013. Eminent Domain ⇨ 253(2)

Failure of petition for commencement of condemnation proceedings to state all uses for which property is intended may be ground for denying the petition. Code W.Va. 8-16-4a, 54-2-2, 54-2-5, 54-2-14. Washington-Summers, Inc. v. City of Charleston, 1977, 430 F.Supp. 1013. Eminent Domain ⇨ 191(3)

## § 8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities

For all purposes of this article, the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the State of West Virginia, the county court of any county of the State of West Virginia, and any agency, board or commission of any thereof, and the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from such motor vehicle parking facility.

Acts 1974, c. 47.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

## PART III—GENERAL POWERS AND AUTHORITY

### § 8-16-5. Powers of board

The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction,

reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of ten thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may consider expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof, and for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, stormwater and surface runoff water quality improvement activities necessary to comply with all federal and state requirements. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

Acts 1935, c. 68, § 4; Acts 1969, c. 86; Acts 1998, c. 214, eff. 90 days after March 14, 1998; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ¶328.  
Westlaw Key Number Search: 268k328.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1027 to 1029.

#### § 8-16-6. Preliminary expenses

All necessary preliminary expenses actually incurred by the board of any municipality or municipalities in the making of surveys or estimates of cost and

of revenues, employment of engineers or other employees, the giving of notices, the taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds herein provided for, may be paid by the municipality or municipalities, to be reimbursed and repaid out of the proceeds of the sale of such revenue bonds to be used for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works as hereinafter provided.

Acts 1935, c. 68, § 5; Acts 1969, c. 86.

**§ 8-16-7. Ordinance for construction, etc., of works**

Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; (e) contain such provisions as the governing body determines are necessary or desirable with regard to the establishment and setting aside of reserves from the proceeds of such revenue bonds or from the revenues of said works, or from both, and the administration and disposition thereof; and (f) contain such other provisions as may be necessary or proper in the premises. When two or more municipalities take joint action under the provisions of this article, a certified copy of each such ordinance shall be filed in the office of the clerk of the county commission of the county or counties in which the municipalities are located and in the office of the state tax commissioner, and when any such municipality is located in more than one county, the filing for that municipality shall be in the office of the clerk of the county commission in which the major portion of the territory of such municipality is located. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the governing body or each governing body, as the case may be, to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality or each such municipality, as the case may be. The notice to be published with said abstract of the ordinance shall specify a date, time and place for a public hearing, the date being not less than ten days after the first publication of said abstract and notice and not prior to the last publication of

said abstract and notice, at which time and place all parties and interest may appear before the governing body of the municipality or each such municipality and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of such office. At such hearing all objections and suggestions shall be heard and the governing body or each such governing body shall take such action as it or they shall deem proper in the premises: Provided, That if at any such hearing written protest is filed by thirty percent or more of the freeholders of the municipality for which the hearing is held, then the governing body of said municipality shall not take further action unless four fifths of the members of said governing body assent thereto: Provided, however, That in case written protest is filed by thirty percent or more of the freeholders as herein provided, any such governing body shall have authority to appoint a committee to consist of one proponent, one opponent, and the third to be selected by these two, to determine whether or not thirty percent of the freeholders have in fact protested and said committee shall report its findings to any such governing body.

Acts 1935, c. 68, § 6; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 193; Acts 1973, c. 89; Acts 1981, 1st Ex. Sess., c. 2.

**Library References**

**Key Numbers**

Municipal Corporations Ⓒ300.  
Westlaw Key Number Search: 268k300.

**Encyclopedias**

C.J.S. Municipal Corporations § 991.

**Notes of Decisions**

**Cost information** 2  
**Purposes of ordinances** 1  
**Repeal of ordinance** 3

**1. Purposes of ordinances**

The purpose of ordinances required by statute authorizing municipalities to establish and maintain municipal public works and defray cost thereof by issuing revenue bonds is to inform residents and taxpayers of the municipalities concerning outlay by them and expected returns from special assessment to be laid pursuant to the statute. Acts 1935, c. 68. *Smith v. City of Parkersburg*, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations Ⓒ 301

**2. Cost information**

Municipal ordinances relating to flood wall project, which set forth the estimated cost of the proposed work to the city, but not the total cost of the project including that assumed by federal government, sufficiently complied with statute requiring such a municipal ordinance to set forth the estimated cost thereof. Acts 1935, c. 68, § 6. *Smith v. City of Parkersburg*, 1943, 24

S.E.2d 588, 125 W.Va. 415. *Levees And Flood Control* Ⓒ 12

The statute requiring municipal ordinance authorizing construction of public work to set forth estimated cost thereof refers to the cost of the proposed work to the municipality, and not to other contributions. Acts 1935, c. 68, § 6. *Smith v. City of Parkersburg*, 1943, 24 S.E.2d 588, 125 W.Va. 415. Municipal Corporations Ⓒ 303(1)

**3. Repeal of ordinance**

Referendum attempting repeal of city ordinance authorizing the issuance of bonds for construction of an incinerator plant under act authorizing municipalities to issue revenue bonds for construction or maintenance of a municipal public works, could not affect the validity of the ordinance when questioned for other reasons by bondholders. Code, 8-4A-1 et seq. *State ex rel. Klostermeyer v. City of Charleston*, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Municipal Corporations Ⓒ 108.1

## PART IV—RIGHT OF EMINENT DOMAIN

## § 8-16-8. Right of eminent domain

Every such municipality shall have plenary power and authority to condemn any such municipal public works to be acquired, and any land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful or convenient for, and incidental to, the construction, reconstruction or establishment of any such works and space for business, commercial or charitable use in connection therewith, or for the improvement, renovation, extension, enlargement, increase or equipment thereof or thereto, and in connection therewith shall have and may exercise all the rights, power, authority and privileges of eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality or jointly in the names of the participating municipalities. Proceedings for such appropriation of property shall be under and pursuant to chapter fifty-four of this code: Provided, That any such municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made as may be just to any such municipality and to the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of any such municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon any such municipality, except such as may be paid from the funds provided under the authority of this article.

In the event of acquisition by purchase, the board may obtain and exercise an option from the owners of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper: Provided, however, That the exercise of such option, or the contract for such purchase, or such purchase shall in no event create any obligation of any such municipality, or create any debt, liability or claim, except such as may be discharged or paid from the funds provided under the authority of this article.

In the event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of any ordinance described in section seven hereof, shall cause to be determined what reconstruction, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works and space for business, commercial or charitable use in connection therewith, if any, may be effective for their purpose, and an estimate of the cost thereof shall be included in the estimate of the cost required by section seven hereof, and the same shall be made upon the acquisition of the works and as a part of the cost thereof: Provided further, That no municipality or municipalities shall, under the authority conferred by this article, condemn any existing

privately owned works (other than motor vehicle parking facilities) in operation at the date of the condemnation.

Acts 1935, c. 68, § 7; Acts 1969, c. 86; Acts 1971, c. 99.

**Library References**

**Key Numbers**

Eminent Domain ⇨18.  
Westlaw Key Number Search: 148k18.

**Encyclopedias**

C.J.S. Eminent Domain §§ 51, 54.

**PART V—REVENUE BOND FINANCING**

**§ 8-16-9. Bonds for improvements, etc., of works**

Whenever any municipality or municipalities now, or hereafter, shall own and maintain and operate any of the works herein referred to, whether constructed, reconstructed, established or acquired under the provisions of this article or not, and shall desire to improve, renovate, extend, enlarge, increase, equip or repair (including replacements) the same, it may issue revenue bonds, under the provisions of this article, to pay for the same, and the procedure therefor, including fixing all rates and the computation of the amount thereof, shall be the same as in this article provided for the issuance of bonds for the construction, reconstruction, establishment or acquisition of any such works in or by any such municipality which has not theretofore owned and maintained and operated any such works: Provided, That no existing obligations or rights shall be affected or impaired thereby.

Acts 1935, c. 68, § 8; Acts 1969, c. 86.

**Library References**

**Key Numbers**

Municipal Corporations ⇨911.  
Westlaw Key Number Search: 268k911.

**Encyclopedias**

C.J.S. Municipal Corporations § 1649.

**Notes of Decisions**

- In general 2
- Calling of bonds 5
- Construction and application 1
- Funding sources 3
- Validity of bonds 4

**1. Construction and application**

Building that was to be acquired and owned by Charleston Building Commission but leased to state was a "municipal public work" for purposes of revenue bond financing statutes. Code, 8-16-1. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations ⇨ 911

**2. In general**

The proceeds of a series of general obligation bonds of city of Grafton issued for purpose of defraying part of expense of completing con-

struction and equipment of a hospital owned by municipality, residue of which expense was paid from sale of revenue bonds could be used for such purpose. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 911

City of Wheeling held authorized to issue bonds for constructing bridge across river within corporate limits (Acts 1923, c. 14; Charter of City of Wheeling, §§ 31, 83, 84). State v. Steen, 1928, 145 S.E. 602, 106 W.Va. 325. Municipal Corporations ⇨ 911

**3. Funding sources**

Fines generated by a municipal court may be dedicated to retire a debt created for a bond issue for not more than twenty years which finances the construction of a municipal build-

ing to the extent that said municipal building constitutes a jail or facility, the use or establishment of a jail which houses municipal prisoners. Magro, Op.Atty.Gen., June 7, 1988.

c. 68. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇨ 911

#### 4. Validity of bonds

The validity of municipal revenue bonds issued by city of Grafton, the proceeds of which were to be used toward completion of hospital owned by city, was not impaired by fact that funds derived from general taxation, or from other sources, also had been, and were to be, used in construction of the hospital. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935

#### 5. Calling of bonds

Portion of city's ordinance requiring city to call revenue bonds it issued when a certain surplus existed in sinking fund from which payments were to be made was invalid. Code, 8-16-9 et seq., 8-16-12. City of Fairmont v. Investors Syndicate of America, Inc., 1983, 307 S.E.2d 467, 172 W.Va. 431. Municipal Corporations ⇨ 953

### § 8-16-10. Items of expense included in cost of works

The cost of the works shall be deemed to include the cost of construction, reconstruction, establishment or acquisition thereof, the cost of all land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful, convenient or incidental therefor or thereto and for the improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) determined upon; the interest upon bonds prior to and during the project and for six months after completion thereof; the amount of any reserve funded from the proceeds of bonds; engineering and legal expenses; expenses for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expenses; and such other expenses as may be necessary or incident to the financing herein authorized, the project, the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

Acts 1935, c. 68, § 9; Acts 1969, c. 86; Acts 1973, c. 89.

#### Library References

##### Key Numbers

Municipal Corporations ⇨950(15).  
Westlaw Key Number Search: 268k950(15).

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

### § 8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation

Nothing in this article contained shall be so construed as to authorize or permit any municipality or municipalities to make any contract or incur any obligation of any kind or nature, except such as shall be discharged or payable solely from the funds provided under the authority of this article. Funds for the payment of the entire cost of the works shall be provided by the issuance of revenue bonds of the municipality or municipalities, the principal and interest of which bonds shall be payable solely from the special fund for such payment herein provided for, and said bonds shall not in any respect be a corporate indebtedness of such municipality or municipalities. All such bonds and the interest thereon, and all properties and revenues and income derived from such

municipal public works, shall be exempt from all taxation by this State, or any county, municipality, political subdivision or agency thereof. All of the details of such bonds and the issuance thereof shall be determined by ordinance of the governing body or bodies.

Acts 1935, c. 68, § 10; Acts 1969, c. 86.

**Library References**

**Key Numbers**

Municipal Corporations Ⓔ950(15).  
Taxation Ⓔ218.  
Westlaw Key Number Searches:  
268k950(15); 371k218.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1708 to 1709.  
C.J.S. Taxation § 260.

**Notes of Decisions**

**Constitutional provisions 1**

**1. Constitutional provisions**

State Constitution's prohibition against incurring excessive debt by municipal corporations was not violated by Charleston Building Commission's proposal to finance acquisition of building to be leased to state through issuance of bonds or certificates of participation. Const. Art. 10, § 8; Code, 8-33-5. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. Municipal Corporations Ⓔ 864(3)

Provision of State Constitution prohibiting state from contracting debt except under certain circumstances is not designed to prohibit state or state's agencies from issuing revenue bonds that are to be liquidated from contracts requiring rental payments from another state agency or from contracts for necessary services such as utilities; nor does that constitutional provision preclude issuance of revenue bonds which are to be redeemed from special fund. Const. Art. 10, § 4. State ex rel. Charleston Bldg. Com'n v. Dial, 1996, 479 S.E.2d 695, 198 W.Va. 185. States Ⓔ 148

**§ 8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates**

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, either coupon or registered, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the State. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth

in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the pro rata part thereof, as provided for in section eleven hereof. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this State. The bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or municipalities: Provided, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than thirteen percent per annum to the purchaser upon the amount paid therefor. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund hereinafter provided for. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definitive bonds, interim certificates may, under like restrictions, be issued, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1935, c. 68, § 11; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ922.

Westlaw Key Number Search: 268k922.

#### Notes of Decisions

In general 2  
 Bond limits 4  
 Constitutional provisions 1  
 Redemption 5  
 Validity of ordinance 3

the constitution limiting bonded "indebtedness" of municipalities. Code, 17-17-30 et seq.; Const. art. 10, § 8. State ex rel. Anderson v. Dailer, 1955, 85 S.E.2d 656, 140 W.Va. 513. Municipal Corporations Ⓒ 916

##### I. Constitutional provisions

Revenue bonds and interest coupons provided for by city ordinance providing for construction of proposed bridge and tunnel facility did not constitute an "indebtedness" of city or State Road Commission within meaning of section of

Under statute providing that bonds issued or given as security in connection with construction of a toll bridge will be payable solely out of revenues of such bridge, where each bond contained a provision to effect that municipality was not obligated to pay bond or interest thereon except from net revenues of bridge, and that

## § 8-16-12

### Note 1

credit or taxing power of the municipality was not deemed to be pledged, the bond issue was not violation of the constitutional limitation on the bonded indebtedness of a municipality. Code, 17-17-32, 33; Const. Art. 10, § 8. State ex rel. Knight v. Hanway, 1951, 67 S.E.2d 1, 136 W.Va. 219. Municipal Corporations ⇌ 916

### 2. In general

City located on or near state boundary and confronted with necessity of purchasing property and erecting sewage disposal plant in adjoining state held authorized under statute to issue revenue bonds payable solely from revenues of such plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⇌ 919

Provisions of statute relating to issuance of municipal bonds constitute integral parts of bonds regardless of whether included therein (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⇌ 923

That special tax rate may be insufficient to pay improvement bonds and interest held not to invalidate issue. Sexton v. Lee, 1925, 130 S.E. 437, 100 W.Va. 389. Municipal Corporations ⇌ 919

That special rate of tax levied to pay bonds may be insufficient to pay them and interest will not invalidate issue, in view of fact that bonds are to raise money to carry on improvement anticipatory of repayment to city by assessments against abutting property, as city, in view of Barnes' Code 1923, c. 47, § 49c(1)-49c(18),

may rely to some extent on such payments. Sexton v. Lee, 1925, 130 S.E. 437, 100 W.Va. 389. Municipal Corporations ⇌ 919

### 3. Validity of ordinance

Portion of city's ordinance requiring city to call revenue bonds it issued when a certain surplus existed in sinking fund from which payments were to be made was invalid. Code, 8-16-9 et seq., 8-16-12. City of Fairmont v. Investors Syndicate of America, Inc., 1983, 307 S.E.2d 467, 172 W.Va. 431. Municipal Corporations ⇌ 953

### 4. Bond limits

In an ordinance the authorization of bonds not to exceed \$6,000 is equivalent, in legal effect, to fixing the amount of such bonds at such sum. Knight v. Town of West Union, 1898, 32 S.E. 163, 45 W.Va. 194. Municipal Corporations ⇌ 917(1)

A municipal ordinance which authorizes the issuance of bonds for waterworks to an amount not exceeding \$6,000 empowers the council to issue to the amount of \$6,000, if necessary, for the purpose expressed in the ordinance, otherwise not. Knight v. Town of West Union, 1898, 32 S.E. 163, 45 W.Va. 194. Municipal Corporations ⇌ 916

### 5. Redemption

Only municipality, whose board can exercise option to redeem, can call bonds before maturity; it cannot, by its ordinance, give redemption decision to bondholders. Code, 8-16-12. City of Fairmont v. Investors Syndicate of America, Inc., 1983, 307 S.E.2d 467, 172 W.Va. 431. Municipal Corporations ⇌ 953

## § 8-16-13. Obligations not to bind municipal official or officer or member of board personally

No municipal official or officer or member of the board shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires.

Acts 1935, c. 68, § 12; Acts 1969, c. 86.

## § 8-16-14. Additional bonds for improvements, etc., of works

The governing body or bodies may provide by the said ordinance or ordinances authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said ordinance or ordinances, or trust indenture, or all of these, for the purpose of improving, renovating, extending, enlarging, increasing, equipping or repairing (including replacements) the works when deemed neces-

sary in the public interest, such additional bonds to be secured, and be payable from the revenues of the works, as provided for in section nine of this article.

Acts 1935, c. 68, § 13; Acts 1969, c. 86.

### § 8-16-15. How proceeds of bonds applied

All moneys received from the sale of any bonds issued under the authority of this article, after reimbursements and repayments to said municipality or municipalities of all amounts advanced for preliminary expenses, as provided in section six of this article, shall be applied solely to the payment of the cost of the project, or to the appurtenant sinking fund, and there shall be, and there is hereby, created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

Acts 1935, c. 68, § 14; Acts 1969, c. 86.

#### Library References

##### Key Numbers

Municipal Corporations ¶950(15).

Westlaw Key Number Search: 268k950(15).

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

### § 8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee

In the discretion and at the option of the governing body or bodies such bonds may be secured by a trust indenture by and between such municipality or municipalities and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the State. The ordinance or ordinances authorizing the issuance of the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality or municipalities and the board in relation to the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase and equipment of the project and the repair (including replacements), maintenance, operation and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the project shall be contracted for, carried out and paid for, under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or such trustee, or both. Except as in this article otherwise provided, the governing body or bodies may provide by ordinance or ordinances or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository, as such body or bodies may determine for the custody thereof, and for the method of distribu-

tion thereof, with such safeguards and restrictions as such body or bodies may determine.

Acts 1935, c. 68, § 15; Acts 1969, c. 86.

#### Library References

##### Key Numbers

Municipal Corporations ¶919.

Westlaw Key Number Search: 268k919.

##### Encyclopedias

C.J.S. Municipal Corporations § 1661.

### § 8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to mean the revenues of the works remaining after the payment of the reasonable expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year and the amounts set aside as reserves out of the proceeds from the sale of the bonds, or from the revenues of said works, or from both, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or ordinances, be given the right to use or direct the trustee or the state sinking fund commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required and after reserving an amount deemed by the board sufficient for repair (including replacements), maintenance and operation for an ensuing period of not less than twelve months and for depreciation, the board may at any time in its discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works, or the governing body or bodies may, notwithstanding the provisions of section twenty, article thirteen of this chapter, transfer all or any part of the balance of the net revenues to the

general or any special fund of the municipality or municipalities and use such revenues for any purpose for which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the state sinking fund commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law.

Acts 1935, c. 68, § 16; Acts 1969, c. 86; Acts 1971, c. 99; Acts 1973, c. 89.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ951.  
Westlaw Key Number Search: 268k951.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1704 to 1705.

#### Notes of Decisions

##### In general 1

##### 1. In general

City of Charleston was not authorized to transfer to general fund any monies in parking system revenue fund until all bonds and indebtedness in connection with parking system had been fully paid off and discharged. Code, §§ 8-13-20, 8-16-17, 8-16-20. State ex rel.

City of Charleston v. Hutchinson, 1970, 176 S.E.2d 691, 154 W.Va. 585, rehearing denied. Municipal Corporations Ⓒ 887

Where enabling act specified purposes for which revenue from operation of municipal parking system could be used, maxim expressio unius est exclusio alterius was applicable. Code, § 8-16-17. State ex rel. City of Charleston v. Hutchinson, 1970, 176 S.E.2d 691, 154 W.Va. 585, rehearing denied. Statutes Ⓒ 195

### PART VI—IMPOSITION OF RATES OR CHARGES

#### § 8-16-18. Rates, fees or charges for services rendered by works

The governing body shall have plenary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use and services rendered, or the improvement or protection of property, not to include highways, road and drainage easements, and/or storm-water facilities constructed, owned and/or operated by the West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust rates, fees or charges from time to time.

When two or more municipalities take joint action under the provisions of this article, the rates, fees or charges shall be established by each participating municipality, with the concurrence of the other participating municipality or

municipalities as to the amount of the rates, fees or charges, and such rates, fees or charges may be the same with respect to each municipality, or they may be different.

Rates, fees or charges heretofore or hereafter established and maintained for the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways, provided or afforded by a municipal flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collectible and enforceable from the time provided in any such ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and the governing body is reasonably assured that the works will be completed and placed in operation without unreasonable delay.

All rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and operation of the works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to the provisions of this section are considered the revenues of the works. No such rates, fees or charges shall be established until after a public hearing at which all the users of the works and owners of the property served, or to be served thereby, and others interested, shall have an opportunity to be heard concerning the proposed rates, fees or charges.

After introduction of the proposed ordinance fixing the rates, fees or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publishing the same as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be such municipality or each such municipality, as the case may be. Said notice shall be published at least five days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest shall be required.

After such hearing the ordinance establishing rates, fees or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest.

The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or adjustment of rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as provided in this section. The aggregate of the rates, fees or

charges shall always be sufficient for the expenses of repair (including replacements), maintenance and operation, and for the sinking fund payments.

If any rate, fee or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent and reasonable attorney's fees, may be recovered by the board in a civil action in the name of the municipality or municipalities, and in the case of rates, fees or charges due for services rendered, such rates, fees or charges, if not paid when due, may, if the governing body so provide in the ordinance provided for under section seven of this article, constitute a lien upon the premises served by such works, which lien may be foreclosed against such lot, parcel of land or building so served, in accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any person receiving any such service to pay for the same when due, the board may discontinue such service without notice.

Acts 1935, c. 68, § 17; Acts 1949, c. 85; Acts 1967, c. 105; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ⇨ 460, 530.  
Westlaw Key Number Searches: 268k460;  
268k530.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1260 to  
1266, 1409.

#### Notes of Decisions

In general 1  
Charges 2  
Estoppel 5  
Lien on land 3  
Relief from assessments 4

##### 1. In general

A municipal special assessment for the cost of street paving laid under statute authorizing municipal authorities to provide for retirement of revenue bonds issued to pay for public works by imposing charges to be paid by persons using the work did not create a "contractual obligation" as against the owners of abutting lots that could be used as a basis of recovery in a notice of motion proceeding. Acts 1935, c. 68; Code 1931, 56-2-6. *City of Moundsville v. Brown*, 1943, 25 S.E.2d 900, 125 W.Va. 779. Judgment ⇨ 184

Under statute authorizing municipalities to pay for public works by issuing revenue bonds secured by the revenues of such systems, creation and levying of special assessments for the cost of such works is an exercise of the state's taxing power notwithstanding that the cost thereof must be provided by means "other than taxation". Acts 1935, c. 68. *City of Moundsville v. Brown*, 1943, 25 S.E.2d 900, 125 W.Va. 779. Municipal Corporations ⇨ 406(1)

##### 2. Charges

The word "charges", as used in statute authorizing municipal authorities to provide for retirement of revenue bonds issued to pay for public works by imposing charges to be paid by persons using the work or receiving the services thereof, includes a special assessment against realty. Acts 1935, c. 68, § 17. *City of Moundsville v. Brown*, 1943, 25 S.E.2d 900, 125 W.Va. 779. Municipal Corporations ⇨ 406(1)

##### 3. Lien on land

The expense of a municipal public work project consisting of paving or repaving a municipal street may be prorated as to land abutting thereon, and such pro rata part of the expense may be made a lien on abutting land and a personal obligation of the owner thereof. Acts 1935, c. 68. *City of Moundsville v. Brown*, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⇨ 465

##### 4. Relief from assessments

Irregularities and errors and other like defenses in actions of city council connected with authorization of public works project, the construction thereof, and establishment of rates and charges thereunder could not be resorted to by property owners for relief against assessments after improvements had been made. Acts 1935, c. 68, §§ 6, 17. *City of Moundsville*

## § 8-16-18

## MUNICIPAL CORPORATIONS

### Note 4

v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602.  
Municipal Corporations ⇨ 319

### 5. Estoppel

Where property owners did not exercise opportunity to test validity of ordinance authorizing municipal public works or ordinance fixing rates and charges but stood by and permitted revenue bonds to be issued and sold, improvements to be made, and proceeds of bonds to be

expended in payment thereof, without protest or objection, in suit by municipality to recover assessments, owners could be heard only on matters which if established would render either proceedings having to do with construction of work or those establishing the rates absolutely void. Acts 1935, c. 68, §§ 6, 17. City of Moundsville v. Brown, 1945, 34 S.E.2d 321, 127 W.Va. 602. Municipal Corporations ⇨ 562(1)

## § 8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission

In addition to the rates or charges authorized to be pledged and expended for the security and payment of bonds as provided in this article, the governing body issuing such bonds shall have plenary power and authority to pledge and expend for the security and payment of such bonds all, or any part, of the revenues which are derived from the hotel occupancy tax which a municipality may impose pursuant to section three, article thirteen of this chapter and which are specifically dedicated by such governing body for any purpose or purposes set forth in section three, article thirteen of this chapter. All such sums which are so pledged shall be deemed "revenues of the works" for all purposes of the provisions of this article. The governing body shall also have the power and authority to contribute all, or any part of, the revenues derived from said hotel occupancy tax to a building commission created by such governing body pursuant to article thirty-three, chapter eight of this code for such lawful purposes which such building commission shall determine and which are set forth in section three, article thirteen of this chapter, including payment of revenue bonds issued by such building commission.

Acts 1976, c. 82.

### Library References

#### Key Numbers

Municipal Corporations ⇨919.  
Westlaw Key Number Search: 268k919.

#### Encyclopedias

C.J.S. Municipal Corporations § 1661.

## § 8-16-19. Appeal to public service commission from rates fixed

If any party in interest is dissatisfied with the rates fixed under the provisions of the immediately preceding section of this article, such party shall have the right to appeal to the public service commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the public service commission.

Acts 1935, c. 68, § 18; Acts 1969, c. 86.

### Library References

#### Key Numbers

Public Utilities ⇨146.  
Westlaw Key Number Search: 317Ak146.

#### Encyclopedias

C.J.S. Public Utilities § 66.

## PART VII—ACCOUNTING SYSTEM AND RECORDS

## § 8-16-20. Accounting system; yearly audit; custodian of funds

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept separate and apart from other funds of the municipality or municipalities, and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen of this article.

Acts 1935, c. 68, § 19; Acts 1969, c. 86.

## Library References

## Key Numbers

Municipal Corporations Ⓒ885.

Westlaw Key Number Search: 268k885.

## Encyclopedias

C.J.S. Municipal Corporations § 1629.

## Notes of Decisions

## In general 1

## 1. In general

City of Charleston was not authorized to transfer to general fund any monies in parking system revenue fund until all bonds and indebt-

edness in connection with parking system had been fully paid off and discharged. Code, §§ 8-13-20, 8-16-17, 8-16-20. State ex rel. City of Charleston v. Hutchinson, 1970, 176 S.E.2d 691, 154 W.Va. 585, rehearing denied. Municipal Corporations Ⓒ 887

## PART VIII—RATES OR CHARGES FOR MUNICIPALITIES

## § 8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them

(a) The municipality or municipalities issuing such bonds shall be subject to the same rates, fees or charges established as provided in this article, or to rates, fees or charges established in harmony therewith, for service rendered to the municipality or municipalities and shall pay such rates, fees or charges, when due, from corporate funds, and the same shall be considered to be a part

of the revenues of the works as defined in this article, and may be applied as provided in this article, for the application of such revenue.

(b) The municipality or municipalities and any county, state and federal government served by the services of the stormwater system shall be subject to the same rates, fees or charges established as provided in this article for stormwater services, or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity and shall pay such rates, fees or charges, when due, from corporate funds, and the same is considered to be a part of the revenues of the works as defined in this article, and may be applied as provided in this article, for the application of such revenue. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways. Acts 1935, c. 68, § 20; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Municipal Corporations ⇨715.  
Westlaw Key Number Search: 268k715.

**Encyclopedias**

C.J.S. Municipal Corporations § 1540.

**PART IX—LIENS AND PROTECTION OF BONDHOLDERS**

**§ 8-16-22. Statutory mortgage lien upon works created**

There shall be and there is hereby created and granted a statutory mortgage lien upon such municipal public works constructed, reconstructed, established, acquired, improved, renovated, extended, enlarged, increased, equipped or repaired (including replacements) under the provisions of this article, which shall exist in favor of the holder of said bonds, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such municipal public works shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Acts 1935, c. 68, § 22; Acts 1969, c. 86.

**Library References**

**Key Numbers**

Municipal Corporations ⇨950(15).  
Westlaw Key Number Search: 268k950(15).

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1708 to 1709.

**Notes of Decisions**

**In general 1**

**1. In general**

The proceeds of a series of general obligation bonds of city of Grafton issued for purpose of

defraying part of expense of completing construction and equipment of a hospital owned by municipality, residue of which expense was paid from sale of revenue bonds could be used for such purpose. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68. *Warden v. City of*

Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇐ 911

A provision in ordinance of city of Grafton authorizing issuance of series of revenue bonds for completion of hospital building owned by city, which provides that bonds are to be a statutory mortgage lien on hospital when com-

pleted and on equipment and future additions thereto, and which pledges all of net profit from hospital for payment of the revenue bonds and interest thereon, is valid. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935, c. 68; 8-4A-22, as added by Laws 1935, c. 68, § 22. Warden v. City of Grafton, 1943, 26 S.E.2d 1, 125 W.Va. 658. Municipal Corporations ⇐ 917(1)

### § 8-16-23. Acquisition of property on which lien exists

No property shall be acquired under the provisions of this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

Acts 1935, c. 68, § 23; Acts 1969, c. 86.

### § 8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement

Any holder of any such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the ordinance authorizing the issuance of the bonds or by the trust indenture, may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section twenty-two of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or municipalities, or by the board or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the works. If there be default in the payment of the principal of or interest upon any of the bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, except as so restricted, with power to charge and collect rates or charges sufficient to provide for the payment of the expenses of repair (including replacements), maintenance and operation, and also to pay any bonds and interest outstanding, and to apply the income or other revenue in conformity with this article, and the said ordinance or trust indenture, or both, and the power herein provided for the appointment of a receiver and the administration by the court of the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, shall apply to cases where such works are operated by a lessee of the municipality or municipalities as well as to cases where works are operated by the municipality or municipalities. In case a receiver is appointed for works operated by a lessee of a municipality or municipalities, the lease agreement then existing between the municipality or municipalities and the lessee ipso facto thereby shall be terminated and all property, equipment, bills receivable and assets of every kind, used in connection with the operation of such works, shall pass to the receiver and upon the termination of such receivership, such works,

equipment, property, bills receivable and assets of every kind then in the hands of the receiver thereupon shall pass to the municipality or municipalities. Acts 1935, c. 68, § 24; Acts 1937, c. 55; Acts 1969, c. 86.

**Library References**

**Key Numbers**

Municipal Corporations Ⓒ955(1).  
Westlaw Key Number Search: 268k955(1).

**Notes of Decisions**

**Mandamus 1**

**1. Mandamus**

Duties of city council in discharging obligations of city under revenue bonds issued for construction of incinerator under act authorizing municipalities to issue revenue bonds for construction or maintenance of a municipal public works, were "administrative" and not "legislative", and therefore mandamus was a proper remedy to compel compliance with the act. Code, 8-4A-1 et seq., 8-4A-24. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Administrative Law And Procedure Ⓒ 104

Holders of revenue bonds issued by city for construction of incinerator were not required to request city to comply with statute under which bonds were issued and to collect charges for incinerator service in plain violation of ordinance abolishing such charges, before bondholders could bring mandamus proceedings, since such requests of the city would be useless. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus Ⓒ 14(1)

Holders of revenue bonds issued by city for construction of incinerator were not barred from relief by mandamus to compel city to make charges for garbage collections on ground of delay or acquiescence in city's failure to

make charges for garbage collections, where there was no alteration in position by the city because of such acquiescence or delay. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus Ⓒ 15

Mere payment of interest due on revenue bonds issued by city for construction of incinerator did not charge bondholders with knowledge that payments were being made from general revenue rather than from revenue from collection of garbage, and did not prevent bondholders from maintaining mandamus proceedings to compel city to comply with act under which bonds were issued, and to make charges for garbage collection. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus Ⓒ 15

Default by city in payment of interest charges or principal on bonds issued for construction of incinerator, was not first required to be shown before mandamus would lie to compel compliance by city with act under which the bonds were issued, in view of provision of the act with reference to future payment of principal by accumulation of a sinking fund which largely affected the market value of the bonds. Code, 8-4A-1 et seq. State ex rel. Klostermeyer v. City of Charleston, 1947, 45 S.E.2d 7, 130 W.Va. 490, 175 A.L.R. 637. Mandamus Ⓒ 110

**PART X—CONSTRUCTION; EXTRATERRITORIAL JURISDICTION**

**§ 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction**

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provisions which may now or hereafter be in effect. For all purposes of this article, municipalities shall have jurisdiction for ten miles outside of the corporate limits thereof, except where such zone would overlap with the zone of another municipality, in which event the meridian line of the overlapping zone shall be the dividing line of their respective jurisdic-

tions, except that one municipality shall have jurisdiction within such ten-mile zone and may overlap into the zone of another municipality or municipalities with the consent thereof.

Acts 1935, c. 68, § 25; Acts 1949, c. 86; Acts 1969, c. 86.

**Library References**

**Key Numbers**

Municipal Corporations ⇨277.

Westlaw Key Number Search: 268k277.

**Notes of Decisions**

**In general 1**

**1. In general**

The validity of municipal revenue bonds issued by city of Grafton, the proceeds of which were to be used toward completion of hospital owned by city, was not impaired by fact that

funds derived from general taxation, or from other sources, also had been, and were to be, used in construction of the hospital. Code 1931, 8-4A-1 et seq., as enacted by Laws 1935 c. 68. *Warden v. City of Grafton*, 1943, 26 S.E.2d 1, 125 W.Va. 658. *Municipal Corporations* ⇨ 911

**§ 8-16-26. Construction of power and authority conferred**

This article shall, without reference to any other statute or charter provision, be deemed full authority for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), maintenance and operation of the works herein provided for, and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to any such project, or to the issuance or sale of bonds under this article, and no publication of any ordinance, notice or proceeding relating to any such project, or to the issuance or sale of such bonds shall be required, except such as are prescribed in this article, any provisions of other statutes of the State to the contrary notwithstanding.

Acts 1935, c. 68, § 26; Acts 1969, c. 86.

**§ 8-16-27. Article liberally construed**

This article being necessary for the public health, safety and welfare shall be liberally construed to effectuate the purposes thereof.

Acts 1935, c. 68, § 27; Acts 1969, c. 86.

**Notes of Decisions**

**In general 1**

**1. In general**

The Legislature, in enacting Acts 1935, c. 68 as a measure to promote public health, safety

and welfare, intended it to have broad scope and wide application to public improvements beneficial to the public health, safety and welfare of municipalities in all sections of the State. *State ex rel. Holbert v. Robinson*, 1950, 59 S.E.2d 884, 134 W.Va. 524. *Automobiles* ⇨ 7

§ 8-16-28

MUNICIPAL CORPORATIONS

§ 8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only

In elaboration of the provisions of section eight, article one of this chapter, wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order, or in any ordinance, resolution or order of a county court, reference is made to the term "municipal authorities" or "municipal authority" within the meaning of the provisions of former article four of this chapter, such reference shall henceforth be read, construed and understood to mean "governing body" as that term is used in this article sixteen only.

Acts 1969, c. 86.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

Section	Purpose
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§ 8-17-1. P  
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Acts 1953, c. 137;

§ 8-17-2. D  
For the purpo

*West's*  
Annotated Code  
of West Virginia

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*Using the Classification and  
Numbering System of the  
1931 Code of West Virginia,  
as Amended*

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Chapters 8 to 10

2009  
Cumulative Annual Pocket Part

Replacing 2008 Pocket Part supplementing 2002 Main Volume

Includes laws through the 2009 Second Extraordinary Session

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§ 8-15-25. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in number of members

Notes of Decisions

Just cause 3.5

3.5. Just cause

Firefighter's possession of cocaine provided just cause for city to terminate firefighter's employ-

ment; possession of cocaine cast doubt on firefighter's ability to perform the tasks inherent to his employment, which directly affected the rights and interests of the public. *Giannini v. Firemen's Civil Service Com'n of City of Huntington*, 2006, 640 S.E.2d 122, 220 W.Va. 59. Municipal Corporations ¶ 198(2)

ARTICLE 15A

STANDARDS FOR PROFESSIONAL FIREFIGHTERS TRAINING; REGISTERED APPRENTICESHIP AND CERTIFICATION

§ 8-15A-1. Definitions

United States Code Annotated

Fire prevention and control, see 15 U.S.C.A. § 2201 et seq.

ARTICLE 16

MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING

Part VII—Accounting System and Records.

Section

8-16-20. Accounting system; yearly audit; custodian of funds.

PART VII—ACCOUNTING SYSTEM AND RECORDS

§ 8-16-20. Accounting system; yearly audit; custodian of funds

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for and in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept separate and apart from other funds of the municipality or municipalities, and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen of this article.

Acts 1935, c. 68, § 19; Acts 1969, c. 86.

PART X—CONSTRUCTION; EXTRATERRITORIAL JURISDICTION

§ 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction

Law Review and Journal Commentaries

This Land is Whose Land? The Feasibility of Land Use Planning Laws. Lori Schwartzmiller, *Extraterritorial Jurisdiction in West Virginia's* 109 W. Va. L. Rev. 929 (Spring, 2007).

ARTICLE 18

ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE

Part XII—Connection to Sewers; Board of Health; Enforcement of Duty to Pay for Service.

Section

8-18-22. Connection to sewers; board of health; penalty.

PART I—POWER AND AUTHORITY TO MAKE IMPROVEMENTS

§ 8-18-1. Power and authority of municipalities relating to street, sidewalk, sewer and other permanent improvements

Notes of Decisions

2. In general

A municipal corporation may use revenue sharing funds to pay that portion of the cost of the improvements to city streets not funded by special assessment. 55 W.Va. Op. Atty. Gen. 180 (November 5, 1973) 1973 WL 159172.

6. Liability of abutting landowners, generally

A County school board must pay municipal paving assessments assessed against its property, if

benefited, including undivided interest thereof. 51 W.Va. Op. Atty. Gen. 588 (November 24, 1965) 1965 WL 92496.

Municipalities may not assess any municipal street cost against abutting property lying wholly outside municipality. 51 W.Va. Op. Atty. Gen. 13 (July 24, 1964) 1964 WL 72571.

PART III—APPORTIONMENT IN MAKING ASSESSMENTS

§ 8-18-9. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid

Notes of Decisions

County-owned property 2

1. State-owned property

State agency must pay its share of municipal paving costs of streets abutting State property. 51 W.Va. Op. Atty. Gen. 432 (August 19, 1965) 1965 WL 92466.

2. County-owned property

A County school board must pay municipal paving assessments assessed against its property, if benefited, including undivided interest thereof. 51 W.Va. Op. Atty. Gen. 588 (November 24, 1965) 1965 WL 92496.



**American Recovery and Reinvestment Act of 2009 (ARRA)**

**Project Certification**

**Program:** West Virginia Clean Water State Revolving Fund

**Project:** Bridgeport, Harrison County

**Description:**

West Fork River Watershed improvements in Stouts Run and Ann's Run; creation of 9 acres of wetlands; construction of storm water management structures to alleviate stream bank erosion, loss of native habitat and improve water quality in the watershed. This project has received a "green" designated under ARRA.

**Total Project Cost**

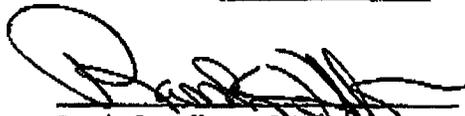
\$1,978,974

**ARRA Assistance Provided**

\$1,978,974

I hereby certify that the above project has received the full review and vetting required by federal law and that the investment of federal and state funds in this infrastructure project is an appropriate use of taxpayer dollars.

This certification will be posted on the Governor's website and linked to the federal ARRA website [www.recovery.gov](http://www.recovery.gov).

  
Randy C. Huffman, Cabinet Secretary

  
Date



west virginia department of environmental protection

## AGREEMENT

THIS AGREEMENT, Made the 28th day of January, 2010, by and between the CITY OF BRIDGEPORT, WEST VIRGINIA, a municipal corporation (the "City"), and GENESIS PARTNERS, LIMITED PARTNERSHIP, a West Virginia limited partnership ("Genesis Partners").

WHEREAS, the United States Congress has provided grant funding under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act") and through the American Recovery and Reinvestment Act of 2009 (the "ARRA") for projects that address energy efficiency, water efficiency, green infrastructure and environmentally innovative processes as well as waste water and storm water treatment facilities ("ARRA Projects");

WHEREAS, the City, as the Local Government and eligible recipient, is a party to a Water Pollution Control Revolving Fund ARRA Assistance Agreement dated January 28, 2010, (the "ARRA Assistance Agreement") with the West Virginia Department of Environmental Protection (the "DEP") pursuant to which the City will construct or cause to be constructed an ARRA Project (the "ARRA Project");

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular Local Governments pursuant to the Clean Water Act and the ARRA;

WHEREAS, under the Act and under the direction of the DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (the "Fund");

WHEREAS, the City is authorized and empowered by the statutes of the State to construct and maintain watershed improvement projects and to finance the cost of construction of the same by borrowing money to be evidenced by revenue bonds issued by the City;

WHEREAS, pursuant to the ARRA Assistance Agreement, the City will fund the construction of the ARRA Project with a loan (the "Loan") from the Fund;

WHEREAS, the ARRA Project includes a watershed drainage project and a recreation complex stormwater project;

WHEREAS, the City and Genesis Partners have agreed that the watershed drainage project will be performed by Genesis Partners pursuant to this Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the mutual agreements hereinafter contained, the City and Genesis Partners hereby agree as follows:

## ARTICLE I

### DEFINITIONS

In addition to the definitions contained in the foregoing recitals, for the purpose of this Agreement, the following terms shall have the meanings ascribed to them in this Article I.

(a) "Agreement" shall mean this Agreement dated January 28, 2010, by and between the City and Genesis Partners

(b) "Completion Date" shall mean the date on which the watershed drainage project is completed as evidenced by a Certificate of Completion, as shown on the attached Exhibit A, Form of Certificate of Completion, delivered by the Consulting Engineer to the City and Genesis Partners.

(c) "Construction Contract" shall mean the construction contract or contracts by and between Genesis Partners and a contractor or contractors named therein relating to the Project.

(d) "Consulting Engineer" shall mean Kimley-Horn and Associates, Inc. or any successor consulting engineer engaged by Genesis Partners in connection with construction of the Project.

(e) "Cost of the Project" shall mean the cost of construction of the watershed drainage project as shown on Exhibit B - Project Description and Allocation of Loan Proceeds attached hereto.

(f) "Payment Request" shall mean a request for payment for Costs of the Project accompanied by Exhibit C - Form of Requisition for Payment attached hereto.

(g) "Payment Security" and "Performance Security" shall mean the payment and performance bonds as prescribed in the Construction Contracts.

(h) "Project" shall mean the construction of the watershed drainage project, the design for each of which is shown or described on the attached Exhibit D - Project Design.

## ARTICLE II

### CONSTRUCTION OF THE PROJECT

#### Section 2.01. Duty of Genesis Partners to Cause Construction of the Project.

Genesis Partners shall cause the Project to be constructed in accordance with the plans and specifications prepared therefore by the Consulting Engineer.

#### Section 2.02. Independent Contractor.

In performing its obligations under this Agreement, Genesis Partners shall be deemed to be and is an independent contractor and not the agent or employee of the City.

#### Section 2.03. Filing of Certificate of Completion.

The watershed drainage project shall be deemed to be completed upon the filing of a Certificate of Completion, in the form of Exhibit A attached hereto, by the Consulting Engineer with the City and Genesis Partners.

#### Section 2.04 Compliance with Terms of ARRA Assistance Agreement and Indemnification.

Completion, ownership and operation of the Project shall be in compliance with the terms, provisions, covenants, conditions, and other obligations set forth in the ARRA Assistance Agreement, including all exhibits attached to said Agreement, and all permits or other regulations or directives referenced therein, or issued pursuant thereto and Genesis Partners and the City agree to mutually indemnify and save harmless one another of and from any and all liability or claims with respect to the other's failure to comply with the obligations set forth in said Agreement, exhibits, permits, regulations, or directives.

## ARTICLE III

### CONSTRUCTION CONTRACTS

#### Section 3.01. Obligation of Genesis Partners under Construction Contracts.

The Construction Contracts shall be entered into by Genesis Partners and Genesis Partners shall be entitled to carry out, amend, modify and otherwise deal with the Construction Contracts as if this Agreement was not in effect, including the right to enforce or collect upon any Performance Security or Payment Security, the release of any collateral

therefore, the approval of change orders, the acceptance of the improvements described therein, and the amendment, modification or termination of any Construction Contract.

#### Section 3.02. Performance Security and Payment Security.

Release of Performance Security and Payment Security required pursuant to a Construction Contract shall be controlled by the terms of the applicable Construction Contract. Neither the submission of a Payment Request by Genesis Partners pursuant to this Agreement nor the approval by the City of any payment for the Cost of the Project as provided herein, shall be construed as the City's approval or acceptance of the Project or any portion thereof pursuant to any Construction Contract, all of which shall be governed exclusively by the Construction Contract applicable to the Project or such portion thereof. The Construction Contract shall be entered into and performed in compliance with the ARRA Assistance Agreement and shall be amended, modified, or terminated only in compliance with said Agreement.

### ARTICLE IV

#### FUNDING

##### Section 4.01. Scope of Agreement; Funding of Project.

The Cost of the Project is intended to be funded solely from the proceeds of the Loan and shall not involve the expenditure of, or encumbrance on, any other funds or moneys of the City, general or special. The City shall not be obligated to fund the Cost of the Project, except from the proceeds of the Loan, and only to the extent of the approved budget for the Project.

##### Section 4.02. Effect on Construction Contracts.

Neither Genesis Partners nor the City shall be obligated to undertake any action pursuant to this Agreement until it has received confirmation from the West Virginia Water Development Authority and the West Virginia Department of Environment Protection, satisfactory to Genesis Partners and the City in their sole and absolute discretion, that the funds from the Loan to pay the Cost of the Project have been irrevocably committed to the City subject only to the performance by the City and Genesis Partners of their respective obligations under the ARRA Assistance Agreement.

##### Section 4.03. Allocations of Loan Proceeds

The allocation of loan proceeds for the Project, including, construction oversight, inspection, testing, legal fees and third party administrative costs, total \$1,500,474 as shown on Exhibit B, and the allocation of loan proceeds for the recreation complex

stormwater project, including, construction oversight, inspection, testing, legal fees and third party administrative costs, is \$460,000.00.

#### Section 4.04. Administrative Costs

The City and Genesis Partners will not impose or charge administrative costs related to the ARRA Project for services provided by their respective personnel. Contract administration and contract management costs of third parties, together with legal costs and fees, are budgeted for each project as part of the estimated costs. If the parties agree to delegate and contract any of the administrative duties, the costs for such duties shall be allocated pro-rata between the watershed drainage project and the recreation complex stormwater project in accordance with each project's estimated costs to the total ARRA Project costs.

### ARTICLE V

#### PAYMENT

#### Section 5.01. Agreement to Fund Costs.

The City hereby agrees to cause the funds from the Loan to be used solely to pay the Cost of the Project, in accordance with the terms of this Agreement, subject to the requirements of the ARRA Assistance Agreement.

#### Section 5.02. Payment Requests.

In order to receive payment for Cost of the Project, Genesis Partners shall deliver to the City a duly completed and executed Payment Request in the form of Exhibit B attached hereto.

#### Section 5.03. Payment.

(a) Upon receipt of a duly executed and completed Payment Request for Cost of the Project, with all necessary supporting documentation and information attached thereto or included therein, the City shall pay Genesis Partners, within ten (10) days from receipt of Loan funds from the Water Pollution Control Revolving Fund for such Payment Request, the amount of such Payment Request.

(b) The City shall not be obligated to approve more than one (1) Payment Request in any calendar month for Cost of the Project submitted by Genesis Partners.

## ARTICLE VI

### DESIGN OF THE PROJECT AND MODIFICATION OF CONSTRUCTION CONTRACT

The City has heretofore approved the design for the watershed drainage project as described on Exhibit D attached hereto. Upon written request of Genesis Partners, the City shall approve any modification of the design of the watershed drainage project within three (3) business days of receipt of the proposed modification so long as such modification is consistent with the terms and conditions of the ARRA Assistance Agreement.

Genesis Partners may change or modify the Construction Contract, so long as such change or modification is consistent with the ARRA Assistance Agreement.

## ARTICLE VII

### OWNERSHIP AND OPERATION OF THE PROJECT

#### Section 7.01. Ownership and Operation.

The watershed drainage project is to be constructed by Genesis Partners on various tracts or parcels of land situate at Charles Pointe in the City of Bridgeport, West Virginia, owned by various individuals and/or entities. Pursuant to a Master Development Agreement dated March 5, 2008, among those individuals and entities and Genesis Partners, Genesis Partners is authorized to undertake construction of the watershed drainage project on said various tracts or parcels of land. Upon completion of the watershed drainage project, the improvements will be owned by the various individuals and entities who or which own the tracts or parcels of land on which each is located. The portions of the tracts or parcels of land on which the Project is located is within the Master Common Interest Community at Charles Pointe. Upon completion of construction of the Project, the Declaration Plat for Charles Pointe will be amended to depict the areas upon which the watershed drainage project is constructed as common areas and the future upkeep and maintenance will be the obligation of the Master Association at Charles Pointe.

## ARTICLE VIII

### INSURANCE

#### Section 8.01. Genesis Partners' and Subcontractor's Insurance.

Genesis Partners shall not commence work under any Construction Contract until it has obtained satisfactory Payment Security, Performance Security and all insurance required under this Article VIII; nor shall Genesis Partners allow any contractor or subcontractor to commence work until the insurance required has been so obtained and

approved, unless such Payment Security, Performance Security and insurance covered by Genesis Partners, which is, in effect responsible to the City. These requirements extend to all tiers of subcontracting.

Section 8.02. Compensation and Employer's Liability Insurance.

Genesis Partners shall obtain and maintain and in force during the life of any Construction Contract, the statutory Workmen's Compensation and Employer's Liability Insurance for all of Genesis Partners' employees to be engaged in work covered by such Construction Contract and if any such work is contracted or sublet, Genesis Partners shall require the contractor or subcontractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all of the contractor's and subcontractor's employees to be engaged in such work.

Section 8.03. Bodily Injury Liability and Property Damage Liability Insurance.

Genesis Partners shall, during the period of construction of Construction Contract, require that all contractors and subcontractors name Genesis Partners and the City as additional insured on all liability insurance policies.

The City shall not be responsible for damage or loss of materials stored on or within the Project. Genesis Partners shall provide necessary insurance coverage to save the City harmless from any such damage or loss of material. Bodily Injury Liability Insurance shall be in an amount of not less than \$1,000,000.00 for injuries including wrongful death to any person or persons in any one occurrence. The insurance certificate provided to the City shall have clearly indicated thereon all exclusions and deductibles which have been written into the policy.

Property Damage insurance shall be in an amount not less than \$500,000.00 for damages on account of any one accident, and in an amount not less than \$1,000,000.00 for damages on account of all accidents.

Section 8.04. Special Hazards Insurance.

In the event of the possibility of special hazards existing in the work contemplated in the Construction Contract, such hazards shall be insured in amounts not less than those normally required for similar hazards. If any special hazard is encountered during the performance of the Construction Contract, Genesis Partners shall, before performing any work involving the special hazard, immediately proceed with the procuring of this insurance.

Section 8.05. Proof of Insurance.

Genesis Partners shall furnish the City with certificates showing type, amount,

class of operations, effective dates and date of expiration of policies and provide that such policies shall not be canceled or materially altered, except after 30 days written notice has been received by Genesis Partners and the City.

## ARTICLE IX

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### Section 9.01. Representations, Covenants and Warranties of Genesis Partners.

Genesis Partners represents, warrants and covenants for the benefit of the City as follows:

(a) Organization. Genesis Partners is a limited partnership, duly organized and validly existing under the laws of the State of West Virginia, is authorized to do business in the State of West Virginia, is in material compliance with the laws of the State of West Virginia, and has the power and authority to own its properties and assets and to carry on its business in the State of West Virginia as now being conducted and as hereby contemplated.

(b) Authority. Genesis Partners has the power and authority, to enter into this Agreement, to undertake the design and construction of the Project contemplated hereby and has taken all action necessary to authorize this Agreement and the execution and delivery thereof, and has in fact caused this Agreement to be properly executed and delivered.

(c) Binding Obligation. This Agreement is a legal, valid and binding obligation of Genesis Partners, enforceable against Genesis Partners in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Laws. Genesis Partners shall not, with knowledge, commit, suffer or permit any act to be done with respect to the Project, in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Projects.

(e) Requests for Payment. (i) Genesis Partners will not request payment from the City for any Cost of the Project which are not a part of the Project, and (ii) Genesis Partners will follow all procedures set forth in this Agreement with respect to the Payment Requests.

(f) Financial Records. Genesis Partners will maintain proper books and account for the Cost of the Project in accordance with the requirements of the ARRA Assistance Agreement.

(g) Plans. Genesis Partners has obtained or will obtain approval of the

plans and specifications for the Project and all required permits to perform the work under such plans and specifications from all appropriate departments of the City and the State of West Virginia, and from any other public entity or public utility from which such approval must be obtained. The Project will be constructed in compliance with the applicable plans and specifications.

(h) ARRA Assistance Agreement. Genesis Partners has reviewed the ARRA Assistance Agreement, is familiar with the terms and conditions thereof and will take no action in performance under this Agreement that would cause the City to be in violation of any of the terms and conditions of the ARRA Assistance Agreement.

Section 9.02. Representations of the City.

The City represents to Genesis Partners, as follows:

(a) Organization. The City is a municipal corporation and has the full legal right, power and authority to enter into this Agreement and to enter into the ARRA Assistance Agreement.

(b) Authority. The City, by all necessary action of the City, has duly authorized and approved the execution and delivery by the City, of this Agreement and the ARRA Assistance Agreement, and has in fact caused this Agreement and the ARRA Assistance Agreement to be duly executed and delivered.

(c) Binding Obligation. This Agreement and the ARRA Assistance Agreement are each the legal, valid and binding obligation of the City, enforceable against the City in accordance with the terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Laws. The City shall not, with knowledge, commit, suffer or permit any act to be done with respect to the Project, in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition, restriction now or hereafter affecting the Project.

(e) Requests for Payment. The City shall process and pay all Payment Requests for the Project as provided in Section 5.03 hereof.

(f) ARRA Assistance Agreement. The City shall comply in all respects with all the terms and conditions of the ARRA Assistance Agreement and, in the event, the City determines or is advised that it is or may be in violation of the terms and conditions of the ARRA Assistance Agreement, the City shall give notice of such potential or actual violation of the terms and conditions of the ARRA Assistance Agreement to Genesis Partners within twenty-four (24) hours of such determination or receipt of such notice by the City.

## ARTICLE X

### TERMINATION

#### Section 10.01. Mutual Consent.

Except as provided in Section 10.02, this Agreement may be terminated only by the mutual, written consent of the City and Genesis Partners.

#### Section 10.02. Termination for Cause.

The following events shall constitute grounds for the City or Genesis Partners, as the case may be, at its option, to terminate this Agreement, without the consent of the other.

- (a) The City or Genesis Partners shall voluntarily file for reorganization or other relief under any federal or State bankruptcy or insolvency law.
- (b) The City or Genesis Partners shall have an involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of its assets, unless, in any such case, such circumstance shall have been terminated or released within 60 days thereafter.
- (c) Genesis Partners shall abandon construction of all or any substantial portion of the Project;
- (d) The City or Genesis Partners shall breach any material covenant or default in the performance of any material obligation hereunder.

#### Section 10.03. Force Majeure.

Whenever performance is required of either party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, damage to work in progress by casualty or by any other cause beyond the reasonable control of the party, then the specified time for performance shall be extended by the amount of the delay actually so caused.

## ARTICLE XI

### MISCELLANEOUS

#### Section 11.01. Limited Liability of the City.

Genesis Partners agrees that any and all obligations of the City arising out of, or related to, this Agreement are special obligations of the City and may not constitute a general obligation debt of the City or a pledge of the City's full faith and credit, and the City's obligation to make payments hereunder is restricted entirely to funds from the Loan.

#### Section 11.02. Notices.

Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

City:       The City of Bridgeport  
              515 West Main Street  
              Bridgeport, West Virginia 26330  
              Attention: City Manager

Genesis Partners:   Genesis Partners, Limited Partnership  
                          1509 Johnson Avenue  
                          Bridgeport, West Virginia 26330  
                          Attention: James A. Corton

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

#### Section 11.03 Severability.

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

#### Section 11.04. Successors and Assigns.

This Agreement shall be binding upon and, to the extent provided herein, inure to the benefit of the successors and assigns of the parties hereto. This Agreement shall not be

Page 11 of 19

assigned by Genesis Partners without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the City.

Section 11.05. No Other Liability of Genesis Partners.

The obligations of Genesis Partners hereunder are strictly limited to the express obligations undertaken.

Section 11.06. Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

Section 11.07. Merger.

No other agreement, statement or promise made by either party or any employee, officer or agent of either party with respect to any matters covered hereby that is not in writing and signed by the parties to this Agreement shall be binding.

Section 11.08. Amendment.

This Agreement may be amended, from time to time in a manner consistent with the ARRA Assistance Agreement, by written supplement hereto and executed by both the City and Genesis Partners.

Section 11.09. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 11.10. Effective Date.

This Agreement shall be effective as of the Effective Date.

Section 11.11. Applicable Law.

This Agreement shall be governed by and enforced in accordance with the laws of the State of West Virginia applicable to contracts made and performed in the State of West Virginia.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE CITY OF BRIDGEPORT (West Virginia)

By: \_\_\_\_\_

Its Mayor

GENESIS PARTNERS, LIMITED PARTNERSHIP

By: REALCOM, INC., Its General Partner

By: \_\_\_\_\_

Its President

**EXHIBIT A**

Watershed Drainage Project

FORM OF CERTIFICATE OF COMPLETION

The watershed drainage project described in the Agreement dated January 28, 2010, by and between Genesis Partners, Limited Partnership, a West Virginia limited partnership, and The City of Bridgeport, a municipal corporation, (the "Agreement"), has been reviewed and found, to our best knowledge, information and belief, to be substantially complete, as such term is defined in the American Institute of Architects (AIA) Document 2704<sup>TM</sup> 2000 Certificate of Substantial Completion, or as contemplated by the Construction Contract for the watershed drainage project.

Date: \_\_\_\_\_

KIMLEY-HORN AND ASSOCIATES, INC.

By: \_\_\_\_\_  
Its Authorized Representative

## **EXHIBIT B**

### ARRA PROJECT DESCRIPTION AND ALLOCATION OF LOAN PROCEEDS

The ARRA project shall consist of the construction and equipping of the watershed drainage project and the recreational complex stormwater plan within the West Fork River Watershed to address existing problems such as flooding, stream bank erosion, and loss of native habitat within the Ann's Run and Stout's Run drainage basins in the City of Bridgeport. Improvements shall include riparian buffer improvements within the Stout's Run drainage basin, and storm water management structures within both the Ann's Run and Stout's Run drainage basins. The recreational complex stormwater plan implements the latest techniques in stormwater management best practices. The allocation of loan proceeds is as follows:

Watershed Drainage Project - \$1,500,474

Recreational Complex Stormwater Plan - \$460,000

**EXHIBIT C**

**FORM OF REQUISITION FOR PAYMENT**

Agreement Dated January 28, 2010  
City of Bridgeport, a municipal corporation,  
and  
Genesis Partners, Limited Partnership, a West Virginia limited partnership  
Watershed Drainage Project

REQUISITION FOR PAYMENT NO. \_\_\_\_\_

GENESIS PARTNERS, LIMITED PARTNERSHIP, a West Virginia limited partnership ("Genesis Partners"), by its duly Authorized Representative, hereby certifies in connection with this Requisition for Payment (the "Requisition") under the Agreement for the above captioned project (the "Agreement") between the City and Genesis Partners, that:

1. Terms used herein and not otherwise defined herein shall have the meanings given such terms in the Agreement.
2. The amount requested to be disbursed by this Requisition: (a) is a portion of the Costs of the Project; (b) includes only payments for work, materials, equipment and other property that have been incorporated into the Project; and (c) is an authorized expenditure under the Agreement.
3. The total amount requested to be disbursed pursuant to this Requisition is \$ \_\_\_\_\_, as set forth in **Schedule I** attached hereto.

The amount set forth herein and in **Schedule I** attached hereto are supported by the attached copies of invoices or statements.

IN WITNESS WHEREOF, this Requisition has been duly executed by Genesis Partners by its duly Authorized Representative this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

GENESIS PARTNERS LIMITED PARTNERSHIP

By: REALCOM, INC., Its General Partner

By: \_\_\_\_\_  
Its President

GENESIS PARTNERS, LIMITED PARTNERSHIP'S  
AUTHORIZED REPRESENTATIVE'S CERTIFICATE

ROBERT F. STUART, as Genesis Partners, Limited Partnership's Authorized Representative, hereby certifies that the portion of the Project for which payment is requested hereby has been constructed in accordance with the plans and specifications therefor.

ROBERT F STUART  
Authorized Representative

By: \_\_\_\_\_

## EXHIBIT D

### PROJECT DESIGN

Design and construction documents are complete for the Project as shown and described within the following approved plans and specifications:

Watershed Drainage Project: “Master Drainage Plan for Charles Pointe South - City of Bridgeport, West Virginia” prepared by Kimley-Horn and Associates, Inc., 13221 Woodland Park Road, Suite 400, Herndon, Virginia 20171

**SCHEDULE I**  
**REIMBURSEMENT**

Total amount of disbursement pursuant to Requisition for Payment # \_\_\_\_\_ is \$ \_\_\_\_\_.

Vendor	Description of Expense
--------	------------------------

Amount	
--------	--

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

The items listed for payment are supported by attached copies of invoices and statements.

DEP PAYMENT REQUISITION FORM

Rev 04/07/09

1. LOAN RECIPIENT/VENDOR:

NAME: City of Bridgeport  
 ADDRESS: 515 West Main Street  
Bridgeport, WV, 26330  
 FEIN: 556000151  
 DUNS: 03-143-8526

2. SRF #: C-547150  
 3. INVOICE NUMBER: #1  
 4. PERIOD COVERED BY THIS REQUEST (MO/DAY/YR)  
 FROM: (MO/DAY/YR) 09/25/2009 TO: (MO/DAY/YR) 01/29/2010  
 5. % of PHYSICAL CONSTRUCTION COMPLETION -0

**ARRA**

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED	C) THIS REQUEST	D) TOTAL COLUMNS B&C
1) CONST. Contract #1	\$ 1,346,223	\$ -	\$ 80,449	
2) CONST. Contract #2	\$ 431,092	\$ -		
3) ENGINEERING				
a. Planning				
b. Design				
c. Const Basic	\$ 6,000	\$ -		
d. Spec Services				
e. Inspection	\$ 127,159	\$ -		
4) LEGAL	\$ 25,000	\$ -		
5) ACCOUNTING				
6) ADMINISTRATIVE	\$ 25,000	\$ -		
7) CONTINGENCY				
8) LOAN REPAYMENT				
9) REGISTRAR FEE	\$ 500	\$ -	\$ 500	
10) CLOSING COSTS	\$ 18,000	\$ -	\$ 18,000	
11) SUBTOTAL	\$ 1,978,974	\$ -	\$ 98,949	\$ -
12) LESS PREVIOUSLY PAID				\$ -
13) INVOICE AMOUNT				\$ -

14) [Signature] for A. Kim Hays / 1/22/2010  
 AUTHORIZED SIGNATURE DATE  
A. Kim Hays, City Manager  
 TYPED OR PRINTED NAME AND TITLE

15) \_\_\_\_\_  
 PERSON PREPARING FORM SIGNATURE DATE  
 \_\_\_\_\_  
 TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: WV DEPARTMENT OF ENVIRONMENTAL PROTECTION

John Rozen / 1/25/2010  
 PROJECT REVIEWER DATE

[Signature] / 1/25/10  
 AUTHORIZED OFFICER DATE

**State of West Virginia**  
**WATER DEVELOPMENT AUTHORITY**  
 180 Association Drive, Charleston, WV 25311-1217  
 (304) 558-3612 - (304) 558-0299 (Fax)  
 Internet: www.wvwda.org - Email: contact@wvwda.org

**PRECLOSING ATTENDANCE LIST**

Date January 27, 2010 Time 1:30 p.m. LGA Bridgport Program CWSRF/ARRA

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Carol A. Cummings	WV Water Dev Auth.	304-558-3612	304-558-0299	ccummings@wvwda.org
Cam Siegrist	Bowles Rice McDavid Graff & Love LLP	304-347-1129	304-343-3058	csiegrist@bowlesrice.com
Samme Lore	Jackson Kelly PLLC	304 340 1388	304 340 1272	sgre@jacksonkelly.com
ROSE BRODERSEN	WV DEP	304 926 0499 x1608	304 926 0496	Rosalie.M.Brodersen@wv.gov

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name H. Thomas Brown, P.E. Telephone (304) 842-8204 E-Mail TomBrown@bridgportwv.com

Address 515 West Main Street, Bridgport, WV 26330

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.